

Planning

Growth & Development

Delegated officer report for planning application

Application no. 140526/LP/2024

Date registered valid: 15 July 2024

Proposal: Change of use of ground floor retail (Use Class E) and first floor flat (Use Class C3) to two (1no. bedroom) flats (Use Class C3)

Address: 205 Lightbowne Road, Manchester, M40 9DD

Ward(s): Moston Ward

Applicant: Mr Lenehen

Agent (if any): Mr Steven Mellor William McCall

Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse

Date of recommendation: 9 September 2024

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: Not Required

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

No neighbour notifications have been printed and sent.

Site notice

No site notice has been produced

Press advert

No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building

Application site relates to a two storey mid-terraced building with a shop/retail unit on the ground floor and a first floor flat.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The property is located within a small parade of shops and what is large a residential area comprising of two storey terraced properties.

Description of development

Certificates of lawfulness for the change of use of ground floor retail (Use Class E) and first floor flat (Use Class C3) to two (1no. bedroom) flats (Use Class C3)

Consultations & Notification Responses

None Required - There is no statutory requirement to consult third parties including neighbours; views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

Issues

Legislative Issues

Sections 191 and 192 of the Town and Country Planning Act 1990 provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

(2) in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

The onus of proof in regard to (1) is firmly on the applicant and the issue of a certificate will depend on the on factual evidence provided about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The relevant test of the evidence in this matter is "the balance of probability" and the applicants own evidence does not need to be corroborated by independent evidence. If the LPA have no evidence to contradict the applicants version of events or make them less than probable, there is no good reason to refuse the issue of a certificate.

In regard to (2), this provides that, if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

In short, the purpose section 192 is to enable any person who wishes to find out whether any proposed use or operations would be lawful to apply to the LPA for that purpose

The application needs to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission that are to be relied upon in order to satisfy the LPA that a certificate should be granted for the proposal.

In making their decision on an application under section 192, the LPA ask themselves the hypothetical question - "If this proposed change of use had already occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?" In doing so, the LPA will not only consider whether the proposal would involve "development" requiring an application for planning permission, but whether it would involve a breach of any existing condition or limitation imposed on a grant of planning permission which has been acted upon, and which therefore constrains what can be done on the land. The LPA will not make a proposal fit a scenario; the only question is whether the proposal made by the applicant is lawful at the time of submission.

Planning History

There have been three planning applications at this address, two relate to advertisements and an approved application which allowed the erection of garage rear of shop after demolition of existing garage under planning reference: F17150 in 1982.

In addition there has been one withdrawn application under planning reference 136919/P3GPA/2023 for a Prior Approval for change of use of first floor to residential flat (Class C3).

The Application

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The Application

This application is pursued under subsection (1) of section 191 which provides for an application to determine whether a specified existing use, operation, or failure to comply with a

planning condition or limitation, which has already been carried out on land is lawful for planning purposes.

The applicant is seeking a lawful development certificate (LDC) for the proposed change of use of ground floor retail (Use Class E) and first floor flat (Use Class C3) to two (1no. bedroom) flats (Use Class C3)

Part 3, Schedule 2, Class MA of the GPDO 2015 allows for Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and services) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.

Therefore, any proposal to change from Use Class E to C3 must be considered under Class MA, as set out below.

MA.1 – (1) Development is not permitted by Class MA-

	Complies
b. <i>Unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;</i>	Yes
<i>If land covered by, or within the curtilage of, the building -</i>	
i. <i>Is or forms part of a site of special scientific interest;</i>	Yes
ii. <i>Is or forms part of a listed building or land within its curtilage;</i>	Yes
iii. <i>Is or forms part of a scheduled monument or land within its curtilage</i>	Yes
iv. <i>Is or forms part of a safety hazard area; or</i>	Yes
v. <i>Is or forms part of a military explosives storage area;</i>	Yes
e. <i>If the building is within-</i>	
i. <i>An area of outstanding natural beauty;</i>	Yes
ii. <i>An area specified by the Secretary of the State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981</i>	Yes
iii. <i>The Broads;</i>	Yes
iv. <i>A National Park; or</i>	Yes
v. <i>A World Heritage Site;</i>	
f. <i>If the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or</i>	Yes
g. <i>Before 1 August 2022, if -</i>	
i. <i>The proposed development is of a description falling within Class O of the is Part as that Class has effect immediately before 1st August 2021; and</i>	N/A
ii. <i>The development would have not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 4.</i>	N/A

(2) The Classes mentioned in sub-paragraph (1)(B) are the following classes of the Use Classes Order –

(a) the following classes of the Schedule as it had effect before 1st September 2020—

- (i) Class A1 (shops);*
- (ii) Class A2 (financial and professional services);*
- (iii) Class A3 (food and drink);*
- (iv) Class B1 (business);*

- (v) Class D1(a) (non-residential institutions – medical or health services);
- (vi) Class D1(b) (non-residential institutions – crèche, day nursery or day centre);
- (vii) Class D2(e) (assembly and leisure – indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;
- (b) on or after 1st September 2020, Class E (commercial, business and service) of Schedule 2.

However, the conditions listed under MA2 state that “**Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to....**” (Emphasis added by case officer) These impacts are listed (a) to (i).

The effect of this requirement to make a prior approval application is that these Classes of permitted development can only proceed if the local planning authority determines that their prior approval will not be required, or if they give their approval.

Therefore, the certificate should be refused.

Conditions

MA.2.—(1) Development under Class MA is permitted subject to the following conditions.

(2) Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

- (a) transport impacts of the development, particularly to ensure safe site access;
- (b) contamination risks in relation to the building;
- (c) flooding risks in relation to the building;
- (d) impacts of noise from commercial premises on the intended occupiers of the development;
- (e) where—
 - (i) the building is located in a conservation area, and
 - (ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;
- (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
- (g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;
- (h) where the development involves the loss of services provided by—
 - (i) a registered nursery, or
 - (ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006, the impact on the local provision of the type of services lost; and
- (i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

(3) An application for prior approval for development under Class MA may not be made before 1 August 2021.

(4) The provisions of paragraph W (prior approval) of this Part apply in relation to an application under this paragraph as if

- (a) for paragraph (e) of sub-paragraph (2) there were substituted—
- “(e) where—

- (i) sub-paragraph (6) requires the Environment Agency⁵⁸ to be consulted, a site-specific flood risk assessment;
- (ii) sub-paragraph (6A) requires the Health and Safety Executive⁵⁹ to be consulted, a statement about the fire safety design principles, concepts and standards that have been applied to the development.”;
- (b) in the introductory words in sub-paragraph (5), for “and highways impacts of the development” there were substituted “impacts of the development, particularly to ensure safe site access”;
- (c) after sub-paragraph (6) there were inserted—
“(6A)Where the application relates to prior approval as to fire safety impacts, on receipt of the application, the local planning authority must consult the Health and Safety Executive.”;
- (d) in sub-paragraph (7) for “(5) and (6)” there were substituted “(5), (6) and (6A)”;

(5) Development must be completed within a period of 3 years starting with the prior approval date.

(6) Any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.

Interpretation of Class MA

MA.3.Development meets the fire risk condition referred to in paragraph MA.2(2)(i) if the development relates to a building which will—

- (a) contain two or more dwellinghouses; and
- (b) satisfy the height condition in paragraph (3), read with paragraph (7), of article 9A (fire statements) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Other Legislative Requirements

Equality Act 2010

Section 149 (Public Sector Equality Duty) of the Equality Act 2010 requires due regard to the need to: Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act and; Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. The Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment. Compliance with the Equality Duty involves consciously thinking about the aims of the Equality Duty as part of the process of decision-making.

Human Rights Act 1998 considerations

This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person’s home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is

in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation:

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

1) The proposal requires prior approval as set out in condition MA.2 of Part 3, Schedule 2, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Appendix 1 – List of consultees & neighbours notified

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4

Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA

Coal Authority - Surface Coal Resources - Name: Coal bearing strata at surface

Historic Landfill Site 250m Buffer -

Area Team Boundary - Name: NORTH AREA