

Planning

Growth & Development

Delegated officer report for planning application

Application no. 140147/LE/2024
Date registered valid: 21 June 2024
Proposal: Use of 2 Units as Storage (Use Class B8)
Address: 461 Cheetham Hill Road, Manchester, M8 9PA
Ward(s): Cheetham Ward

Applicant: Mr Mohammed Abbas
Agent (if any): Mr Muthahar Khan Studio Tashkeel Architecture
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 15 August 2024

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: 8 August 2024

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 15 July 2024 Expired: 5 August 2024

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

The application site relates to the rear and yard of 461 Cheetham Road that faces onto Beckenham Road.

At the time of the site visit officers noted that some works have already been carried out on the site with what appears to be a shell of a building that includes roller shutters installed over two openings, roof joists installed, however they do not cover the whole of space, there is also no roof to the structure and there appears to be a tree growing from within what is claimed to be one of the units.

Lastly concrete fencing has been installed along the frontage of Beckenham Road with side timber fencing.



Image Montage 1 Case office Site Photographs and Google Earth Aerial Image dated April 2022

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The application site is located within what is a predominantly residential area within some commercial properties located on Cheetham Hill Road.

Description of development

The certificate of lawful existing use or development (CLEUD) that is the subject of this application relates to the use of the rear of the site as 2 Units for Storage (Use Class B8)

Consultations & Notification Responses

Publicity – Notification letters were sent to nearby residential properties (see appendix 1 for the list of properties).

Local residents/public opinion – No objections, comments or representations in support of the application have been received.

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

Prior to this application for a certificate, the last planning application at this site was for a part retrospective application for the erection of two single storey A1 retail units in the rear yard area of 459-461 Cheetham Hill Road which was refused in September 2012 (099853/FO/2012/N1).

A planning application was refused in August 2007 for the conversion of existing stockroom to separate retail unit (Class A1) with associated elevational alterations including installation of roller shutters and disabled access ramp (083424/FO/2007/N1).

Planning Permission was refused in April 2005 for the erection of a two-storey rear extension to form an extended retail area with storage/stockroom at first floor (074551/FO/2005/N1).

Following the refusal of Planning Permission for the change of use of 459 Cheetham Hill Road into a hot food takeaway, an Appeal was dismissed (073704/FU/2004/N1).

Advertisement Consent was refused in 1982 for the display of non-illuminated fascia signs fixed above existing fascia signs on front and side elevations of shop (F/AD03593).

An alley-gating scheme was approved in the residential streets surrounding the site in 2003 (070387/VO/2003/N1).

The Application

In a case of this type, the onus is on the applicant to substantiate his or her case, on the balance of probability. The applicant needs to demonstrate that the use of rear property as 2 Units for Storage (Use Class B8) commenced more than ten years prior to the date of the application (i.e. by 29 May 2014) and continued without a significant break for ten years.

Class B8 is defined in the Town and Country Planning (Use Classes) Order 1987, as amended, as "Use for storage or as a distribution centre."

The application site relates to the rear yard of a car spare parts store (Class E) and a travel shop (Class E). The Planning Practice Guidance points to the need for evidence to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The applicant has stated that the Certificate should be granted as the units were used for temporary storage purposes that does not generate any footfall and that the work had been completed more than 10 years ago.

Planning history of the site reveals that there was an application in 2012 that was refused for erection of two single storey A1 retail units in the rear yard area of 459-461 Cheetham Hill Road. The drawings from this application appear to relate to the same part of the site that the applicant is now seeking a certificate (image 1).

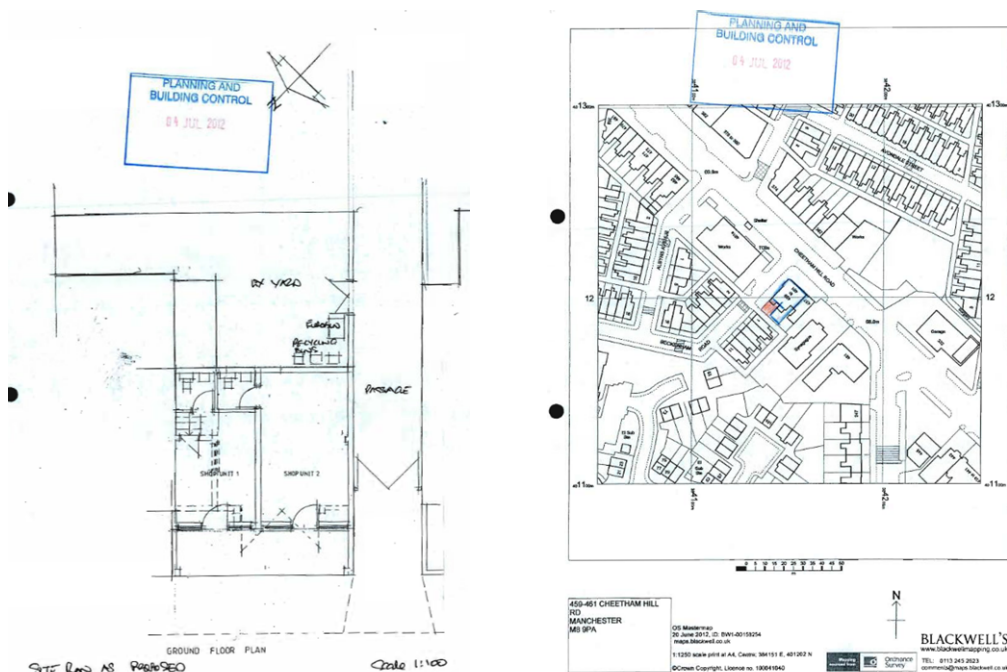


Image 1 Proposed Site plan and Site Location Plan for application reference: 099853/FO/2012/N1

In terms of evidence, the applicant has provided a tenancy agreement for a term beginning on the 01-12-2013 until 30-11-2016 of what is describe on the tenancy agreement as storage unit of 461 Cheetham Hill Road.

In addition to the tenancy agreement, the applicant has also provided two images taken from Google street view in September 2012 and July 2014.

The Planning Practice Guidance points to the need for evidence to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The condition of the site raises doubts that the site has ever been used as 2 units for storage, with Google Streetview showing very little change at the rear of the property since 2012. This taken with the evidence submitted does not provide a basis to conclude with sufficient confidence that the rear yard has been in continuous use 2 units for storage over the 10 years from 29 May 2014.

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: Refuse

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

1) The applicant has failed to demonstrate that 461 Cheetham Hill Road has been used as two units of storage within Use Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended), for a continual 10 year period up to the date of the application.

Appendix 1 – List of consultees & neighbours notified

Rear Of, 461 Cheetham Hill Road, Manchester, M8 9PA
Ground Floor, 461 Cheetham Hill Road, Manchester, M8 9PA
461A Cheetham Hill Road, Manchester, M8 9PA
461B Cheetham Hill Road, Manchester, M8 9PA
First Floor, 461 Cheetham Hill Road, Manchester, M8 9PA
8 Beckenham Road, Manchester, M8 9AD
6 Beckenham Road, Manchester, M8 9AD
4 Beckenham Road, Manchester, M8 9AD
3 Beckenham Road, Manchester, M8 9AD
457 Cheetham Hill Road, Manchester, M8 9PA
11 Beckenham Road, Manchester, M8 9AD
First Floor, 459B Cheetham Hill Road, Manchester, M8 0PF
459 Cheetham Hill Road, Manchester, M8 0PF
7 Beckenham Road, Manchester, M8 9AD
1 Beckenham Road, Manchester, M8 9AD
9 Beckenham Road, Manchester, M8 9AD
5 Beckenham Road, Manchester, M8 9AD
2 Beckenham Road, Manchester, M8 9AD
10 Beckenham Road, Manchester, M8 9AD

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
Area Team Boundary - Name: NORTH AREA