MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	139907/LE/2024
Date registered valid:	30 April 2024
Proposal:	Use of property a small house in multiple occupation (Use Class C4)
Address:	39 Talbot Road, Manchester, M14 6TA
Ward(s):	Withington Ward
Applicant:	Mr Ben Thorns
Agent (if any):	Mr Farhan Rama Archirama Ltd
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Refuse
Date of recommendation:	20 June 2024

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: Not Required

Standard consultations:
No consultations have been printed and sent.

Neighbour notifications
Printed: 30 April 2024 Expired: 22 May 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

Application site relates to an end terraced, two storey terraced house, with an enclosed front and rear gardens

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The site is located to the south east of Fallowfield District Centre and the north west of Withington District Centre and comprises mostly residential properties close to good public transport links in and out of the City Centre.

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 property as a small House in Multiple Occupation (Class C4)

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 then 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.

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.

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 property as a small House in Multiple Occupation (Use Class C4) commenced more than ten years prior to the date of the application (i.e. by 10th October 2013) and continued without a significant break for ten years.

Class C4 is defined in the Town and Country Planning (Use Classes) Order 1987, as amended, as “Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”.” This latter term is as defined in S.254 of the Housing Act 2004.

39 Talbot Road is an end terraced, two storey dwelling house, with an enclosed front and rear gardens. The application form states that from the 22nd May 2008 the property became a C4 use. The floor plans provided show a combined lounge/diner on the ground floor, with a separate kitchen and a bedroom with an ensuite. At the first floor is further three bedrooms all with suites and two bedrooms that share a bathroom access from the landing “forms six bedrooms” in total.

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 evidence provided in the form of HMO Licence that shows between 22nd May 2008 up until 21st May 2012, from 19th August 2016 to 18th August 2021 and 23rd August 2021 until 22nd August 2026 had a HMO licence at this address for a maximum of 4, 6 and 6 tenants respectively. Between 2012 and 2016, correspondence from with Councils Citywide Housing Support Team, indicates that the number of occupants at the address reduced from 5 to 4 and therefore took the property out of the requirement for a mandatory of HMO licence.

An extract from the electoral register was also provided by the applicant showing that in 2009/10 and in 2014 there were four persons registered to vote at the property.

From the information provided, whilst it may show that the property was let as an HMO in 2009/10 and 2014, it fails to demonstrate that the use of property as a House in Multiple Occupation commenced more than ten years prior to the date of the application and continued without a significant break for ten years.

A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

As such, it does not provide a basis for the Council to conclude with sufficient confidence that the property has been in continuous use as a house in multiple occupation for the required 10 years. However, this does not preclude a further application to the Council should further and more compelling evidence be forthcoming to shed light on the gaps within the information submitted.

Therefore, based on the information provided, the Certificate should be refused.

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 polices 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 39 Talbot Road , Manchester, M14 6TA has been occupied as a small scale house in multiple occupation Class C4 of the schedule to 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

56 St Georges Road, Manchester, M14 6SZ
50 St Georges Road, Manchester, M14 6SZ
41 Talbot Road, Manchester, M14 6TA
54 St Georges Road, Manchester, M14 6SZ
48 St Georges Road, Manchester, M14 6SZ
52 St Georges Road, Manchester, M14 6SZ
28 Talbot Road, Manchester, M14 6TB
24 Talbot Road, Manchester, M14 6TB
22 Talbot Road, Manchester, M14 6TB
26 Talbot Road, Manchester, M14 6TB
37 Talbot Road, Manchester, M14 6TA
43 Talbot Road, Manchester, M14 6TA
35 Talbot Road, Manchester, M14 6TA

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M
Flood Zones Type 2 (low to medium risk) -
Area Team Boundary - Name: SOUTH AREA