

Planning

Growth & Development

Delegated officer report for planning application

Application no. 139502/LE/2024
Date registered valid: 12 April 2024
Proposal: Use of property as 3 No. Apartments (Use Class C3).
Address: 95 Longden Road, Manchester, M12 5SJ
Ward(s): Levenshulme Ward

Applicant: Mr Turner
Agent (if any): Mr Grant Erskine Grant Erskine Architects
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 6 June 2024

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit:

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 23 April 2024 Expired: 15 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

The application site relates to part ground and the first floor of two storey building located on the corner Longden Road and Stovell Avenue.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

Located to the north of Levenshulme District Centre, the area comprises of residential properties that become more commercial the close to Stockport Road (A6).

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 3 No. Apartments (Use Class C3).

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.

Planning History

There have been a total of six application at this address of relevance are as follows:

120605/P3MPA/2018

Notification for a Prior Approval for a change of use from retail use class A1 to residential class C3 with associated external alterations
Application Approved - 02.08.2018

120834/FO/2018

Conversion of part of ground floor to create 1 no. one bedroom self-contained flat and conversion of first floor to 2 no. one bedroom self-contained flats (total of 3 flats) with associated elevational alterations
Application Refused - 28.09.2018

F08210

Use of ground floor of dwellinghouse as a shop, and single storey extension at the rear.
Application Approved - 12.05.1978

021933

Two storey extension to living accommodation at rear of house and shop
Application Approved - 16.07.1984

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.

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 an existing certificate of lawful development to confirm the use of the property as 3 self-contained flats.

in a case of this type, the onus is on the applicant to substantiate their case, on the balance of probability. The applicant needs to demonstrate that the use as two flats commenced more than 4 years prior to the date of the application (i.e. by 11th March 2019) and continued without a significant break for 4 years.

Class C3 is defined in the Town and Country Planning (Use Classes) Order 1987, as amended, as "Use as a dwellinghouse (whether or not as a sole or main residence) by -."

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided for residents; or
- (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4)."

For the purposes of Class C3(a) "single household" shall be construed in accordance with S.258 of the Housing Act 2004.

The floor plan provided with the application shows that the property has been subdivided into three units.

The part of ground floor is a one-bedroom flat consisting of a separate living room and kitchen, a shower room with a toilet and washbasin. On the first floor there are two, two-bedroom flats consisting of a separate living room and kitchen, a shower room with a toilet and washbasin.

The applicant has provided a deposit details and tenancy agreements for each flat, energy performance certificates for each flat and council tax details. The tenancy agreements show that the flats have been occupied since 29 July 2019 (flat 1), 15 August 2019 (flat 2) and 15 August 2019 (flat 3).

The onus is on the applicant to provide evidence to support their application, however public available information from the Valuation Office Agency (VOA) website, the website shows that three properties are within Council Tax Band A and were registered as flats for council tax purposes on the 4th May 2019 (images 1) The energy performance certificate provided by the applicant shows that all three of the flats have one with the assessment for each flat taken place on the 19th July 2019.

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Property information for
**FLAT 1 AT 95, LONGDEN ROAD,
MANCHESTER, M12 5SJ**

Local Authority	Manchester
Local authority reference number	4125162
Council Tax band	A
Improvement indicator	No
With effect from	4 May 2019
Mixed-use property	No
Court code	None

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Property information for
**FLAT 2 AT 95, LONGDEN ROAD,
MANCHESTER, M12 5SJ**

Local Authority	Manchester
Local authority reference number	4125163
Council Tax band	A
Improvement indicator	No
With effect from	4 May 2019
Mixed-use property	No
Court code	None

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Property information for
**FLAT 3 AT 95, LONGDEN ROAD,
MANCHESTER, M12 5SJ**

Local Authority	Manchester
Local authority reference number	4125164
Council Tax band	A
Improvement indicator	No
With effect from	4 May 2019
Mixed-use property	No
Court code	None

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Image 1 Screenshot of the Council Tax Valuation Office website for each flat. Accessed 04.06.2024

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.

Taking into consideration all the evidence provided, it does not provide a basis for the Council to conclude that with sufficient confidence, that the property has been in continuous use as three

self-contained since 11th March 2019, as the evidence provided shows that the flats have been occupied for less than the four years.

The certificate should therefore 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 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) From the evidence available, and with reference to the relevant planning legislation, Manchester City Council is satisfied that the use of the property as three self contained flats is lawful by reason of the said use having been in existence for a period of 4 years up to the date of this application.

Appendix 1 – List of consultees & neighbours notified

91 Longden Road, Manchester, M12 5SG
34 Stovell Avenue, Manchester, M12 5SE
Flat 2, 95 Longden Road, Manchester, M12 5SJ
Flat 1, 95 Longden Road, Manchester, M12 5SJ
Flat 3, 95 Longden Road, Manchester, M12 5SJ
97 Longden Road, Manchester, M12 5SJ

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
Area Team Boundary - Name: NORTH AREA