

Planning

Growth & Development

Delegated officer report for planning application

Application no. 139645/LE/2024
Date registered valid: 27 March 2024
Proposal: Use of property as a Small House in Multiple Occupation (Use Class C4)
Address: 78 Wellington Road, Old Moat, Manchester, M14 6BJ
Ward(s): Old Moat Ward

Applicant: Mr Dermot McKenna Longley Lane Investments Ltd
Agent (if any): Mrs Jackie McKenna Kendalbyrne Developments Ltd
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Grant
Date of recommendation: 20 May 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: 10 April 2024 Expired: 1 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 a two storey semi-detached property with both ground and first floor bay windows and a recessed porch.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

Application site is a residential area located close to Fallowfield District 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 – One representation was received, objecting to the certificate on the grounds that expanding the property would allow for more students within the property which in turn would increase in noise levels and impact the health of a nearby resident.

The area of Old Moat already has too many HMO properties and thought that the City Council were reducing the number of HMOs not increasing them.

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

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 27 March 2014) 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.

The property is a semi-detached brick built dwelling house with a blue/grey slate tiled roof property. The property has a partially enclosed front garden and a rear garden, the application form states that from the 01 March 1994 the property became a C4 use.

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 tenancy agreements from 2013/14 up until the most recent tenancy agreement for 2023/24. The forms should that up to six tenants have resided at the property over the last 10 years.

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.

Therefore, on balance of probability and without any evidence to the contrary the properties have been in use a small house in multiple occupation continuously for over 10 years.

Other Matters – Concerns raised by the objection including the impact of HMOs properties have caused on areas with high concentration of HMO properties are noted, however this certificate is not an application to create an HMO. However, 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.

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: Grant

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 is lawful by reason of the said use having been in existence for a period of 10 years up to the date of this application.

Appendix 1 – List of consultees & neighbours notified

Flat 9, 73 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 7, 73 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 6, 73 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 4, 73 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 2, 73 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 1, 73 Wellington Road, Old Moat, Manchester, M14 6BN
80 Wellington Road, Old Moat, Manchester, M14 6BJ
76 Wellington Road, Old Moat, Manchester, M14 6BJ
Flat 12, 73 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 11, 73 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 3, 69 - 71 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 2, 69 - 71 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 1, 69 - 71 Wellington Road, Old Moat, Manchester, M14 6BN
12 Barnsfold Avenue, Manchester, M14 6FJ
67 Wellington Road, Old Moat, Manchester, M14 6BH
Flat 11, 69 - 71 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 8, 73 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 5, 73 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 3, 73 Wellington Road, Old Moat, Manchester, M14 6BN
8 Barnsfold Avenue, Manchester, M14 6FJ
10 Barnsfold Avenue, Manchester, M14 6FJ
Flat 12, 69 - 71 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 10, 69 - 71 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 9, 69 - 71 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 8, 69 - 71 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 7, 69 - 71 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 6, 69 - 71 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 5, 69 - 71 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 4, 69 - 71 Wellington Road, Old Moat, Manchester, M14 6BN
Flat 10, 73 Wellington Road, Old Moat, Manchester, M14 6BN

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
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: SOUTH AREA