

15 March 2024

Manchester City Council
Submitted via Planning Portal

Dear Sir/Madam,

I have been instructed by my client Dr Sermed Mezher to submit a Certificate of Lawfulness of Existing Use or Development application (a CLEUD) under Section 191 of the Town and Country Planning Act 1990 (as amended) (The TCPA) in relation to 15 Milverton Road, Manchester, M14 5PL. The aim is to establish that the existing and continued use of the application property as a Class C4 House in Multiple Occupation (HMO) is lawful by virtue of:

- (1) The existing use falling within Class C4 of the Town and County Planning (Use Classes) Order 1987 (As amended); and
- (2) The existing use has been in continuous operation for in excess of 10 years and as such under the provision of Section 171B of the TCPA no enforcement action may be taken.

The description of the development applied for is:

'Certificate of Lawfulness for the existing and continued use of 15 Milverton Road, Manchester, M14 5PL as a Class C4 House in Multiple Occupation (HMO)'

This covering letter is provided in support of the application and sets out the grounds under which the certificate is made. It describes and considers the evidence submitted with the application and details how this evidence demonstrates that 'on the balance of probability' the existing Class C4 use had commenced and has continued to operate as such and is therefore lawful in planning terms taking account of the timescales outlined in s171b of the TCPA.

In addition to this letter, the application includes:

- A completed application form (including the applicant's interest in land).
- 1:1250 OS Site Location Plan identifying the land to which the application relates.
- Evidence - Tenancy Agreement showing the property rented out to unrelated occupiers for in excess of 10 years, the timeline for the tenants and rooms occupied are contained within **Appendix 1**.
- Bank Statements for the applicant's bank accounts these show transactions from tenants into his account relating to room rentals. ***Please note these are private and confidential and should not be uploaded to the planning portal.***
- Evidence – Report and Valuation for Mortgage Purposes by the Cambridge Group, confirming 5 individual bedrooms with locks on doors and that it was let out to individual tenants dated 8/7/2021.
- Messages between applicant and Niki Drossinos Sancho (Bedroom 1 tenant) relating to occupation of room from June 2019
- Statement to Giorgio Carbone dated 9/11/2020, who was a tenant of the property since September 2018, confirming utilities were in the applicant's name. This has not changed.
- Email trail relating to tenant moving in on the 12 August 2018.
- Student tax exemption from council tax message to the Council it is assume this can be checked with the Council Tax Team. This was for year 2015/2016.
- Similar to above Council Tax Exemption request dated 4/11/2016 for year 2016/17.
- Spare Room Advert for HMO from 2022, detailing 4 rooms let and seeking a further tenant from 14/11/2022.
- Spare Room Advert for HMO from 2018, detailing 4 rooms let and seeking a further tenant for 2018/19.

The required planning fee of £578 will be made directly by the applicant.

The above information complies with validation requirements for a certificate of lawfulness application, as set out in Article 39 of the Town and Country Planning (General Management Procedure) (Order) 2015 i.e. completed application form, details of interest in the site, location plan and evidence. The site is not Crown Land and a single use is applied for in terms of the whole application site outlined in red on the Site Location Plan.

It is noted that whilst the onus of proof lies with an applicant when a Certificate of Lawfulness application

is made, the National Planning Policy Guidance sets out that where the Local Planning Authority (LPA) has no evidence of its own or from others (e.g. neighbours) that contradicts the applicant's case or otherwise makes it '*less than probable*', there is then no good reason to refuse the application, provided the applicant's evidence alone is sufficiently '*precise and unambiguous*' to justify the grant of a certificate 'on the balance of probability'. Case law has also established that the applicant's evidence does not need to be corroborated by independent evidence for it to be accepted. Furthermore, the identity of the applicant and the planning merits of the development applied for are not relevant to the consideration of the certificate, which deals purely with the legal issues involved in determining an application.

Application Site and Context

The application site is a semi-detached property known as 15 Milverton Road. It is located on the northern side of the road in a residential area in an urban location. The application site includes the property's front and rear garden area.

Historically, the property was used as a single residential dwelling (Class C3) but has been used as a small HMO (Use Class C4) with 5 individual bedrooms and various shared facilities.

The property has been in use as a HMO since 3 September 2013. The property is currently occupied by 5 tenants.

The site has no planning history of direct relevance to this certificate application.

Legislative Background

Town and Country Planning (Use Classes) Order 1987 (as amended)

A dwellinghouse occupied by a family falls within Class C3 of the Use Classes Order. It specifically falls within Class 3(a), which is a dwellinghouse occupied by:

Class C3(a) a single person or by people to be regarded as forming a single household'

The UCO states that for the purposes of Class C3(a), a 'single household' is as construed in Section 258 of the Housing Act 2004. The basic principle is that a single household is formed by people belonging to the same 'family' (related), with such relatives including couples, step-children etc. The Planning Portal clarifies that certain live-in employees (e.g. a nanny) can also be included.

A small shared house in multiple occupation where there is more than a single household (as defined in Section 258) and no more than 6 residents fall within Class C4 of the UCO. This is defined as:

Class C4. Houses in multiple occupation Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”

The Planning Portal provides additional information in terms of Class C4, which takes account of Sections 254 and 258 of the Housing Act 2004 regarding HMOs. It states:

C4 Houses in multiple occupation - Small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.

Section 191 of The Town and Country Planning Act 1990

Section 191 of the Town and Country Planning Act 1990 (as amended) relates to certificates of lawfulness in respect of an existing use or development. As noted above, applications for a certificate of lawfulness are a legal evidence-based assessments based on the balance of probabilities.

Section 191(1) states:

‘If any person wishes to ascertain whether –

- a) Any existing use of buildings or other land is lawful; (my emphasis)*
- b) Any operations which have been carried out in, on, over or under land are lawful; or*
- c) Any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful.*

He may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.’

Section 191(2) continues by stating:

‘for the purposes of this Act uses and operations are lawful at any time if –

- a) No enforcement action may then be taken in respect of them whether because they did not involve development or require planning permission or because the time for enforcement action has expired (my emphasis) or for any other reason; and*
- b) They do not constitute a contravention of any of the requirements of any enforcement*

notice then in force. ‘

It is on this basis of 191(2)(a) as underlined that this application is made i.e. the application property is being used as a Class C4 HMO which has continued for in excess of 10 years from the first date of the breach in planning, therefore, by fact and degree is lawful and immune from enforcement action.

Documentary Evidence

Documentary evidence is provided to demonstrate that the application property as a former Class C3 dwellinghouse is now in use as a Class C4 HMO, when this commenced and that the change of use of occurred in excess of 10 years ago and has been in continuous use since that time.

The evidence submitted suitably demonstrates precisely and unambiguously that the application property is being used as a Class C4 HMO and the material change of use from Class C3 to Class C4 commenced in September 2013 and has continue up to this date, and will continue to be tenanted on this basis in the future.

Potential other evidence from the applicant

A statutory declaration by the applicant confirming the above details to be correct has not been included in the application, as it is not considered that this additional level of evidence is necessary in this case, with the submitted evidence instead suitably demonstrating that on the balance of probability a Class C4 HMO use has commenced. A Statutory Declaration by the applicant and tenants can be completed and provided if such additional evidence is considered absolutely essential by the LPA, as such will involve a time and financial cost.

Conclusion

The application site is in use as a Class C4 HMO with between 3-6 unrelated occupants using the property as their main residence, following its conversion from a Class C3 family dwellinghouse. The Class C4 use commenced on in September 2013.

It is considered that the submitted evidence is sufficiently precise and unambiguous to allow the LPA to conclude that on the balance of probability the property is in use as a Class C4 HMO is lawful. In view of the above it is respectfully requested that a Certificate of Lawfulness for the use of the application property as a Class C4 HMO is issued without delay.

If any clarification of the application is required, or it is considered that a statutory declaration is

required, please contact me.

Additionally, please contact me to make arrangements for the case officer to enter the property if this would assist in terms of obtaining evidence first-hand.

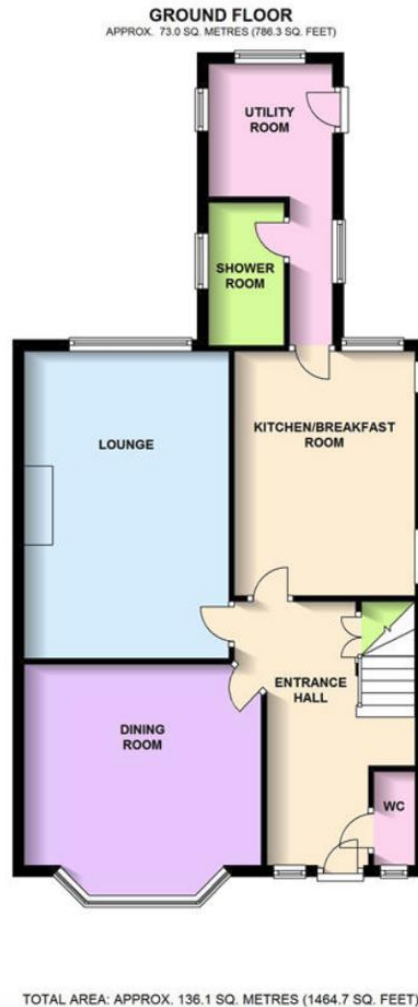
Yours faithfully

A handwritten signature in black ink, appearing to read 'C Pipe', is positioned above the printed name.

Chris Pipe BA (Hons), DipTP, MTP, MRTPI

Planning Director

Appendix 1 Tenant Timeline



Bedroom 1 (Ground floor, historically the dining room as per above ground floor plan):

Rajen Nagar (3rd September 2013 - 14th June 2015)

2 week gap (15th June 2015 - 30th June 2015) - does not coincide with any gaps in other rooms

Rita Rozinyak & Csaba Sandor (1st July 2015 - 1st April 2017)

1 week gap (2nd April 2017 to 7th April 2017) - does not coincide with any gaps in other rooms

Salvatore Bella & Ellie Grajczonek (8th April 2017 - 19th November 2017)

Ellie Grajczonek (20th November 2017 - 3/1/2018)

1 week gap (4/1/2018 - 8/1/2018) - does not coincide with any gaps in other rooms

Edward Roberts (9/1/2018 - 31/07/2018)

Tobias Searle and Lily Boyask (01/08/2018 - 15/06/2019)

Niki Drossinos Sancho (16/06/2019 - present)

Master Bedroom (as per first floor plan):

Kristian Whalley (3/8/2013 - 30/6/2015)

Laura-Jane Webb (1/7/2015 - 30/9/2018)

Giorgio Carbone (1/10/2018 - 01/04/2022)

Pablo Nicholas Power (1/04/2022 - present)

Bedroom 2 (as per first floor plan):

Gowrav Gowda (3/9/2013 - 30/06/2015)

Krutik Patel (01/07/2015 - 19/6/2017)

Yang Pei (20/6/2017 - 31/07/2018)

10-day break (1/8/2018 - 10/8/2018) - intersecting with gap in bedroom 4 (4 separate tenants remain)

Edward Roberts (11/8/2018 - 21/6/2019)

Rose Tranes/Callum Sheppard (22/06/2019 - 1/2/2020)

1 week gap (2nd February 2020 - 6th February 2020) - not intersecting with gap in another room

Nicole Nadine Wilson (7/2/2020 - present)

Bedroom 3 (as per first floor plan):

Emily Patrick (16/01/2014 - 30/06/2014)

Sam Eastwood (01/07/2014 - 30/06/2015)

10-day gap (1/7/2015 - 10/07/2015)

Shreyank Nahar (11/07/2015 - 6/9/2015)

Aleyda Sosa Ramirez (07/09/2015 - 31/07/2017)

Katie Elizabeth Smith (01/08/2017 - 31/07/2018)

Teh Eng Hean (01/08/2018 - 28/02/2021)

Teh Eng Hean & Scott MacHenry (01/03/2021 - 31/07/2023)

Joseph Conyers (01/08/2023 - present)



Bedroom 4 (as per first floor plan):

Sermed Mezher (3/9/2013 - 12/07/2017)

Giorgio Carbone (13/07/2017 - 30/07/2018)

1-month gap (1/8/2018 - 31/08/2018) - intersecting with gap in Bedroom 2 (4 separate tenants remain)

Elizabeth Bellman (01/09/2018 - 13/6/2019)

Sven Karl Andreas Ritter (14/6/2019 - 31/8/2020)

Tom Sloan Kirton (1/9/2020 - 28/2/2021)

2-week gap (1/3/2021 - 13/3/2021) - not intersecting with any other room gap

István Ladanyi (14/03/2021 - 09/11/2022)

2-day gap (10/11/2022 - 11/11/2022) - not intersecting with any other room gap

Bastien Vieubl  (12/11/2022 – present)