MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	138310/LE/2023
Date registered valid:	23 January 2024
Proposal:	Use of part of ground floor, first floor and second floor as a 6 bedroom dwelling (Use Class C3) for up to 4 persons.
Address:	321 Dickenson Road, Manchester, M13 0NR
Ward(s):	Rusholme Ward
Applicant:	Mr Mahboob Butt
Agent (if any):	
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	REFUSE
Date of recommendation:	12 March 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: 26 January 2024 Expired: 16 February 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 and area

The application site relates to part of ground floor, first floor and second floor of a 3-storey mid-terraced building. The property is located an area with a mix of commercial and is approximately 16 metres from Longsight District Centre.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a certificate of lawful development for the use of part of ground floor, first floor and second floor as a 6-bedroom dwelling (Use Class C3) for up to 4 persons.

Consultations & Notification Responses

Publicity – Notification letters were sent to nearby residential properties (appendix 1).

Local residents/public opinion – None Received

Issues

Planning History

Application Reference: **136606/LE/2023**
Address: 321A Dickenson Road, Manchester, M13 0NR,
Proposal: Use of property as a flat (Use Class C3)

Decision/Status: **Approved - 26.06.2023**

Application Reference: **135993/LE/2023**
Address: 321 Dickenson Road, Manchester, M13 0NR,
Proposal: Use of property as homeopathy pharmacy and clinic (Use Class E).
Decision/Status: **Approved - 12.05.2023**

Application Reference: **134634/LE/2022**
Address: Ground Floor , 321 Dickenson Road, Manchester, M13 0NR,
Proposal: Use of property as homeopathy pharmacy and clinic (Use Class E)
Decision/Status: **Refused - 18.10.2022**

Application Reference: **128541/LE/2020**
Address: 321 Dickenson Road, Manchester, M13 0NR,
Proposal: Application for a Certificate of Existing Lawful Development relating to use of property as: one, self contained basement flat, landlords residential accommodation, four rented bedrooms with shared facilities and ground floor pharmacy / homeopathy business for a period exceeding 4 and 10 years
Decision/Status: **Refused - 19.04.2022**

There have been two applications that have either been withdrawn or returned concerning this property.

Application Reference: **125602/FO/2019**
Address: 321 Dickenson Road, Manchester, M13 0NR,
Proposal: Three-storey rear extension providing access to existing basement flat and external access to ground-floor shop., Provision of 6 No B&B rooms
Decision/Status: Returned

Application Reference: **118811/FO/2018**
Address: Basement Flat , 321 Dickenson Road, Manchester, M13 0NR
Proposal: Change of use of basement flat (Class C3) to a private hire booking office (sui generis use) to operate 24 hours a day, 7 days a week
Decision/Status: Application Withdrawn - 23.04.2018

Legislation

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 dwellinghouse (Use Class C3) commenced more than four years prior to the date of the application (i.e. by 12 October 2013) 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 application relates to part of the ground, first and second floors of a three storey mid-terraced property, which has a basement flat (application reference: 136606/LE/2023) and a ground floor homeopathy pharmacy and clinic (application reference: 135993/LE/2023), both uses confirmed by separate lawful development certificates.

The submitted floor plans show that on the ground floor there is a storage room kitchen and w/c for the residential property, at first floor there are two bedrooms, a common room and a bathroom, on the second floor are a further four bedrooms and a bathroom.

The Valuation Office Agency Council Tax website indicates that the property was registered for council tax purposes on the 26th August 2011

The documentation provided show that for the last 10 years Council Tax has been paid at the property, however the confusion arises from the tenancy agreements as they appear to show that the property was rented out to individuals on a room-by-room basis rather than the whole property.

Furthermore, the type of tenancy could indicate that the property was in use a house in multiple occupation (Use Class C4).

The lacking in exact details of tenants, dates of occupation and other relevant details of how the property was let and occupied. As such, it does not provide a basis to conclude with sufficient confidence that the property has been in continuous use as dwellinghouse for the past 4 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. 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 part of ground floor, first floor and second floor of 321 Dickenson Road has been used a 6 bedroom dwelling (Use Class C3) for up to 4 persons 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

Room 3 First Floor, 319 Dickenson Road, Manchester, M13 0NR
Room 2 First Floor, 319 Dickenson Road, Manchester, M13 0NR
Room 1 Ground Floor, 319 Dickenson Road, Manchester, M13 0NR
First Floor, 321 Dickenson Road, Manchester, M13 0NR
Second Floor, 321 Dickenson Road, Manchester, M13 0NR
321A Dickenson Road, Manchester, M13 0NR
14 Honor Street, Manchester, M13 0WY
323 Dickenson Road, Manchester, M13 0NR
Ground Floor Rear, 321 Dickenson Road, Manchester, M13 0NR
Ground Floor Front, 321 Dickenson Road, Manchester, M13 0NR
319 Dickenson Road, Manchester, M13 0NR
332 Dickenson Road, Manchester, M13 0NG
330 Dickenson Road, Manchester, M13 0NG
16 Honor Street, Manchester, M13 0WY
12 Honor Street, Manchester, M13 0WY
10 Honor Street, Manchester, M13 0WY
334 Dickenson Road, Manchester, M13 0NG

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
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: NORTH AREA