

Planning

Growth & Development

Delegated officer report for planning application

Application no. 138590/LP/2023

Date registered valid: 12 December 2023

Proposal: Change of use from 10. self-contained flats to short term holiday accommodation lettings.

Address: 170 - 172 Cheetham Hill Road, Manchester, M8 8LQ

Ward(s): Cheetham Ward

Applicant: Mr Balkar Singh Kaila Lowest Rent Ltd

Agent (if any): Mr Kelly Solid Void

Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse

Date of recommendation: 06 February 2024

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: 16 January 2024

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 20 December 2023

Expired: 13 January 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



170-172 Cheetham Hill Road, is a three storey building, located within a parade of terraced elevated commercial buildings fronting Cheetham Hill Road. At the ground floor level is a restaurant.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a certificate of proposed lawful development for a change of use from 10. self-contained flats to short term holiday accommodation lettings.

Consultations & Notification Responses

None Required - There is no statutory requirement to consult third parties including neighbours; 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.

Issues

Planning History

111496/FO/2016/N1 - Elevational alterations to create a new shopfront - **Application Refused - 27.05.2016**

079366/FO/2006/N1 - Change of use of ground and first floor to a restaurant (Class A3) with storage at basement level, staff areas at second floor and addition of fume extraction equipment to rear elevation. Installation of ramped access to Cheetham Hill Road frontage - **Application Approved - 18.08.2006**

069296/FO/2003/N1 - Change of use of second floor from offices to 2 no. self- contained flats, existing first floor manufacturing use to office only, ground floor extension at the rear, and elevation alterations to front - **Application Approved - 09.01.2004**

024499 - Use of second floor as a health studio* - **Application Approved - 31.07.1985**

* Relates to 170 Cheetham Hill Road Only *

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 192, which provides for an application to determine whether any proposed use or operations would be lawful for planning purposes.

The Town and Country Planning Act 1990 (TCPA 1990) provides that planning permission is required for the carrying out of any development of land (section 57(1), TCPA 1990).

The definition of development includes "making any material change in the use of any buildings or other land" (section 55(1), TCPA 1990). This means that the requirement to obtain express planning permission generally applies to any "material change of use" unless the following circumstances apply:

- Where a change of use is permitted development by virtue of Part 3, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO 2015);
- Where the developer obtains a "certificate of lawfulness" from the local planning authority (LPA) (section 191 TCPA 1990);
- If the time limit for enforcement has expired (section 171B TCPA 1990).

The applicant is seeking a certificate of proposed lawful development for a change of use from 10. self-contained flats to short term holiday accommodation lettings.

The Town and Country Planning (General Permitted Development) Order Class C3. Dwellinghouses is defined as a *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).

Interpretation of Class C3

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

This use class makes no distinction between whether the dwellinghouse is used as a sole or main home, for personal or commercial use, or its tenure (rental or home ownership). Use classes apply nationally. Therefore, a self-contained flat and short-term holiday accommodation would both fall within the definition of a C3 Use.

The onus of proof in an LDC application rests with the applicant. The standard of proof required on the part of the applicant is no more than “the balance of probability”. An LPA would have no excuse for refusing an LDC because the applicant has failed to discharge the stricter, criminal burden of proof (“beyond reasonable doubt”).

If the LPA has no evidence of its own, or from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence is sufficiently precise and unambiguous to justify the grant of a certificate “on the balance of probability”.

In this case there are doubts over the existing use as 10 self-contained flats, as shown when viewing the planning history of the site. For example, the 2016 planning application describes the use of the property “is in use as a restaurant (Use Class A3), following grant of Planning Permission in 2006 (ref. 079366/FO/2006/N1).” In addition, the Council Tax Valuation Office and the Energy Performance Certificate website (image 1) found no details for this address under the property’s post code. However, the business rates valuation website (image 2) found that both on 1st April 2023 and 1st April 2017 that the property was described as shop and premises with the first-floor retail area and public toilets and the second floor as offices and a staff toilet. The Energy Performance Certificate website (image 3) shows that property type was assessed on the 26 April 2023 and was classified as “Restaurants and Cafes/Drinking Establishments/Takeaways”, the inspector confirmed that he assessed the whole property.

Lastly, following an investigation (reference: ENF/15012/20 by the Council into the subdivision of the first and second floor, the Council are in receipt of an email from Greater Manchester Fire and Rescue Service (GMFRS) dated 17 November 2020 advising the Council that there is a prohibition notice on the property and the use of the upper floors of 9 apartments. A further email from GMFRS dated 27 November 2023 confirms that the prohibition notice still applies to this building and therefore for at least the last 3 years the first and second floors of property has been unable to be used as residential accommodation.

Section 55(2)(f) of the Town and Country Planning Act 1990 explains that the use of a building for any purpose within the same class shall not be taken, for the purpose of the Act, as amounting to 'development'. However, in this case the information available to the Council, places doubt on the existing use, as such, it does not provide a basis to conclude with sufficient confidence that the first and second floor of the property has been in use as 10. self-contained flats.

Therefore, the use of the first and second floors as short term holiday lettings would amount to development would be considered to be development as set out in Section 55(1) of the Town and Country Planning Act 1990 (as amended) as it would involve, the carrying out of building,

engineering, mining or other operations or the making of a material change in the use of land and would therefore require planning permission.

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BETA

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No results for M8 8LQ

Check the details you have entered are correct or search for a property using the [other search options](#).

If you still cannot find your property, you should contact the Valuation Office Agency at ctinbox@voa.gov.uk.

Enter a postcode

M8 8LQ

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Find an energy certificate

No results for M8 8LQ

We only list properties with EPCs. There are no results for this postcode.

You can search again by:

- [postcode](#)
- [street and town](#)
- [certificate number](#)

If your property does not have an EPC, you can [get a new energy certificate](#).

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Image 1 Screenshot of the Council Tax Valuation Office website for the property and Energy Performance Certificate Source: No results for M8 8LQ - Check and challenge your Council Tax band - GOV.UK Accessed 05.02.2024

Energy performance certificate (EPC)

Certificate contents

- Rules on letting this property
- Energy rating and score
- How this property compares to others
- Breakdown of this property's energy performance
- Recommendation report
- Who to contact about this certificate
- Other certificates for this property

Share this certificate

- Email
- Copy link to clipboard
- Print

170-172 Cheetham Hill Road MANCHESTER M8 8LQ	Energy rating D
Valid until 2 May 2033	Certificate number 2051-3904-9070-3308-6221

Property type	Restaurants and Cafes/Drinking Establishments/Takeaways
Total floor area	646 square metres

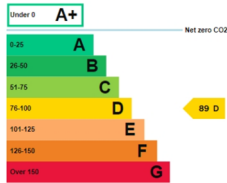
Rules on letting this property

Properties can be let if they have an energy rating from A+ to E.

You can read [guidance for landlords on the regulations and exemptions](#).

Energy rating and score

This property's energy rating is D.



Properties get a rating from A+ (best) to G (worst) and a score.

The better the rating and score, the lower your property's carbon emissions are likely to be.

How this property compares to others

Properties similar to this one could have ratings:

If newly built	32 B
If typical of the existing stock	127 F

Breakdown of this property's energy performance

Main heating fuel	Natural Gas
Building environment	Air Conditioning
Assessment level	3
Building emission rate (kgCO2/m2 per year)	36.98
Primary energy use (kWh/m2 per year)	253

[About primary energy use](#)

Recommendation report

Guidance on improving the energy performance of this property can be found in the [recommendation report](#).

Who to contact about this certificate

Contacting the assessor

If you're unhappy about your property's energy assessment or certificate, you can complain to the assessor who created it.

Assessor's name	Muhammad Ijaz Munir
Telephone	07872314115
Email	hello@manchesterepc.com

Contacting the accreditation scheme

If you're still unhappy after contacting the assessor, you should contact the assessor's accreditation scheme.

Accreditation scheme	Quidos Limited
Assessor's ID	QUID03644
Telephone	01225 667 570
Email	info@quidos.co.uk

About this assessment

Employer	Manchester EPC
Employer address	hello@manchesterepc.com
Assessor's declaration	The assessor is not related to the owner of the property.
Date of assessment	26 April 2023
Date of certificate	3 May 2023

Other certificates for this property

If you are aware of previous certificates for this property and they are not listed here, please contact us at dhur-digital-services@reveling.co.uk or call our helpdesk on 020 3829 0748 (Monday to Friday, 9am to 5pm).

There are no related certificates for this property.

170-172 Cheetham Hill Road MANCHESTER M8 8LQ	Energy rating D
Valid until 2 May 2033	Certificate number 2051-3904-9070-3308-6221
Property type	Restaurants and Cafes/Drinking Establishments/Takeaways
Total floor area	646 square metres

About this assessment

Employer	Manchester EPC
Employer address	hello@manchesterepc.com
Assessor's declaration	The assessor is not related to the owner of the property.
Date of assessment	26 April 2023
Date of certificate	3 May 2023

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) The use of the first and second floors as short term holiday lettings as proposed by the applicant would be considered to be development as set out in Section 55(1) of the Town and Country Planning Act 1990 (as amended) as it would involve, the carrying out of building, engineering, mining or other operations or the making of a material change in the use of land and would therefore require planning permission.

Appendix 1 – List of consultees & neighbours notified

22 Bent Street, Manchester, M8 8NF
24 Bent Street, Manchester, M8 8NF
26 Bent Street, Manchester, M8 8NF
28 Bent Street, Manchester, M8 8NF
147 Cheetham Hill Road, Manchester, M8 8LY
147A Cheetham Hill Road, Manchester, M8 8LY
147B Cheetham Hill Road, Manchester, M8 8LY
149 Cheetham Hill Road, Manchester, M8 8LY
149A Cheetham Hill Road, Manchester, M8 8LY
20 Bent Street, Manchester, M8 8NF
Parisian House, 145 Cheetham Hill Road, Manchester, M8 8LY
Rear Unit, 155 - 157 Cheetham Hill Road, Manchester, M8 8LY
Front Unit, 155 - 157 Cheetham Hill Road, Manchester, M8 8LY
First Floor, 160 Cheetham Hill Road, Manchester, M8 8LQ
166 - 168 Cheetham Hill Road, Manchester, M8 8LQ
French Imports Ltd, 160 - 162 Cheetham Hill Road, Manchester, M8 8LQ
Warehouse Rear Of 151, Cheetham Hill Road, Manchester, M8 8LY
174 - 182 Cheetham Hill Road, Manchester, M8 8LQ
Warehouse Next To 151 To 153, Cheetham Hill Road, Manchester, M8 8LY
Swift Agencies, 160 - 162 Cheetham Hill Road, Manchester, M8 8LQ
Vivir, 160 - 162 Cheetham Hill Road, Manchester, M8 8LQ
160 - 162 Cheetham Hill Road, Manchester, M8 8LQ
162 Cheetham Hill Road, Manchester, M8 8LQ
Ground Floor, 160 Cheetham Hill Road, Manchester, M8 8LQ
164 Cheetham Hill Road, Manchester, M8 8LQ
51 Stocks Street, Manchester, M8 8GG
151 - 153 Cheetham Hill Road, Manchester, M8 8LY
184 Cheetham Hill Road, Manchester, M8 8LQ

Appendix 2 – Planning constraints

Article 4 Direction - City Centre PD Restriction - Class B1(c) To C3
Article 4 Direction - City Centre PD Restriction - Class B1(a) To C3
Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Aircraft Safeguarding Zone - Aircraft Safeguarding - Not Affected
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Historic Landfill Site 250m Buffer -
Historic Landfill Site 250m Buffer -
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: NORTH AREA