

## **Planning**

## **Growth & Development**

### **Delegated officer report for planning application**

**Application no.** 138206/LE/2023  
**Date registered valid:** 16 October 2023  
**Proposal:** Use of the basement as a residential flat (Use Class C3)  
**Address:** 7 Grange Park Road, Manchester, M9 7AF  
**Ward(s):** Charlestown Ward

**Applicant:** Mr Leo Gentile  
**Agent (if any):** Mr David Hadwin Keystone Design Associates Ltd  
**Case officer:** Robert Tyrer  
Tel: 0161 234 4068  
Email: robert.tyrer@manchester.gov.uk

**Recommendation:** Grant  
**Date of recommendation:** 02 February 2024

## Application details

**Type of application:** Certificate Lawful Development Existing

**Development type:** Certificates of lawfulness

**Date of site visit:** 18.12.2023

### Standard consultations:

No consultations have been printed and sent.

### Neighbour notifications

Printed: 3 November 2023 Expired: 24 November 2023

### 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 property relates to an end terraced two storey former shop building, the property forms part of parade of



**Listed building:** Not applicable

**Conservation area:** Not applicable

**Tree Preservation Order:** Not applicable

## Description of area

Residential area to the north of Boggart Hole Clough.

## Description of development

Certificates of lawfulness to confirm the use of the basement as a residential flat (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** – One representation was received neither supporting nor objecting to the certificate. A summary of the comments raised are provided below:

- Basement used as flat for several years and estimated that it had been in use since 2018/19;
- The ground and first floor have either been let as one property or individually by room, the basement has always been let as a separate residential flat.
- Access to the basement flat is via a side passage, this make it difficult for the deliveries to the flat from Royal Mail etc.
- The gates restrict access to the front garden restrict the number of cars that can park on site, it is often the case;
- There are flooding issues in the area;

## **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 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.

## **Planning History**

There have been two planning applications at this address, the first relates to permission being granted to use ground floor and basement of shop for the preparation and storage of food used in connection with an outside Catering Business under planning permission reference F08205 approved 5<sup>th</sup> April 1978.

The second application approved the change of use from food preparation room and flat above into two flats under planning permission reference: 045042/FO/NORTH1/94 on the 11<sup>th</sup> April 1994

## **The Application**

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## **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 a lawful development certificate (LDC) the existing use of first floor as a flat and is sought on 'Other' grounds to which the application form states that the LDC should be granted as *"PD allows it to be changed from commercial to C3."*

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 basement has been used a

The basement flat is located at the rear of 7 Grange Park Road, previous planning applications reveal that the ground floor and basement of property was used for the preparation and storage of food used in connection with an outside Catering Business under planning permission reference F08205 approved 5<sup>th</sup> April 1978. In 1994 under planning permission 045042 the property was converted the ground and first floor into two flats. The drawings do not show the basement for 1994 application. In year 2000 it appears that ground floor and first floor became one dwellinghouse, as per the details found on the Council Tax valuation list.

The basement flat is access via a side gate next to the shared boundary with no. 9 Grange Park Road. The submitted floor plans show a self-contained unit which has one bedroom, a separate living room and kitchen and a bathroom.

The applicant states on the application form that the basement began being used as a flat in 2018, however, the tenancy agreements for "room 5" show that the property has been rented to at least 2 persons from 20<sup>th</sup> November 2017 to 24<sup>th</sup> February 2024 each tenancy agreed for a minimum of 6 months.

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 Council have no evidence to raise any doubt to this claim.

Therefore, on balance of probability and without any evidence to the contrary the properties have been in use a flat for at least four years and the certificate should be granted.

## **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:**

#### **Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse**

1) The applicant has failed to demonstrate that the basement of 7 Grange Park Road, Manchester, M9 7AF has been occupied as a self-contained flats for a continual 4 year period up to the date of the application.

## **Appendix 1 – List of consultees & neighbours notified**

5 Grange Park Road, Manchester, M9 7AF  
3 Grange Park Road, Manchester, M9 7AF  
3A Grange Park Road, Manchester, M9 7AF  
First Floor Flat, 5 Grange Park Road, Manchester, M9 7AF  
9 Grange Park Road, Manchester, M9 7AF  
11 Grange Park Road, Manchester, M9 7AF

## **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 - Not Affected  
Coal Authority - Development Low Risk - Name: DEVELOPMENT\_LOW\_RISK\_AREA  
Coal Authority - Surface Coal Resources - Name: Coal bearing strata at surface  
Historic Landfill Site 250m Buffer -  
Area Team Boundary - Name: NORTH AREA