MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	138651/LP/2023
Date registered valid:	27 November 2023
Proposal:	Use of premises as a house in multiple occupation (HMO) providing 35 single bedrooms and 26 double/twin bedrooms including re-construction of the building.
Address:	2-8 Harkness Street, Manchester, M12 6BT
Ward(s):	Ardwick Ward
Applicant:	Mr Mohammed Ibrar Ardwick Residences Ltd
Agent (if any):	Mr Yunus Jiva AZH Consultancy
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Refuse
Date of recommendation:	23 January 2024

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: 23.01.2024

Standard consultations:
No consultations have been printed and sent.

Neighbour notifications
No neighbour notifications have been printed and sent.

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 application site relates to a site with what remains of a former hotel that fronts Harkness Road, enclosed by No.2-4 Higher Ardwick known as Fenton House (grade II listed building) to the west, Dolphin Place to the south and an MOT garage (10 – 12 Harkness Street) to the east.

The remains of the property are a two storey front façade fronting Harkness Street, two gable ends and there is no roof or rear wall.





Listed building: Not applicable.

Conservation area: Not applicable.

Tree Preservation Order: Not applicable.

Description of area

Located approximately one mile to the southeast of the City Centre located around Ardwick Green Park of grand terraces of Regency houses some of which still survive.

Description of development

The applicant is seeking a certificate of proposed lawful development for the use of premises as a house in multiple occupation (HMO) providing 35 single bedrooms and 26 double/twin bedrooms including re-construction of the building.

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

F05590/LB - Conversion of 2 dwellinghouses to private hotel.- **Approved 27.04.1977**

F12555 - Alterations and extension to basement to form dining room and store and erection of a garage at side of hotel. **Approved - 02.04.1980**

F13984/LB - Use of part of hotel as a public bar – **Approved - 01.10.1980**

078259/LE/2006/N2 - CERTIFICATE OF LAWFULNESS Use of premises as house in multiple occupation (HMO) providing 35 single bedrooms and 26 twin bedrooms – **Approved 20.03.2006**

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.

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.

According to the statement submitted the former hotel was “partially” destroyed in a fire in 2018 and this application seeks to confirm operations to reinstatement the building back to its former layout and appearance falls within current planning approvals and therefore no further permission is required; is lawful for planning purposes under section 192 of the Town and Country Planning Act 1990 and would therefore not be subject to enforcement action.

Section 55(1) of the Town and Country Planning Act 1990 as amended (1990 Act) states that ‘development’ (which requires planning permission) means the carrying out of building, engineering, mining or other operations or the making of a material change in the use of land.

This section of the 1990 Act covers rebuilding and structural alterations and other operations normally carried on by builders, and thus any reconstruction work reasonably falling within this description would require planning permission.

In this case it is quite clear when viewing and comparing the photographs taken from the site visit in January 2024 (photograph montage 1) and the Google Street View images (photograph montage 2) from 2018 and 2015 when the building last stood. Only the front façade and a side wall remain, there is no roof, there are no first or second floors and the photographs shown in Appendix H in the statement submitted by the applicant in support of the application appears to show that there is no ground floor or basement either (photograph 1).

The 2006 Certificate of Lawfulness confirmed that the use of the premises as house in multiple occupation (HMO) providing 35 single bedrooms and 26 twin bedrooms under planning reference: 078259/LE/2006/N2.

However, the extreme dereliction of the premises has rendered them incapable of human habitations and common sense would dictate that the use as a HMO has ceased for at least 6 years since the fire.



Photograph Montage 1 Site Visit Photographs from January 2024



Photograph Montage 2 Google Street View Images taken May 2018 and June 2015



Photographs 1 and 2 Image of the interior of the building provided within Appendix H of the supporting statement submitted with the application.

To conclude, to rebuild the premises is considered to be development 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.

The certificate should therefore be refused and planning permission is required.

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 works 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

Appendix 2 – Planning constraints

Article 4 Direction - North Manchester PD Restriction - Class B1(c) To C3
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 (Middle) -
Area Team Boundary - Name: NORTH AREA