

## Planning

## Growth & Development

### Delegated officer report for planning application

**Application no.** 138042/LE/2023

**Date registered valid:** 8 September 2023

**Proposal:** Use of the property as a small House in Multiple Occupation (Class C4)

**Address:** First Floor Flat, 331 Dickenson Road, Manchester, M13 0NR

**Ward(s):** Rusholme Ward

**Applicant:** Wakmoor (Assets) Limited

**Agent (if any):** Mr Paul Chandler-King Iceni Projects

**Case officer:** Robert Tyrer  
Tel: 0161 234 4068  
Email: [robert.tyrer@manchester.gov.uk](mailto:robert.tyrer@manchester.gov.uk)

**Recommendation:** Refuse

**Date of recommendation:** 14 November 2023

## **Application details**

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

**Development type:** Certificates of lawfulness

**Date of site visit:**

### **Standard consultations:**

No consultations have been printed and sent.

### **Neighbour notifications**

Printed: 20 September 2023

Expired: 11 October 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**

Application site relates to the first and second floors of a two storey mid-terraced property on Dickenson Road, which is known as Flat 1.

**Listed building:** Not applicable

**Conservation area:** Not applicable

**Tree Preservation Order:** Not applicable

## **Description of area**

Located close to Rusholme District Centre, predominantly residential in nature.

## **Description of development**

Use of the property as a House in Multiple Occupation (Use Class C4)

## **Consultations & Notification Responses**

Publicity – Notification letters were sent to nearby residential properties (see appendix 1 for the list of properties).

Local residents/public opinion – No objections, comments or representations in support of the application have been received.

## **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 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.

Evidence – The following evidence has been submitted for consideration:

1. A site location plan edged in red.
2. Tenancy Agreements

### 3. Supporting summary of tenant occupancy details

#### 4. Existing Floor Plans

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 small House in Multiple Occupation (Use Class C4) commenced more than ten years prior to the date of the application (i.e. by 8<sup>th</sup> September 2013) and continued without a significant break for ten years.

Class C4 is defined in the Town and Country Planning (Use Classes) Order 1987, as amended, as "Use of a dwellinghouse by not more than six residents as a "house in multiple occupation". This latter term is as defined in S.254 of the Housing Act 2004.

331 Dickenson Road is a mid-terraced two storey red brick built dwelling house with a blue/grey slate tiled roof property. The property has a small enclosed front garden and rear garden, the application form states that from the 1<sup>st</sup> September 2010 the property became a C4 use.

The Valuation Office Agency Council Tax website indicates that the property was registered for council tax purposed into two flats on the 1<sup>st</sup> September 2009.

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 evidence provided in the form of tenancy agreements show that from 2013 to 2023 the property has been occupied between 3-5 tenants per year, the exception is when the property was vacant from 1<sup>st</sup> September 2012 until 6<sup>th</sup> Day of September 2013, a period of just over 12 months. The applicant was asked as to why the property was vacant to which they explained that the property had been marketed, available to rent but were left unoccupied.

There was also a period between 28<sup>th</sup> June 2019 and 31<sup>st</sup> August 2019 of just 2 months whereby the property was occupied by 3 tenants, after the 31<sup>st</sup> August 2019 the property appears to have been vacant until 2<sup>nd</sup> September 2020 when another 3 tenants occupied the property.

If a use is to be found to be immune from enforcement action the onus is on the appellant to show that, over the 10 years concerned, it has been in reasonably continuous operation and the use did not cease for such a significant period as to indicate that a fresh breach of control resulted on resumption.

The key test, as established by the Court of Appeal in *SoS and Terry Holding v Thurrock BC* is whether if at any time during the relevant period the local planning authority would not have been able to take enforcement proceedings in respect of the breach because, for example, no breach was taking place, then any such period cannot count towards the rolling period of years that gives rise to the immunity.

Whilst there is no doubt that the applicant's intention was to continue the breach as a new tenancy agreement was signed commencing on the 2<sup>nd</sup> September, the evidence to explain the break was not provided within the planning statement and upon further questioning the applicant the evidence put forward was sparse and lacked precision and was therefore ambiguous. As such the break cannot be considered to be *de minimis* and as such would a significant break.

Therefore, on balance of probability it appears that there has been two significant periods in the 10 years.

As such, it does not provide a basis for the Council to conclude with sufficient confidence that the property has been in continuous use as a house in multiple occupation for the required 10 years.

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 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:**

### **Article 35 Declaration**

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

1) The applicant has failed to demonstrate that number First Floor Flat, 331 Dickenson Road, Manchester, M13 0NR has been occupied as a small house in multiple occupation (Use Class C4 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**

Ground Floor Flat, 331 Dickenson Road, Manchester, M13 0NR  
333 Dickenson Road, Manchester, M13 0NR  
329 Dickenson Road, Manchester, M13 0NR  
2 Whiley Street, Manchester, M13 0WR

## **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) -  
Area Team Boundary - Name: NORTH AREA