

Planning

Growth & Development

Delegated officer report for planning application

Application no. 137998/LE/2023
Date registered valid: 6 September 2023
Proposal: Use of property as offices (Use Class E)
Address: 3A Park Place, Manchester, M4 4EZ
Ward(s): Cheetham Ward

Applicant: Mr T Muir APG Park Place Ltd
Agent (if any): Ms Linda Wright Katana Planning
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 1 November 2023

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: 11 September 2023

Expired: 2 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 a three storey brick built building that includes a basement located to the rear of 3 Park Place.



Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

Located to the north east of the City Centre.

Description of development

The applicant is seeking a certificate of lawfulness to confirm the use of property as offices (Use Class E)

Consultations & Notification Responses

Publicity – Notification letters were sent to nearby 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.

Planning History

Application Details And Status	Proposal
137601/FO/2023 Recv: 25.10.2023 Application Pending Consideration -	Creation of 12no residential apartments (Class C3a) together with elevational alterations including the installation of windows.
136967/FO/2023 Recv: Application Returned -	Insertion of windows in rear elevation - to accompany Prior Approval application for change of use from former offices to flats
137019/P3MAP/2023 Recv: 16.05.2023 Application Withdrawn - 23.06.2023	Prior Approval for change of use from Commercial, Business and Service (Use Class E) to Dwellinghouses (Use Class C3)
056681/FO/NORTH1/99 Recv: 13.05.1999 Application Approved - 08.07.1999	Change of use from electrical wholesalers to offices (Class B1), with external alterations including new roof

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 applicant's own evidence does not need to be corroborated by independent evidence. If the LPA have no evidence to contradict the applicant's 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 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. Floor Plans
3. Covering Letter
4. Photographs
5. Statutory Declaration from the owner of the building;
6. 3no. Decision Notices- 056681/FO/NORTH1/99, 060832/FO/NORTH1/00 and 090394/FO/2009/N1
7. Local Authority Search

8. Building Control Notice of Passing of Plans Reference No 37229/N/00112 dated 7th January 2002 and Drawing of Proposed Ground Floor

The Government published the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 in July 2020 which came into force on the 1st of September 2020. The changes included revisions of the classification of uses of property. Former Classes A, B1 and D, applicable to retail, office and non-residential institutions and assembly and leisure uses were removed and a new use class introduced in their place.

The new Class E includes commercial, business and service and brings together the former A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes) and B1 (business) as well as parts of classes D1 (non-residential institutions) and D2 (assembly and leisure) into one single use class to allow for changes of use without the need of planning permission.

The Town and Country Planning (Use Classes) Order 1987 (as amended) defines the classes of use for the purposes of section 55(2)(f) of the 1990 Act. Class E in Schedule 2 Part A is defined as:

"Class E. Commercial, Business and Service

Use, or part use, for all or any of the following purposes –

(a) For the display or retail sale of goods, other than hot food, principally to visiting members of the public,

(b) For the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises.

(c) For the provision of the following kinds of services principally to visiting members of the public -

i). Financial services,

ii). Professional services (other than health or medical services), or

iii). Any other services which it is appropriate to provide in a commercial, business or service locality,

(d) For indoor sport, recreation, or fitness, not involving motorised vehicles or firearms or use as a swimming pool or skating rink, principally to visiting members of the public,

(e) For the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,

(f) For a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,

(g) For-

a. An office to carry out any operational or administrative functions,

b. The research and development of products or processes, or

c. Any industrial process.

being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

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 an office (Use Class E) commenced more than ten years prior to the date of the application (i.e. by 6th September 2013) and continued without a significant break for ten years.

Class E (g) (a) is defined in the Town and Country Planning (Use Classes) Order 1987, as amended, as “An office to carry out any operational or administrative functions”.

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 relevant test, established by the court in *Thrasyvoulou v SSE* [1984], is the balance of probabilities – whether something is more likely than not.

The applicant does not have to “demonstrated beyond all reasonable doubt”, as that is the standard of proof required for criminal cases and would be wrong test to apply.

The application form states that the building has been used as offices since 1st January 2013.

The statutory declaration submitted with the application that the current proprietor has owned the property since 25th June 2020 and that to the best of their knowledge that 3a Park Place M4 4EX has been used as offices during their ownership and when they purchased the property.

The planning history reveals that planning permission was granted on the 8th July 1999 to allow the change of use from electrical wholesalers to offices (Class B1), with external alterations including new roof approved under planning application reference: **056681/FO/NORTH1/99**.

There were no further applications at this address until 2023 when an application for Prior Approval for change of use from Commercial, Business and Service (Use Class E) to Dwellinghouses (Use Class C3) was submitted on the 16th May 2023 and withdrawn on the 23rd June 2023.

From the records available to the Council the correspondence reveals that Business Rates Records (images 1 and 2) reveal that the property is in use as a warehouse from 1st April 2017 to present. Therefore this would place the property within the B8 Use Class as a Warehouse.

Property

3 A, Park Place, Manchester, M4 4EZ

Valuation

[Help with previous valuation](#)[Compare properties](#)

Valuation

Previous rateable value (1 April 2017 to 31 March 2023)

£2,375

This was the rateable value for the property. It is not what you would have paid in business rates or rent. Your local council uses the rateable value to calculate the business rates bill.

[Estimate your business rates bill](#)

Valuations for this property

Valuations	Effective date	Rateable value
CURRENT 1 April 2023 to present	1 April 2023	£3,750
PREVIOUS 1 April 2017 to 31 March 2023	1 April 2017	£2,375

[Hide all sections](#)

Valuation details

[Hide](#)

Description	Warehouse and premises
Local council	Manchester
Local council reference	1955620
Rating list	2017
Effective date	1 April 2017
Valuation scheme reference	349027
Base rate	£30.00
Measurement method	Gross internal area
Transitional relief certificate issued	No
Special category code	096G

How the rateable value is calculated

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The Valuation Office Agency (VOA) uses a 'rental' method to value industrial properties like factories, warehouses and workshops.

The VOA gathers information about rents paid for industrial properties. It analyses the information and works out a price per square metre. To get the price per square metre of an individual property, the VOA considers things like property age, location, physical characteristics and features.

The price per square metre is multiplied by the property floor area to get the rateable value.

Plant and machinery, car parking and land that add to the rateable value are shown separately in the valuation.

This property is part of [valuation scheme \[2\]](#) which includes a price for floor areas and property features.

[More about how business properties are valued](#)

Warehouse floor areas

Description	Area m ² /unit	£ per m ² /unit	Value
Ground floor warehouse	82	£29.25	£2,399
Total	82		£2,399

Valuation

Total value	£2,399
Rateable value (rounded down)	£2,375

[Get help with this valuation](#)[Report a problem with this page.](#)

Property

3 A, Park Place, Manchester, M4 4EZ

Valuation

[Help with current valuation](#)[Compare properties](#)

Valuation

Current rateable value (1 April 2023 to present)

£3,750

This is the rateable value for the property. It is not what you pay in business rates or rent. Your local council uses the rateable value to calculate the business rates bill.

[Estimate your business rates bill](#)

Valuations for this property

Valuations	Effective date	Rateable value
CURRENT 1 April 2023 to present	1 April 2023	£3,750
PREVIOUS 1 April 2017 to 31 March 2023	1 April 2017	£2,375

[Hide all sections](#)

Valuation details

[Hide](#)

Description	Warehouse and premises
Local council	Manchester
Local council reference	1955620
Rating list	2023
Effective date	1 April 2023
Valuation scheme reference	590305
Base rate	£47.00
Measurement method	Gross internal area
Transitional relief certificate issued	No
Special category code	096G

How the rateable value is calculated

[Hide](#)

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The VOA gathers information about rents paid for industrial properties. It analyses the information and works out a price per square metre. To get the price per square metre of an individual property, the VOA considers things like property age, location, physical characteristics and features.

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[More about how business properties are valued](#)

Warehouse floor areas

Description	Area m ² /unit	£ per m ² /unit	Value
Ground floor warehouse	82	£45.83	£3,758
Total	82		£3,758

Valuation

Total value	£3,758
Rateable value (rounded down)	£3,750

[Get help with this valuation](#)[Report a problem with this page.](#)

Photographs were provided however, it is not clear from the photographs when these photographs were taken as it appears some of the furniture is new and unused, secondly there was no corresponding plan to show which offices the photographs showed.

The floor plans provided are for the adjacent and attached building 3 Park Place but do not show the layout of the property and therefore cannot be relied upon to show an accurate representation of the floor plans within the 3A Park Place.

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 Class E Office for over the 10 years from 6th September 2013

The certificate should therefore 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: Refuse

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

- 1) The applicant has failed to demonstrate that 3A Park Place, Manchester, M4 4EZ has been used as an office (Use Class E 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

Car Parking Spaces, 1 Park Place, Manchester, M4 4EZ
Christhouse Bible Church, 3 Park Place, Manchester, M4 4EZ
1 Park Place, Manchester, M4 4EZ
CURTIS FARADAY LIMITED, First Floor, 7 Park Street, Manchester, M3 1EU
Ground Floor, 7 Park Street, Manchester, M3 1EU
6 Park Place, Manchester, M4 4EY
9 - 11 Park Street, Manchester, M3 1EU
Flat 5, 4 Park Place, Manchester, M4 4EY
Flat 4, 4 Park Place, Manchester, M4 4EY
Flat 3, 4 Park Place, Manchester, M4 4EY
Flat 2, 4 Park Place, Manchester, M4 4EY
Flat 1, 4 Park Place, Manchester, M4 4EY
5 Cheetham Hill Road, Manchester, M4 4FY
19 Cheetham Hill Road, Manchester, M4 4FY
10 - 12 Park Place, Manchester, M4 4EY
12 Park Place, Manchester, M4 4EY
7 Park Street, Manchester, M3 1EU
8 Park Place, Manchester, M4 4EY
Ground Floor, 12 Park Place, Manchester, M4 4EY
Second Floor, 7 Park Street, Manchester, M3 1EU
25 Cheetham Hill Road, Manchester, M4 4FY
21 Cheetham Hill Road, Manchester, M4 4FY
12 Park Street, Manchester, M3 1ES

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
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: CENTRAL