



ATTICUS PLANNING

Address: PO Box 247, Tavistock, PL19 1FJ

Telephone: 01822 270 020

Email: hello@atticusplanning.co.uk

Website: www.atticusplanning.co.uk

24 WILLOW BANK

FALLOWFIELD

MANCHESTER

M14 6XT

**APPLICATION FOR A CERTIFICATE OF LAWFULNESS TO ESTABLISH
EXISTING USE OF PROPERTY AS A HMO (USE CLASS C4)**

PLANNING STATEMENT

JULY 2023

REPORT CONTROL SHEET

Document Title	Planning Statement
Proposal	Certificate of lawfulness to establish existing use of property as a HMO (Use Class C4)
Address	24 Willow Bank, Fallowfield, Manchester, M14 6XT
Client	Mr Robinson
Project Number	AP23027

Author:	Checked By:	Date:	Status:	Revision:
Emily Robinson		04/07/2023		

APPENDICES

- Appendix 1** The applicant's Statutory Declaration dated 3rd July 2023
- Appendix 2** Tenancy agreements for the property from between 2003 and 2020
- Appendix 3** Email dated 3rd June 2021 from Mr D Robinson to Mr Paul Davies of

Manchester City Council's Neighbourhood Directorate Department
- Appendix 4** Photographs of the property from 2007 and 2008
- Appendix 5** Photographs taken in 2023 showing locks on the property's bedroom doors

CONTENTS

1	INTRODUCTION.....	1
2	SITE DESCRIPTION & BACKGROUND	2
3	PLANNING JUSTIFICATION	3
4	CONCLUSION	7

1 INTRODUCTION

- 1.1.1 Atticus Planning is retained to progress an application for a lawful development certificate to confirm that the property identified on the submitted Location Plan, 24 Willow Bank, Fallowfield, Manchester, M14 6XT, is a lawful house in multiple occupation (HMO) falling within Use Class C4 of the Town and Country Planning (Use Classes) Order 1087 (as amended).
- 1.1.2 The purpose of this statement is to set out relevant legislation and explain why, based on the evidence provided by the applicant, the certificate should be issued.

2 SITE DESCRIPTION & BACKGROUND

- 2.1.1 The property comprises of a mock-Georgian, three storey town house within a gated cul-de-sac of similar properties at the end of Willow Bank, within the Fallowfield suburb of Manchester.
- 2.1.2 The applicant purchased the property in June 2023, at which point it was being used as a four bedroom HMO, and since owning the property, the applicant has continued to let out the property on the same basis.
- 2.1.3 The property's accommodation is set over three floors; there is a studio on the ground floor inclusive of an ensuite bedroom, kitchenette and living area, a bedroom, shared living / dining room and separate kitchen on the first floor, with two further bedrooms (one with study / dressing room area) and a shared bathroom on the second floor. All four bedrooms are accessed via the same main entrance door, entrance hall and internal staircase. All four bedrooms have shared use of the living / dining room and kitchen on the first floor, as well as the bathroom on the second floor. All four bedrooms have internal locks on their doors.
- 2.1.4 The property has two off-road parking spaces to its frontage and has a rear garden, which is accessed via the ground floor studio bedroom.
- 2.1.5 In March 2023, the applicant put the property on the market for sale and accepted an offer; as part of the sale, they are required to formally establish its lawful use as a HMO through obtaining a certificate of lawfulness.
- 2.1.6 Moreover, this application is supported by a signed affidavit from the applicant, as well as a suite of other evidential documents, which when read together proves the property has been used as a HMO (Use Class C4) since at least June 2003 and that this use has continued uninterrupted until the present day.

3 PLANNING JUSTIFICATION

3.1.1 For the purposes of this application, Section 191 of the Town and Country Planning Act (TCPA) 1990 applies.

3.1.2 The relevant part of the legislation states that:

“(1)If any person wishes to ascertain whether—

(a)any existing use of buildings or other land is lawful;

(b)any operations which have been carried out in, on, over or under land are lawful; or

(c)any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2)For the purposes of this Act uses and operations are lawful at any time if—

(a)no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b)they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3)For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a)the time for taking enforcement action in respect of the failure has then expired; and

(b)it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

[F3(3A)]In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a)the time for applying for an order under section 171BA(1) (a “planning enforcement order”) in relation to the matter has not expired,

(b)an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.]

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.”

3.1.3 Section 171B of the TCPA sets out the time limits for enforcement.

3.1.4 Relevant to this case is Part 3, which states that ‘*In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach..*’ Part 3 applies in this instance as the use of the building does not constitute a single dwellinghouse and therefore, the property needs to have been occupied as a HMO for a continuous period of not less than 10 years preceding the submission of this application for it to have become lawful through the passage of time.

3.1.5 This application provides a suite of evidential documentation which prove that 24 Willow Bank has been used as a HMO (Use Class C4) continuously since at least June 2003, for (at the time of writing this statement) a period of twenty years, in accordance therefore with Part 4 of Section 191. This period is in excess of the 10 year requirement as laid out by Part 3 of Section 171B.

3.1.6 Firstly, the applicant has produced a Statutory Declaration (**Appendix 1**) which confirms their ownership and letting of the property as a four bedroom HMO, and also explains why a certificate is being sought.

3.1.7 Secondly, copies of tenancy agreements for the property from October 2003 to September 2023, relating to the bedrooms on the first and second floors, are also included at **Appendix 2**. The list of agreements is not exhaustive, but are the ones the applicant still has copies of. Note that there was no official tenancy agreement in place for the ground floor studio bedroom, as this was occupied by the applicant’s close friend. Throughout the applicant’s ownership of the property and its use as HMO, it has always been occupied by unrelated individuals, mainly students and professional persons.

3.1.8 Thirdly, in response to a letter that was issued by Mr Paul Davies of Manchester City Council’s Neighbourhood Directorate Department on 19th May 2021 (a copy of this cannot be located)

regarding licencing, the applicant sent an email directly to Mr Davies on 3rd June 2021 confirming that the property had four occupants. A copy of this email is included at **Appendix 3**.

- 3.1.9 Fourthly, provided at **Appendix 4** are photographs uploaded to Facebook on July 23rd 2008, which were taken during a period when the applicant's daughter, Mrs Hannah Wotherspoon, was a tenant of the property's top floor bedroom. A photo uploaded on 19th July 2007 to Facebook is also included, which was the day of Mrs Wotherspoon's graduation from university and shows Mrs Wotherspoon stood with a fellow tenant of the property by its front door. Further photographs from former tenants living in the property, as well as from family and friends who visited them, can be provided upon request.
- 3.1.10 Finally, **Appendix 5** includes internal photographs of the property show the locks on all of the bedroom doors.
- 3.1.11 In examining the evidence contained within the Appendices, it is appropriate to consider the case of *Thurrock Borough Council v Secretary of State for the Environment, Transport and the Regions [2001] EWHC Admin 128*, where it was held that the effect of Section 171B and Section 191 of the Act was that no enforcement action could be taken after the relevant period (in this case ten years). The rationale of immunity is that throughout the relevant period the local planning authority would have had the opportunity to take enforcement action but failed to do so.
- 3.1.12 It is also important to note that the circumstances have not changed since 24 Willow Bank began functioning as a HMO. In this respect, reference is made to the case of *Panton and Farmer v Secretary of State for the Environment, Transport and the Regions and Vale of White Horse DC (1999) JPL 461*. In that case, guidance was given by the High Court on the approach a decision-maker should follow in considering an application. This was first to ask the question 'when did the Material change in use occur?' In the instant case this would need to be at a date at least ten years prior to the application. Secondly, if the material change of use took place prior to the relevant date (as it did in this case), has the use specified in the application been lost by operation of law in one of three possible ways, including abandonment, the formation of a new planning unit, or by way of a material change of use, be it by way of implementation of a further planning permission or otherwise.
- 3.1.13 Based on the evidence supplied, none of the above circumstances apply in this instance; the property has been occupied continuously since at least June 2003 as a four bedroom HMO (Use Class C4). It is said to have been used since 'at least' June 2003 because this was when the applicant purchased and began letting the property out as a HMO, though it was already in use as such prior to their purchase.

- 3.1.14 The National Planning Policy Guidance states that *“In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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 alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability”* (Paragraph 006 Reference ID: 17c-006-20140306).
- 3.1.15 Based on the robust evidence provided and in the absence of any evidence to contradict the version of events set out, it is considered that on the balance of probability, the use of the property as a HMO (Use Class C4) is now immune from enforcement action and has become lawful.

4 CONCLUSION

- 4.1.1 The evidence provided with this application is both sufficiently precise and unambiguous in proving that 24 Willow Bank is a lawful HMO (Use Class C4), and that the property has been in use as such since at least June 2003, with no intervening uses or abandonment, in excess of the ten year period within which enforcement action could have been taken.
- 4.1.2 Accordingly, it is considered that a lawful development certificate for the existing use should be issued, in line with the provisions of Section 191(5) of the TCPA.