

Planning

Growth & Development

Delegated officer report for planning application

Application no. 137402/LE/2023
Date registered valid: 26 June 2023
Proposal: Use of property as Small HMO (Use Class C4)
Address: 1 Keppel Road, Manchester, M21 0AT
Ward(s): Chorlton Ward

Applicant: Mr Lawrence James Aldwarden Ltd
Agent (if any):
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 28 September 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: 4 July 2023 Expired: 25 July 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 3 storey, semi-detached contemporary modern dwellinghouse. The property is constructed with a combination of render and brick. The property has a single parking space to the front and a small rear yard for private amenity space accessed via an alleyway.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area is located very close to Chorlton District Centre and contains a mixture of residential streets set behind commercial properties located on Wilbraham Road.

Description of development

The applicant is seeking a Certificates of lawfulness for the use of property as Small HMO (Use Class C4)

Consultations & Notification Responses

Notification letters were sent to the properties and addresses listed in appendix 1.

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 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.

Planning History – There has been two planning application at this site which is of relevance to the application.

Application Reference: 088623/FO/2008/S1

Description of Development: Erection of a pair of 3 storey semi-detached houses with associated car parking and landscaping

Status: Approved on the 01.06.2009

Application Reference: 099183/JO/2012/S1

Description of Development: Variation of condition no. 4 attached to planning permission 088623/FO/2008/S1 to vary compliance with BREEAM

Status: Approved on the 13.08.2012

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. Floor Plans
4. MCC HMO Licence 21 March 2022 – 20 March 2025
5. Letter from JP & Brimelow Estate Agents to confirm applicant were the first buyers of this property on November 3rd 2015
6. Title Register for the property
7. Decision Notices for the Previous Planning Permissions

In S.75(3) it is stated that if the purpose for which a permitted building is to be used is not specified, a permission is to be construed as being to use the building for the purpose for which it was designed. The 2009 planning permission allowed for the construction of “...*a pair of 3 storey semi-detached houses*...” and there was at the time of granting the permission, no condition requiring that the dwellinghouse could only be occupied within Class C3, this likely as Class C4 was not introduced until April 2010, effectively splitting the old Class C3 (dwellinghouses) into two separate classes. Limiting the occupation of the property to a Class C3 dwellinghouse would therefore not have been on the mind of the decision maker at the time.

In a case of this type, the onus is on the applicant to substantiate his or her case, on the balance of probability, and as the property was purchased by the applicant as the first registered owners, the application needs to demonstrate that the use of property as a small house in multiple occupation (Use C4) has existed since it was first occupied, i.e. that there was no preceding use in Class C3.

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.

The documentation provided shows that the applicant first purchased the property on the 30th October 2015 for a fee of £310,000 as confirmed by the title register for the property, and also confirmed by letter from the estate agent JP & Brimelow who confirm that the property was on the market as a new build property and purchased by the applicant on the 3rd November 2015.

The Zoopla website which shows that the property was first listed in January 2014 and sold in October 2015 for £310,000 (Source: <https://www.zoopla.co.uk/property/uprn/10090665731/> accessed 21.08.2023)

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 tenancy agreements show at least 3 persons in the property at anyone one time since 2016, the applicant has explained that tenants were on rolling contracts. However, from the applicants submitted documents, it is unclear how the property was used between being completed and the applicant purchasing the property.

The local planning authority only sought clarification through its own records, and others that are publicly available, for the period prior to the existence of the tenancy agreements and the additional evidence provided. In doing so, it was noted that the Valuation Office Agency website (image 1) (which is used to identify council tax bands) provides a date from which the property was registered for council tax, in this case 25 May 2012.

 **GOV.UK**

Check and challenge your Council Tax band

BETA This is a new service – your [feedback](#) will help us to improve it.

[English](#) | [Cymraeg](#)

[Back](#)

Property information for
1, KEPPEL ROAD, MANCHESTER, M21 0AT

Local Authority	Manchester
Local authority reference number	4022008
Council Tax band	E
Improvement indicator	No
With effect from	25 May 2012
Mixed-use property	No
Court code	None

[What does my property information mean?](#)

[Print this page](#)

Challenge this Council Tax band

Image 1 Property Details for 1 Keppel Road source: [Property information for 1, KEPPEL ROAD, MANCHESTER, M21 0AT - Check and challenge your Council Tax band - GOV.UK](#) accessed 12.09.2023

Enquires made of Council Tax records identified two people who shared the same surname were registered as living at the property from 20th July 2012 until 29th October 2015, which was one day prior to the date when the property was purchased by the applicant. Enquiries were also made of the public copy of the historical electoral register for years 2013-14 and 2014-2015 which showed 4 persons in occupation that were eligible to vote: each with the same surname.

Therefore, on balance of probability, it cannot be said that the property was occupied in the first instance as a small house in multiple occupancy (3-6 unrelated persons) (Class C4), as from the evidence available to the local planning authority, for the period of July 2012 to October 2015, its first period of occupation was that of Class C3 dwellinghouse. Accordingly, based on the

applicants' own evidence, a material change of use occurred when the property was occupied as a Class C4 HMO for the first time in 2016, this amounting to a breach of planning control; the certificate should therefore be refused. The breach of planning control has been referred to the Development Compliance Team for the consideration and a determination on whether enforcement action should be taken.

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) From the evidence available, and with reference to the relevant planning legislation, the applicant has failed to demonstrate that number 1 Keppel Road, Manchester, M21 0AT, was occupied as a small scale house in multiple occupation Class C4 of the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), as its first instance of occupation and up to the date of the application.

Appendix 1 – List of consultees & neighbours notified

452A Wilbraham Road, Manchester, M21 0AG
450B Wilbraham Road, Manchester, M21 0AG
450A Wilbraham Road, Manchester, M21 0AG
444A Wilbraham Road, Manchester, M21 0AG
3 Keppel Road, Manchester, M21 0AT
452B Wilbraham Road, Manchester, M21 0AG
Ground Floor, 454 Wilbraham Road, Manchester, M21 0AG
First Floor And Second Floor, 454 Wilbraham Road, Manchester, M21 0AG
Flat 2, 2 Keppel Road, Manchester, M21 0AT
Flat 1, 2 Keppel Road, Manchester, M21 0AT
Flat 2, 446 Wilbraham Road, Manchester, M21 0AG
Flat 1, 446 Wilbraham Road, Manchester, M21 0AG
452 Wilbraham Road, Manchester, M21 0AG
442 Wilbraham Road, Manchester, M21 0AG
444 Wilbraham Road, Manchester, M21 0AG
Flat 2, 442A Wilbraham Road, Manchester, M21 0AG
Flat 1, 442A Wilbraham Road, Manchester, M21 0AG
2A Keppel Road, Manchester, M21 0AT
448 Wilbraham Road, Manchester, M21 0AG
446 Wilbraham Road, Manchester, M21 0AG
448A Wilbraham Road, Manchester, M21 0AG

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