MANCHESTER CITY COUNCIL

# Planning

## Growth & Development

## Delegated officer report for planning application

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|---|---|
| **Application no.** | 137694/FO/2023 |
| **Date registered valid:** | 27 July 2023 |
| **Proposal:** | Use of property as a family dwellinghouse (Use Class C3) |
| **Address:** | 148 Braemar Road, Manchester, M14 6PW |
| **Ward(s):** | Fallowfield Ward |
| **Applicant:** | Miss Stephanie Nash |
| **Agent (if any):** | |
| **Case officer:** | Robert Tyrer<br>Tel: 0161 234 4068<br>Email: robert.tyrer@manchester.gov.uk |
| **Recommendation:** | Approve |
| **Date of recommendation:** | 12 October 2023 |

**Application details**

**Type of application:** Full Application Consent

**Development type:** Minor Dwellings

**Date of site visit:** 23 August 2023

**Standard consultations:**
Printed: 23 August 2023 Expired: 13 September 2023

**Neighbour notifications**
Printed: 23 August 2023 Expired: 13 September 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**



The application site relates to an Edwardian two storey semi-detached mid terraced dwellinghouse as shown in photograph 1. The property is red brick, with decorative bands, shaped stone lintels and a slate tiled roof. The property has a rear yard and a limited sized front garden.

**Listed building:** Not applicable

**Conservation area:** Not applicable

**Tree Preservation Order:** Not applicable

**Description of area**

The site is located roughly between Fallowfield District Centre and Levenshulme District Centre and comprises mostly residential, University of Manchester's sport facilities and a small retail park on Birchfield Road.

**Description of development**

The applicant is seeking planning permission to use the property as a family dwellinghouse (Use Class C3)

**Consultations & Notification Responses**

HS2 Ltd – Confirmed that confirm that the red line location plan boundary falls within sub-surface safeguarding for Phase 2b of HS2 and above proposed sub surface tunnels.

No objection as the proposal it will not affect HS2 works in that location..

**Planning History**

| **Application Details** | **Description** |
|---|---|
| 029651<br>Recv: 31.07.1987<br>Application **Approved** - 26.08.1987 | Single storey kitchen and bathroom extension at rear of house |
| 134211/LE/2022<br>Recv: 30.06.2023<br>Application **Refused** – 25.08.2022 | Use of the property as a small House in Multiple Occupation (Class C4) |
| Planning Inspectorate Reference:<br>APP/B4215/X/22/3306956<br>Appeal **Dismissed -** 13.02.2023 | Use of the property as a small House in Multiple Occupation (Class C4) |

**Issues**

**National Planning Policy Framework (NPPF)** - The NPPF sets out broad national policies on themes such as housing, historic environment, town centres, design, climate change and the Green Belt.

**The Development Plan**

Manchester's Core Strategy Development Plan Document forms part of the development plan for Manchester and its policies provide the basis for planning decisions in the City. The Core Strategy replaced a large number of policies in the Unitary Development Plan; however, some of the UDP policies do remain extant.

**Core Strategy**

The following Core Strategy policies are of relevance to this application.

Policy SP1, T2, H1, H6, EN1 and DM1

**Unitary Development Plan for the City of Manchester (1995)**

The following UDP policies are of relevance to this application.

DC7

**Guide to Development in Manchester SPD**

**Manchester Residential Quality Guidance March 2017**

**The Principle** – Policy H6 of the Core Strategy states that high density development in South Manchester will generally only be appropriate within the district centres of Chorlton, Didsbury, Fallowfield, Levenshulme, and Withington, as part of mixed-use schemes. Outside the district centres priorities will be for housing which meets identified shortfalls, including family housing and provision that meets the needs of elderly people, with schemes adding to the stock of affordable housing.

The application site is not located within any designated district or local centre and the proposal seeks to provide one family dwellinghouse.

Policy EN1 of the Core Strategy, saved policy DC6.2 are in line with Section 12 of the NPPF with regard to achieving well designed places and a high standard of amenity for existing and future residents.

However, there are detailed matters that also require consideration, and these are set out below.

**Use** - The Town and Country Planning Act 1990 (TCPA 1990) provides that planning permission is required for the carrying out of any development of land (section 57(1), TCPA 1990).

The definition of development includes "making any material change in the use of any buildings or other land" (section 55(1), TCPA 1990). This means that the requirement to obtain express planning permission generally applies to any "material change of use" unless the following circumstances apply:

- Where a change of use is permitted development by virtue of Part 3, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO 2015);

- Where the developer obtains a “certificate of lawfulness” from the local planning authority (LPA) (section 191 TCPA 1990);

- If the time limit for enforcement has expired (section 171B TCPA 1990).

If there is an unlawful material change of use without planning permission and the period for enforcement has not expired, then the Council as Local Planning Authority (LPA) may take enforcement action against the developer utilising its various enforcement powers under Part VII TCPA 1990 to halt the unlawful use (use A) and require a return to the previous lawful use (use B).

In addition, section 57(4) TCPA 1990 provides that:

“where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose of which […] it could lawfully have been used if that development had not been carried out.”

Further explanation of section 57(4) TCPA 1990 was provided in Newland v Secretary of State [2008] EWHC 3132 (Admin) case:

*"i) […] There is no requirement to obtain planning permission to resume a former lawful use of land where there has been successful enforcement action against a subsequent unlawful material change of use. The landowner is entitled to revert to the lawful use that ceased when he embarked on the unlawful use.*

*ii) However, following enforcement action, the only use that can be made of the land without obtaining fresh planning permission is the use for which the land could have been used immediately before the use of which complaint is made in the enforcement notice. Reversion is only allowed to the use which was current immediately before the development, which is the subject of the enforcement notice, and then only if that use was lawful (Young v Secretary of State for the Environment [1983] 2 AC 662 at page 670F-G).”*

In the case of this property the applicant submitted a Certificate of Lawful Development for the use of the property as a small House in Multiple Occupation (Class C4) under application reference: 134211/LE/2022. The certificate was refused as the applicant failed to demonstrate that number 148 Braemar Road, Manchester, M14 6PW had been 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) for a continual 10 year period up to the date of the application.

The applicant appealed the decision under appeal reference: APP/B4215/X/22/3306956 which was subsequently dismissed.

The consequence of which is that if there is a change of use from a lawful use X (in this case a C3 dwellinghouse) to use Y (in this case a C4 HMO) and an enforcement notice is issued in respect of use Y, then the landowner can revert to use X. However, if the local planning authority do not enforce against use Y, and if the owner reverts of his own volition to use X there may well be a material change in use and the local planning authority can then serve an enforcement notice on use X, if indeed there was some fundamental objection to it. In such a case, an owner cannot avail himself of a fallback right of reversion as this is not protected by any formal action that the Council have instigated. Had the enforcement notice been served on the HMO use, and this use

then ceased in compliance with that notice, the right of reversion would then have been permitted. However, as it hadn't been issued the is not right of reversion back to a C3 dwellinghouse and a planning application is required.

**Standard of Accommodation** – As the property was originally built as a family dwellinghouse with three bedrooms, it would still meet Manchester emerging space standards for a two storey three-to-four-bedroom house as set out in the Manchester Residential Quality Guidance March 2017.

The floor plans show separate dining room, lounge, kitchen and bathroom on the ground floor and three bedrooms and a bathroom on the first floor which will provide adequate facilities for the future users of the property.

Overall, it is considered that the property would meet a good standard of accommodation in accordance with policies SP1, T2, H1, H6, EN1 and DM1 of the Core Strategy and saved policy DC7 of the UDP.

**Residential Amenity** – There are no concerns with the use of the property as a dwellinghouse, as the area is characterised as being a residential area, properties either side of the property are also dwellinghouses.

In terms of future residents of the property the small garden/rear yard which will provide adequate private amenity space in accordance with policies SP1, T2, H1, H6, EN1 and DM1 of the Core Strategy and saved policy DC7 of the UDP.

**Car Parking** – As with all the properties in the area there are no private off road car parking spaces and as such if the future residents were to have a vehicle they would also have to park on street.

**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:** Approve

**Article 35 Declaration**

The proposal complies with the development plan and would improve the economic, social and environmental conditions of the area. It therefore comprises sustainable development and the Local Planning Authority worked proactively and positively to issue the decision without delay. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the NPPF.

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

1) The development must be begun not later than the expiration of three years beginning with the date of this permission.

Reason - Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification) no part of the development shall be used for any purpose other than the purpose(s) of Class C3(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason - In the interests of residential amenity, to safeguard the character of the area and to maintain the sustainability of the local community through provision of accommodation that is suitable for people living as families pursuant to policies DM1 and H11 of the Core Strategy for Manchester and the guidance contained within the National Planning Policy Framework.

**Appendix 1 – List of consultees & neighbours notified**

High Speed Two (HS2) Limited

179 Brailsford Road, Manchester, M14 6PZ
177 Brailsford Road, Manchester, M14 6PZ
159 Braemar Road, Manchester, M14 6PN
150 Braemar Road, Manchester, M14 6PW
146 Braemar Road, Manchester, M14 6PW
157 Braemar Road, Manchester, M14 6PN
181 Brailsford Road, Manchester, M14 6PZ

**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
HS2 Phase 2b Safeguarding Zones - HS2 Safeguarding Zones (June 2022)
HS2 Phase 2b Safeguarding Zones - HS2 Safeguarding Zones (October 2020)
Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Moseley Road/Ladybarn Lane)
Area Team Boundary - Name: SOUTH AREA