

Planning

Growth & Development

Delegated officer report for planning application

Application no. 136789/LE/2023
Date registered valid: 21 April 2023
Proposal: Use of property as a small House in Multiple Occupancy (Use C4).
Address: 149 Acomb Street, Manchester, M14 4DF
Ward(s): Moss Side Ward

Applicant: David Hill and Ian Rowe
Agent (if any): Stephen Lamb Steve Lamb
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Grant
Date of recommendation: 13 June 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: 9 May 2023 Expired: 30 May 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

Listed building: Not applicable

Conservation area: Not applicable

The application site relates to an end terraced two storey brick built dwelling house with blue tiled roof located on the corner of Acomb Street and Ruthin Street. The property has a small enclosed front garden and rear garden.

The property has a detached pre-cast concrete garage.

Tree Preservation Order: Not applicable

Description of area

The surrounding area is residential in nature.

Description of development

The applicant is seeking a Certificate Lawful Development Existing to allow Use of property as a small House in Multiple Occupancy (Use C4).

Consultations & Notification Responses

Publicity – Notification letters were sent to nearby residential properties (appendix 1).

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

Planning History – There has been one previous application at this address for.

Reference: 034330

Application: Erection of a pre cast concrete sectional garage which was approved

Status: Approved 15.08.1989

Legislative 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.

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 from 2012/13 – 2022/23
3. Management Agreement with MicroMega Sourcing Limited Dated 1st July 2022
4. Email from Manchester City Council Revenues and Benefits Team
5. HMO Selective Licence September 2018 – January 2023
6. Selective Bank Transactions 1st August 2015 to 30th June 2016 and 1st July 2016 to 30th June 2017
7. Email from previous tenant to confirm that they rented the property from 2015 to 2017

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 C4) commenced more than ten years prior to the date of the application (i.e. by 21 April 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.

149 Acomb Street is an end terraced two storey dwellinghouse, the application form states that from the 1st January 2011 the property became a C4 use.

The tenancy agreements show that there has been mostly 3 to 4 persons from 1st July 2012 to 21st September 2023. The tenancy agreements have been provided for the years 2012 to 2014 and then from 2017 to 2022/23. The covering letter explains that for the period 2015 to 2017 the evidence has been provided in the form complied bank statements show the payments of two of the three tenants as well as an email message from the other tenant who paid rent by cash.

In addition to this an email from Manchester City Councils Revenue and Benefits Team stating that the property has been occupied by a minimum of 3 tenants since 2012.

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.

Therefore, on balance of probability and without any evidence to the contrary the properties have been in use as a small house in multiple occupation and the certificate should be granted.

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: GRANT

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, Manchester City Council is satisfied that the use is lawful by reason of the said use having been in existence for a period of 10 years up to the date of this application.

Appendix 1 – List of consultees & neighbours notified

48 Ruskin Avenue, Manchester, M14 4DG
148 Acomb Street, Hulme, Manchester, M14 4DH
144 Acomb Street, Hulme, Manchester, M14 4DH
47 Ruskin Avenue, Manchester, M14 4DG
43 Ruskin Avenue, Manchester, M14 4DP
151 Acomb Street, Hulme, Manchester, M14 4DF
42 Ruskin Avenue, Manchester, M14 4DQ
46 Haydn Avenue, Manchester, M14 4DL
146 Acomb Street, Hulme, Manchester, M14 4DH
147 Acomb Street, Hulme, Manchester, M14 4DF
48 Haydn Avenue, Manchester, M14 4DE

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
Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Moss Side)
Area Team Boundary - Name: SOUTH AREA