

Planning

Growth & Development

Delegated officer report for planning application

Application no. 137088/LE/2023
Date registered valid: 25 May 2023
Proposal: Use of property as a small House in Multiple Occupation (Class C4).
Address: 174 Acomb Street, Manchester, M14 4DZ
Ward(s): Moss Side Ward

Applicant: Wakmoor (Assets) Limited
Agent (if any): Mr Paul Chandler-King Icen Projects
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 20 July 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: 31 May 2023 Expired: 21 June 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 and Area

The application relates to a two storey mid terrace property on 174 Acomb Street in close proximity to Rusholme District Centre, Oxford Road and Whitworth Park.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

Use of the property as a House in Multiple Occupation (Use Class C4)

Consultations & Notification Responses

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

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

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 then 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 have been no previous planning applications at this address.

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. Existing Floor Plans
3. Supporting Planning Statement
4. Redacted Tenancy Agreements from 2011/12 – 2022/23
5. Redacted Copy of Landlord Licence

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 25th May 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.

174 Acomb Street is a mid-terraced two storey red brick built dwelling house with a blue/grey slate tiled roof property. The property has a small enclosed front garden and rear garden, the application form states that from the 2nd September 2010 the property became a C4 use.

The submitted documentation provided reveals that the property had been occupied by 3 to 4 persons from September 2010 until 1st September 2014. From the 19th September 2014 until 18th March 2015, the tenancy agreements show that the property was rented to 2 persons for 6 months where they were charged a rent of £650 per calendar month. After 18th March 2015 the property remained vacant until the 1st of September 2015 before the next tenants moved in, leaving a gap of approximately 6 months. However, the 2 persons named on the tenancy agreement does not preclude the possibility that others also occupied the property at that time.

To gain more of an insight a useful exercise would be to look at a comparison between the monthly rental charge prior to and after the 2 persons moved in and then out of the property.

From 2nd September 2014 to the 1st of September 2015, according to the tenancy agreement were charged a rent of £1026 per calendar month which averages to £342 per tenant each month.

The 2 tenants who rented the property for 6 months were charged £650 per calendar month which averages at £325 per tenant.

The 6 tenants who rented the property from 1st September 2015 until 26th August 2016 were charged £2730 per month which averages at £455 per tenant.

The above figures reveal that the tenants proportionately paid a similar amount in terms of their rent.

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, from the evidence available and on the balance of probability, the use of the application property changed from a Class C4 house in multiple occupation to a Class C3 dwellinghouse from September 2014 until August 2015. Therefore, the property cannot be said to have been used as Class C4 house in multiple occupation for a continual 10 year period up to the date of the application.

Lastly it should be noted as the property was converted into an HMO in September 2010 prior to when the Article 4 Direction came into force on the 8th October 2011, the change to C3 would have been a permitted change not requiring a planning application. However, in September 2015 the use changed from C3 dwellinghouse to C4 house in multiple occupation which in accordance with the Article 4 Direction required planning permission.

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 174 Acomb Street, Manchester, M14 4DZ has been occupied as a small house in multiple occupation (Use 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.

Appendix 1 – List of consultees & neighbours notified

19 Kippax Street, Manchester, M14 4EX
15 Kippax Street, Manchester, M14 4EX
23 Kippax Street, Manchester, M14 4EX
Flat 2, 176 Acomb Street, Hulme, Manchester, M14 4DZ
Flat 1, 176 Acomb Street, Hulme, Manchester, M14 4DZ
176 Acomb Street, Hulme, Manchester, M14 4DZ
170 Acomb Street, Hulme, Manchester, M14 4DZ
25 Kippax Street, Manchester, M14 4EX
21 Kippax Street, Manchester, M14 4EX
17 Kippax Street, Manchester, M14 4EX
178 Acomb Street, Hulme, Manchester, M14 4DZ
172 Acomb Street, Hulme, Manchester, M14 4DZ
168 Acomb Street, Hulme, Manchester, M14 4DZ
181 Acomb Street, Hulme, Manchester, M14 4DY
179 Acomb Street, Hulme, Manchester, M14 4DY
177 Acomb Street, Hulme, Manchester, M14 4DY
175 Acomb Street, Hulme, Manchester, M14 4DY
173 Acomb Street, Hulme, Manchester, M14 4DY
171 Acomb Street, Hulme, Manchester, M14 4DY

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