

## Planning

## Growth & Development

### Delegated officer report for planning application

**Application no.** 137043/LE/2023  
**Date registered valid:** 6 June 2023  
**Proposal:** Use of property as a small house in multiple occupation (Class C4)  
**Address:** 11 Egerton Crescent, Manchester, M20 4PN  
**Ward(s):** Withington Ward

**Applicant:** Mrs Tessa Gavin  
**Agent (if any):** Mr Andrew Whiteley MMP Architects  
**Case officer:** Robert Tyrer  
Tel: 0161 234 4068  
Email: robert.tyrer@manchester.gov.uk

**Recommendation:** Refuse  
**Date of recommendation:** 2 August 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: 16 June 2023      Expired: 7 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 relates to a residential property that forms part of the ground floor, all upper floors, plus rear garden and rear parking area. The property is accessed from the front of the property Egerton Crescent and car parking is accessed from the side of No.9 Egerton Crescent.

Below and next to the application property is no. 9 Egerton Crescent was converted from a retail shop (formerly class A1 now class E) into a mixed use of retail and bar (Sui Generis) under planning reference: 123650/FO/2019.

Prior to this planning permission was granted to Conversion of shop and dwelling to 2 self-contained flats, erection of external stairs and front elevational alterations and erection of front boundary wall under planning reference: 063669/FO/SOUTH1/01 in January 2002.



**Listed building:** Not applicable

**Conservation area:** Withington Conservation Area 1983

**Tree Preservation Order:** Not applicable

### **Description of area**

The site is located within Withington District Centre, which is a compact centre focus around Wilmslow Road and Copson Street. Centre provides 'top up' shopping for residents and contains other services, including food and drink. The Centre is well served by public transport and has good links to both Fallowfield and Didsbury District Centres.

### **Description of development**

Certificates of lawfulness for the use of the of property as a small house in multiple occupation (Class C4)

### **Consultations & Notification Responses**

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

Councillor Wills – Objects to this application.

Local Residents/Public Opinion – Two representations were received neither objecting to or supporting the Planning Application however, they have raised concerns with the number of student properties in the area and that it is no longer a family friendly to live in.

## **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 have been six previous planning applications at this address and no.9 Crescent. As part of the first floor was no.9 Egerton Crescent these applications have also been included for reference.

| <b>Planning Reference and Status</b>                                                | <b>Address</b>                                   | <b>Description</b>                                                                                                                                                                                                                                   |
|-------------------------------------------------------------------------------------|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>123650/FO/2019</b><br>Recv: 26.06.2019<br>Application Approved - 03.10.2019      | 9 And 11 Egerton Crescent, Manchester, M20 4PN   | Proposed change of use from retail (Use Class A1) to a mixed use of retail and bar (Sui Generis) and part of building from residential to enlarged ground floor together with associated elevational alterations and replacement boundary treatment. |
| <b>063669/FO/SOUTH1/01</b><br>Recv: 22.11.2001<br>Application Approved - 17.01.2002 | 9/11, Egerton Crescent,, Withington,             | Conversion of shop & dwelling to 2 self-contained flats, erection of external stairs and front elevational alterations and erection of front boundary wall                                                                                           |
| <b>050348/FH/SOUTH1/96</b><br>Recv: 29.07.1996<br>Application Approved - 06.09.1996 | 11, Egerton Crescent,, Withington,               | Single storey rear extension to form additional living space, utility room and w.c                                                                                                                                                                   |
| <b>039010</b><br>Recv: 12.04.1991<br>Application Refused - 11.07.1991               | 9/9a, Egerton Crescent,, Withington, WITHINGTON, | Change of use from shop and dwelling into shops with offices above including a 2 storey rear and single storey side extension                                                                                                                        |
| <b>039887</b><br>Recv: 21.08.1991<br>Application Approved - 07.11.1991              | 9/9a, Egerton Crescent,, Withington, WITHINGTON, | Two storey rear extension to property and change of use to form 2 shops at ground floor level ( 9a previously a dwelling) with a flat above                                                                                                          |
| <b>040925</b><br>Recv: 06.02.1992<br>Application Refused - 23.04.1992               | 9, Egerton Crescent,, Withington, WITHINGTON,    | Change of use from vacant shop to a hot food take-away/cafe                                                                                                                                                                                          |

## **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 which shows 4 bedrooms and Elevations Existing
3. Statement of Truth signed by the applicants which also included the following documents:
  - 3a. Assured Shorthold Tenancy Partial 2010
  - 3b. Assured Shorthold Tenancy Partial 2011
  - 3c. List of rental properties
  - 3d. Rent book for the month October 2011.

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 22<sup>nd</sup> 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.

11 Egerton Crescent is an end terraced two storey property that contains 4 bedrooms that is spread across 3 floors. The property has a no front garden but a large rear garden, with car parking .The application form states that from the 1st September 2010 the property became a C4 use.

The evidence provided only shows evidence for two years and it is unclear from both the tenancy agreements provided and the rent book how many people lived at the property. The two tenancy agreements show 1 person per tenancy but the submitted rent book indicates that perhaps more than 1 persons lived at the address.

The comments received highlight issues with HMOs and in particular student properties in the area and do not raise doubt on the applicants claims.

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.

As such, it does not provide a basis for the Council to conclude with sufficient confidence that the property has been in continuous use as a house in multiple occupation over the 10 years from 19<sup>th</sup> May 2013. However, it does not preclude a further application to the Council should further and more compelling evidence be forthcoming to explain this period.

The Certificate should be refused.

A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

### **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 number 11 Egerton Crescent, Manchester, M20 4PN has 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.

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

16 Swinbourne Grove, Manchester, M20 4PP  
8 Egerton Crescent, Manchester, M20 4PN  
Flat 9, 8 Egerton Crescent, Manchester, M20 4PN  
18 Swinbourne Grove, Manchester, M20 4PP  
Withington Post Office, 15 Egerton Crescent, Manchester, M20 4PL  
7 Egerton Crescent, Manchester, M20 4PN  
9 Egerton Crescent, Manchester, M20 4PN  
20 Swinbourne Grove, Manchester, M20 4PP

## **Appendix 2 – Planning constraints**

Conservation Area - Withington Conservation Area 1983