

Planning

Growth & Development

Delegated officer report for planning application

Application no. 136138/LE/2023
Date registered valid: 2 February 2023
Proposal: Use of Property as a House in Multiple Occupation (Use Class C4)
Address: 63 Haydn Avenue, Manchester, M14 4DE
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: 14 April 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: 14 February 2023 Expired: 7 March 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 relates to a two storey mid terrace property on Haydn Avenue in close proximity to Rusholme District Centre, Oxford Road and Whitworth Park.

Listed building: Not applicable

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 – Two representations were received one expressing their concern at the proposal and requesting to attend a public meeting to discuss. The second representation objected to the proposal and claimed that for the year the property was claimed to be empty it had in fact been rented out to a family.

Issues

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. Supporting Statement
3. Tenancy Agreements
4. Email from MCC Revenue and Benefits Unit
5. HMO Licence Reference: 223685/OL2

The applicant has provided tenancy agreements covering the 10 year period with the exception of the year 2020/21. In the cover letter provided the applicant explains that during this year the property was not let out but was managed by Micromeega Sourcing Ltd which administered extensive repairs and improvements. During this period the combined effect of Covid and the renovations made it difficult to get tenants in until the start of the new academic year.

An objection to the application raised that the property was rented out to a family for several months during 2020/21 via an airbnb letting, however no other evidence was found to substantiate this claim, whereas the applicant has provided an email from the Council Revenues and Benefits Unit that supports this position

The LPA have no evidence to contradict the applicants version of events or make them less then probable

Conclusion - From the information that has been provided it is considered, that on the balance of probabilities, the rooms comprising the property had been let to individual tenants with access to shared facilities. It is therefore considered that the premises were in use as a small house in multiple occupancy (C4 use) for at least 10 years and this use has subsequently continued accommodating between 3-6 people.

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: 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

Room D Flat 27, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room D Flat 26, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room A Flat 24, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room C Flat 11, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room A Flat 28, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room C Flat 18, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room B Flat 16, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room A Flat 14, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room C Flat 12, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room C Flat 3, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room A Flat 2, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room A Flat 3, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room B Flat 4, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room C Flat 2, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
72 Haydn Avenue, Manchester, M14 4DE
Flat 22, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Flat 3, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Flat 2, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Flat 5, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
69 Haydn Avenue, Manchester, M14 4DE
66 Haydn Avenue, Manchester, M14 4DE
53 Haydn Avenue, Manchester, M14 4DE
Flat 14, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
4 Playfair Street, Manchester, M14 4DD
2 Playfair Street, Manchester, M14 4DD
56 Haydn Avenue, Manchester, M14 4DE
71 Haydn Avenue, Manchester, M14 4DE
61 Haydn Avenue, Manchester, M14 4DE
54 Haydn Avenue, Manchester, M14 4DE
Room C Flat 27, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room B Flat 24, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room A Flat 23, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room B Flat 21, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room A Flat 21, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room C Flat 16, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room C Flat 14, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room D Flat 12, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room D Flat 9, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room A Flat 9, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room B Flat 7, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room A Flat 7, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room B Flat 6, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
76 Haydn Avenue, Manchester, M14 4DE
67 Haydn Avenue, Manchester, M14 4DE
Flat 18, 418 Moss Lane East, Manchester, M14 4PQ
Flat 17, 418 Moss Lane East, Manchester, M14 4PQ
Flat 9, 414 Moss Lane East, Manchester, M14 4PQ
Flat 27, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Flat 8, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room D Flat 28, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ

[illegible]

[illegible]

Room B Flat 11, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room B Flat 10, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room C Flat 7, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room A Flat 26, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room C Flat 21, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room D Flat 16, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room D Flat 14, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room B Flat 14, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
59 Haydn Avenue, Manchester, M14 4DE
Flat 15, 416 Moss Lane East, Manchester, M14 4PQ
Flat 13, 416 Moss Lane East, Manchester, M14 4PQ
Flat 24, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Flat 7, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
Room A Flat 19, Moss Court, 422 Moss Lane East, Manchester, M14 4PQ
74 Haydn Avenue, Manchester, M14 4DE
65 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