

Planning

Growth & Development

Delegated officer report for planning application

Application no. 137034/LE/2023

Date registered valid: 5 June 2023

Proposal: Use of property as a small House in Multiple Occupation (Use Class C4)

Address: 14 Driffield Street, Manchester, M14 7HZ

Ward(s): Whalley Range Ward

Applicant: Wakmoor (Assets) Limited

Agent (if any): Mr Paul Chandler-King Iceni Projects

Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse

Date of recommendation: 28 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: 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

The application relates to a two storey mid terrace property on Driffield Street. An area comprising of terraced housing arranged in a grid iron fashion.

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.

No representations were 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 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 no 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. Redacted Tenancy Agreements
3. Redacted Landlord Licence

4. Existing Floor Plans

5. Supporting Planning Statement

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 19th 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.

14 Driffield Street is a 5 bedroom 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 15th September 2011 the property became a C4 use.

The documentation provided show that there has been consistently 3 to 5 persons at the property from September 2010 to the current tenancy agreement which ends in August 2023.

The only exception in terms of occupancy is in the year 2015 to 2016, where the submitted tenancy agreements show that a single tenant rented the property from the 21st September 2015 until the 2nd September 2016 and paid a rent of £386.00 per calendar month. Records available to the Council show that the same tenant paid for Council Tax for that year also.

Whilst 1 person named on the tenancy agreement or council tax records does not preclude the possibility that others also occupied the property at that time, there was a gap of at least 6 months until the next two tenants moved in. Both were 3 months individual tenancy agreements starting on the 3rd of March until 2nd of June 2016 each where each tenant agreed to pay £343.00 per calendar month. As each tenant paid a similar amount in terms of rent it does raise some doubt about the use of the property as C4 house in multiple occupation. If as it would appear the first person lived at the property by themselves for a period of 6 months between them moving and two other tenants moving in, then the use would have reverted back to a C3 dwellinghouse thus creating a break in the 10 years claimed.

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 19th 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.

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 14 Driffield Street, Manchester, M14 HZ 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

27 Markington Street, Manchester, M14 7JB
25 Markington Street, Manchester, M14 7JB
23 Markington Street, Manchester, M14 7JB
21 Markington Street, Manchester, M14 7JB
13 Markington Street, Manchester, M14 7JB
17 Markington Street, Manchester, M14 7JB
12 Driffield Street, Manchester, M14 7HZ
6 Driffield Street, Manchester, M14 7HZ
22 Driffield Street, Manchester, M14 7HZ
2 Driffield Street, Manchester, M14 7HZ
18 Driffield Street, Manchester, M14 7HZ
5 Markington Street, Manchester, M14 7JB
15 Markington Street, Manchester, M14 7JB
8 Driffield Street, Manchester, M14 7HZ
20 Driffield Street, Manchester, M14 7HZ
19 Markington Street, Manchester, M14 7JB
4 Driffield Street, Manchester, M14 7HZ
24 Driffield Street, Manchester, M14 7HZ
16 Driffield Street, Manchester, M14 7HZ
11 Markington Street, Manchester, M14 7JB
10 Driffield Street, Manchester, M14 7HZ
8 Lloyd Street South, Manchester, M14 7HY
9 Markington Street, Manchester, M14 7JB
7 Markington Street, Manchester, M14 7JB

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
Area Team Boundary - Name: SOUTH AREA