

Planning

Growth & Development

Delegated officer report for planning application

Application no. 136612/LE/2023
Date registered valid: 29 March 2023
Proposal: Use of property as a 9 bedroom House in Multiple Occupation (Sui Generis)
Address: 50 Richmond Grove, Manchester, M13 0DP
Ward(s): Ardwick Ward

Applicant: Mr Paul Reeves Parc Housing Ltd
Agent (if any): Mr John Albutt PZvi Architects & Designers Ltd
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: REFUSE
Date of recommendation: 22 May 2023

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: None Required

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 13 April 2023 Expired: 4 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

The application site relates to a three storey end terraced dwellinghouse, the property has a small front garden which has been hard landscaped with tarmac to provide off road car parking for at least two vehicles and a relatively large rear garden.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The application site is located within a suburban residential area characterised by similar large dwellinghouses, and by a mixture of flats and houses in multiple occupation. The area is located to the south east of Manchester Royal Infirmary and Manchester Children's Hospital.

Description of development

Certificate Lawful Development Existing for the use of property as a 9 bedroom House in Multiple Occupation (Sui Generis)

Site History

Two previous planning applications at this address were both withdrawn.

Consultations & Notification Responses

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

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 and layout plan edged in red.
2. Floor Plans:
 - a. Basement Plan – Three rooms and a store;
 - b. Ground Floor Plan – 1 x bedroom, living room, kitchen and bathroom;
 - c. First Floor Plan – 3 x bedrooms, kitchen and laundry room;
 - d. Second Floor Plan – 5 x bedrooms and w.c
 - e. Roof Plan – Shows roof and a couple of rooflights
 - f. Elevations, North, South, East and West
3. Statutory Declaration by Mr M, F Royle dated 16th May 2022 stated that from the date of the purchase of the property it has been occupied by 7 or more tenants continuously other than during rental voids.
4. HMO Licence Ref: 094037 dated 28 March 2012

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 9 bedroom House in Multiple Occupation (Sui Generis) commenced more than ten years prior to the date of the application (i.e. by 28 March 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.

In cases of shared houses occupied by 7 or more unrelated individuals, as their only or main residence, who share basic amenities, are considered to be a sui generis. Sui generis' is a Latin term that, in this context, means ‘in a class of its own’.

50 Richmond Grove is an end terraced, three storey dwellinghouse, the submitted floor plans reveal that there is a total of 9 bedrooms spread across the floors. The application form states that from the 31st December 2010 the property became a sui generis use.

The tenancy agreements show that between the years July 2013 until the end of June 2017 the property was consistently rented out to 8 tenants. From July 2017 until end of June 2019 the tenancy agreements show that the property was rented to 9 tenants, where it reverted back to 8 tenants from July 2019 until June 2020.

From July 2020 until June 2021 the property was occupied by 9 tenants, but number of tenants then dropped to 6 from July 2021 to June 2022 and then up to 7 persons for July 2022 to June 2023.

The statutory declaration states that the property from the date of the purchase of the property it has been occupied by 7 or more tenants continuously other than during rental voids and with the exception of one year the tenancy agreements do show this to be true.

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, it cannot be said that the property has been rented out continually as a 9 Bedroom HMO (sui generis) continually for 10 years, as the evidence submitted by the applicant shows that the property has been rented out to 6, 7 and 8 persons and for the entirety of the preceding 10 years, for only 3 years has the property been occupied by 9 tenants. Therefore 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 50 Richmond Grove, Manchester, M13 0DP has been occupied as a 9-bedroom house in multiple occupation, a sui generis use that does not fall within the use classes identified by 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

Flat 9, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 3, 60 Richmond Grove, Manchester, M13 0DP
Flat 3, 23 Portland Crescent, Manchester, M13 0BU
Flat 3, 21 Portland Crescent, Manchester, M13 0BU
Flat 2, 29 - 31 Portland Crescent, Manchester, M13 0BU
Room 5, 48 Richmond Grove, Manchester, M13 0DP
Room 1, 46 Richmond Grove, Manchester, M13 0DP
26 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
15 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
12 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
Flat 18, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 3, 52 Richmond Grove, Manchester, M13 0DP
First Floor, 78 Richmond Grove, Manchester, M13 0DP
Flat 19, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 2, 25 Portland Crescent, Manchester, M13 0BU
19 Portland Crescent, Manchester, M13 0BU
Basement Flat, 70 Richmond Grove, Manchester, M13 0DP
Room 9, 48 Richmond Grove, Manchester, M13 0DP
Room 7, 48 Richmond Grove, Manchester, M13 0DP
Room 1, 48 Richmond Grove, Manchester, M13 0DP
Room 7, 46 Richmond Grove, Manchester, M13 0DP
19 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
17 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
11 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
8 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
6 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
5 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
68 Richmond Grove, Manchester, M13 0DP
Flat 25, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 23, Leyburn House, Richmond Grove, Manchester, M13 0DH
Ground Floor Flat, 76 Richmond Grove, Manchester, M13 0DP
Flat 1, 21 Portland Crescent, Manchester, M13 0BU
Flat 4, 21 Portland Crescent, Manchester, M13 0BU
Flat 4, 29 - 31 Portland Crescent, Manchester, M13 0BU
Flat 2, 56 Richmond Grove, Manchester, M13 0DP
Flat 3, 54 Richmond Grove, Manchester, M13 0DP
Flat 3, 68 Richmond Grove, Manchester, M13 0DP
2 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
Room 3, 48 Richmond Grove, Manchester, M13 0DP
Flat 2, 1 Ingoldsby Avenue, Manchester, M13 0DF
Flat 1, 1 Ingoldsby Avenue, Manchester, M13 0DF
1 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
18 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
16 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
4 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
Flat 6, 57 Richmond Grove, Manchester, M13 0DH
Flat 11, Leyburn House, Richmond Grove, Manchester, M13 0DH
3 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
Flat 6, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 5, Leyburn House, Richmond Grove, Manchester, M13 0DH

Flat 17, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 2, 58 Richmond Grove, Manchester, M13 0DP
Ground Floor, 78 Richmond Grove, Manchester, M13 0DP
Flat 24, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 2, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 1, Leyburn House, Richmond Grove, Manchester, M13 0DH
2 Thurlby Street, Manchester, M13 0DR
Flat 3, 58 Richmond Grove, Manchester, M13 0DP
46 Richmond Grove, Manchester, M13 0DP
48 Richmond Grove, Manchester, M13 0DP
7 Ingoldsby Avenue, Manchester, M13 0DF
76 Richmond Grove, Manchester, M13 0DP
Flat 8, 29 - 31 Portland Crescent, Manchester, M13 0BU
Flat 2, 72 Richmond Grove, Manchester, M13 0DP
The Studio Flat, 68 Richmond Grove, Manchester, M13 0DP
9 Ingoldsby Avenue, Manchester, M13 0DF
1 Ingoldsby Avenue, Manchester, M13 0DF
65 Richmond Grove, Manchester, M13 0DH
11 Ingoldsby Avenue, Manchester, M13 0DF
THURLBY HOUSE, 2 Ingoldsby Avenue, Manchester, M13 0DF
Flat 1, 72 Richmond Grove, Manchester, M13 0DP
Flat 5, 29 - 31 Portland Crescent, Manchester, M13 0BU
Flat 3, 29 - 31 Portland Crescent, Manchester, M13 0BU
Flat 1, 56 Richmond Grove, Manchester, M13 0DP
Second Floor, 78 Richmond Grove, Manchester, M13 0DP
Room 4, 46 Richmond Grove, Manchester, M13 0DP
27 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
Flat 1, 52 Richmond Grove, Manchester, M13 0DP
Flat 15, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 4, 57 Richmond Grove, Manchester, M13 0DH
Flat 3, 74 Richmond Grove, Manchester, M13 0DP
Flat 8, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 7, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 4, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 21, Leyburn House, Richmond Grove, Manchester, M13 0DH
3 Ingoldsby Avenue, Manchester, M13 0DF
Second Floor Flat, 76 Richmond Grove, Manchester, M13 0DP
Flat 1, 25 Portland Crescent, Manchester, M13 0BU
Flat 2, 23 Portland Crescent, Manchester, M13 0BU
Flat 4, 23 Portland Crescent, Manchester, M13 0BU
Flat 6, 29 - 31 Portland Crescent, Manchester, M13 0BU
Flat 5, 56 Richmond Grove, Manchester, M13 0DP
Flat 3, 56 Richmond Grove, Manchester, M13 0DP
Room 10, 48 Richmond Grove, Manchester, M13 0DP
Room 8, 46 Richmond Grove, Manchester, M13 0DP
Room 5, 46 Richmond Grove, Manchester, M13 0DP
Room 3, 46 Richmond Grove, Manchester, M13 0DP
46A Richmond Grove, Manchester, M13 0DP
21 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
62 Richmond Grove, Manchester, M13 0DP
Flat 3, 57 Richmond Grove, Manchester, M13 0DH
Flat 4, 55 Richmond Grove, Manchester, M13 0DH
57 Richmond Grove, Manchester, M13 0DH
52 Richmond Grove, Manchester, M13 0DP

60 Richmond Grove, Manchester, M13 0DP
Flat 10, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 16, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 1, 60 Richmond Grove, Manchester, M13 0DP
Flat 1, 58 Richmond Grove, Manchester, M13 0DP
First Floor Flat, 76 Richmond Grove, Manchester, M13 0DP
Flat 2, 3 Ingoldsby Avenue, Manchester, M13 0DF
Flat 5, 23 Portland Crescent, Manchester, M13 0BU
Flat 2, 21 Portland Crescent, Manchester, M13 0BU
Flat 5, 21 Portland Crescent, Manchester, M13 0BU
Flat 1, 29 - 31 Portland Crescent, Manchester, M13 0BU
Flat 2, 5 Ingoldsby Avenue, Manchester, M13 0DF
Flat 7, 56 Richmond Grove, Manchester, M13 0DP
Flat 2, 54 Richmond Grove, Manchester, M13 0DP
Flat 1, 68 Richmond Grove, Manchester, M13 0DP
1A Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
Room 2, 48 Richmond Grove, Manchester, M13 0DP
Room 10, 46 Richmond Grove, Manchester, M13 0DP
Room 6, 46 Richmond Grove, Manchester, M13 0DP
24 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
9 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
Flat C, 61 Richmond Grove, Manchester, M13 0DH
Flat 20, Leyburn House, Richmond Grove, Manchester, M13 0DH
63 Richmond Grove, Manchester, M13 0DH
Flat 2, 57 Richmond Grove, Manchester, M13 0DH
Flat 2, 52 Richmond Grove, Manchester, M13 0DP
Flat 3, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 22, Leyburn House, Richmond Grove, Manchester, M13 0DH
Flat 2, 60 Richmond Grove, Manchester, M13 0DP
29 - 31 Portland Crescent, Manchester, M13 0BU
Flat 5, 54 Richmond Grove, Manchester, M13 0DP
Flat 7, 29 - 31 Portland Crescent, Manchester, M13 0BU
Flat 4, 56 Richmond Grove, Manchester, M13 0DP
Flat 7, 54 Richmond Grove, Manchester, M13 0DP
Flat 4, 54 Richmond Grove, Manchester, M13 0DP
Flat 1, 54 Richmond Grove, Manchester, M13 0DP
Room 8, 48 Richmond Grove, Manchester, M13 0DP
Room 6, 48 Richmond Grove, Manchester, M13 0DP
Room 4, 48 Richmond Grove, Manchester, M13 0DP
Room 9, 46 Richmond Grove, Manchester, M13 0DP
Room 2, 46 Richmond Grove, Manchester, M13 0DP
48A Richmond Grove, Manchester, M13 0DP
25 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
20 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
10 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
Flat 1, 55 Richmond Grove, Manchester, M13 0DH
Flat 1, 74 Richmond Grove, Manchester, M13 0DP
Flat B, 61 Richmond Grove, Manchester, M13 0DH
Flat 7, 57 Richmond Grove, Manchester, M13 0DH
Flat 3, 66 Richmond Grove, Manchester, M13 0DP
Flat 14, Leyburn House, Richmond Grove, Manchester, M13 0DH
59 Richmond Grove, Manchester, M13 0DH
5 Ingoldsby Avenue, Manchester, M13 0DF
33 Portland Crescent, Manchester, M13 0BU

64 Richmond Grove, Manchester, M13 0DP
Flat 1, 3 Ingoldsby Avenue, Manchester, M13 0DF
Flat 2, 74 Richmond Grove, Manchester, M13 0DP
Flat 2, 66 Richmond Grove, Manchester, M13 0DP
56 Richmond Grove, Manchester, M13 0DP
54 Richmond Grove, Manchester, M13 0DP
58 Richmond Grove, Manchester, M13 0DP
Flat 8, 57 Richmond Grove, Manchester, M13 0DH
Flat 1, 57 Richmond Grove, Manchester, M13 0DH
Flat 3, 55 Richmond Grove, Manchester, M13 0DH
Flat 5, 57 Richmond Grove, Manchester, M13 0DH
Flat 2, 55 Richmond Grove, Manchester, M13 0DH
70 Richmond Grove, Manchester, M13 0DP
17A Portland Crescent, Manchester, M13 0BU
Flat 1, 5 Ingoldsby Avenue, Manchester, M13 0DF
27 Portland Crescent, Manchester, M13 0BU
Flat 3, 25 Portland Crescent, Manchester, M13 0BU
Flat 1, 23 Portland Crescent, Manchester, M13 0BU
17 Portland Crescent, Manchester, M13 0BU
Flat 6, 56 Richmond Grove, Manchester, M13 0DP
Flat 6, 54 Richmond Grove, Manchester, M13 0DP
Flat 2, 68 Richmond Grove, Manchester, M13 0DP
Room 11, 48 Richmond Grove, Manchester, M13 0DP
23 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
14 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
7 Richmond Court, 42 Richmond Grove, Manchester, M13 0DP
Flat A, 61 Richmond Grove, Manchester, M13 0DH
Flat 1, 66 Richmond Grove, Manchester, M13 0DP
Flat 12, Leyburn House, Richmond Grove, Manchester, M13 0DH

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
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Area Team Boundary - Name: NORTH AREA