

Planning

Growth & Development

Delegated officer report for planning application

Application no. 135719/LE/2022

Date registered valid: 6 January 2023

Proposal: Use of land as a car park (Sui Generis)

Address: Junction Of Land At Jessie Street & Cutland Street, Manchester, M40 2EA

Ward(s): Miles Platting & Newton Heath Ward

Applicant: Mr H Razzaq

Agent (if any): David Ormesher Holborow & Ormesher

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

Recommendation: REFUSE

Date of recommendation: 10 March 2023

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: 17 January 2023

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 6 January 2023 Expired: 27 January 2023

Site notice

No site notice has been produced

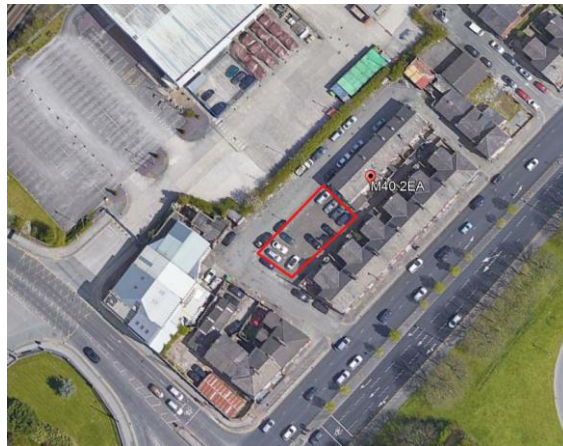
Press advert

No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building and area



The application site relates to parcel of vacant land of a roughly rectangular shape. The land which is hard surfaced with rough gravel is presently open, with no means of enclosure.

The site is bounded by Cutland Street to the north, Jessie Street to the west, the gable end of a two storey, residential terrace to the east and an alleyway which separates the site from a two-storey residential terrace to the south. The rear of these properties (885-895 Oldham Road) faces onto the application site.

Situated to the other side of Cutland Street is a large, two storey warehouse containing a plumbing supplies and bathroom showroom business, beyond which is an industrial estate comprising multiple warehouses. This business is associated with the parcel of land.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a Lawful Development Certificate to confirm the Use of land as a car park (Sui Generis)

Consultations & Notification Responses

Letters were sent to all the addresses listed in appendix 1. Three representations were received, 2 objected to the application.

Objections

Local Resident and J.C.O. (Jessie & Cutland Street and Oldham Road) Community Group

Granting a certificate would give the applicant the power to re-apply to erect a fence around the croft. The representation says that they have just been through all this and was successful in opposing it.

They say they have used it as a car park for 10 years, well there are residents who have used it for more than 20 years

Other Representations

One representation was received to state they had knowledge of the land being used as a car park since 1974.

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

130964/FO/2021

Change of use of vacant land to car park to be used in association with plumber's merchants opposite, together with associated boundary fencing. Refused 14 October 2022.

108736/FO/2015/N1

Retrospective Application for the retention of four shipping containers for storage associated with 2-10 Thorp Road, and erection of 2.1 metre high boundary treatment to the perimeter, including gates, with access towards Jessie Street. Refused 22 June 2015. Appeal against enforcement notice dismissed on appeal 16 February 2018 (Ref: APP/C/17/317735).

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.

The application relates to a roughly rectangular site which is bounded by Cutland Street to the north, Jessie Street to the west. The gable end of a two storey, residential terrace to the east and an alleyway which separates the site from a two-storey residential terrace to the south. The rear of these properties (885-895 Oldham Road faces onto the application site.

This application is seeking to confirm the lawful use of the land as operating as a car park for the required continuous 10 year period.

Evidence – The list below sets out the evidence provide by the applicant to support their application.

- Design and Access Statement
- Statutory Deceleration and site plan

- Confirmed that the property was purchased on the 24th March 2016 and that since May 2011 the applicant has ran the business known Manchester Plumbing Supplies.
- Confirmed that the car park has been used for the benefit and use of the warehouse building and the residential element of the building for over 10 years

To obtain the certificate, the onus is on the applicant to substantiate their case, on the balance of probability. In this case the claims are reliant upon the statutory deceleration that the car park has been used for the benefit and use of the warehouse building (2-10 Thorp Road) and residential element (address) for over 10 years.

Planning Practice Guidance (Paragraph: 006 Reference ID: 17c-006-20140306) advises the following with regard to this type of application:

“In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability”.

Source: <https://www.gov.uk/guidance/lawful-development-certificates>

The site history reveals that in March 2015 a complaint was received alleging that four shipping containers had been placed on the land for storage purposes associated with the business use opposite the site at 2-10 Thorp Road.

The substance of this complaint was that the use of this land for the storage of containers was causing a nuisance in terms of highway safety, visual amenity, noise, waste collection and debris associated with the use.

A site inspection on 23 March 2015 revealed that four storage containers were present on the land along with debris including wooden pallets attributable to the business use at 2-10 Thorp Road.

A planning application was submitted on 27th April 2015 for the retention four shipping containers for storage associated with 2-10 Thorp Road, and erection of 2.1-metre-high boundary treatment to the perimeter, including gates, with access towards Jessie Street under planning application reference: 108736/FO/2015/N1. The application form states that at the time the application was submitted that the existing use of land was “open land” and that vehicle parking was not applicable image 1)

10. Vehicle Parking ~ / A

Please provide information on the existing and proposed number of on-site parking spaces.

Type of Vehicle	Total Existing	Total proposed (including spaces retained)	Difference in spaces
Cars			
Light goods vehicles/ public carrier vehicles			
Motorcycles			
Disability spaces			
Cycle spaces			
Other (e.g. Bus)			
Other (e.g. Bus)			

Date: 2015-04-02 #5 Siteplan: 61493

14. Existing Use

Please describe the current use of the site:

open Land

Is the site currently vacant? ☐ Yes ☐ No

If Yes, please describe the last use of the site:

open Land

When did this use end (if known)?
DD/MM/YYYY
(date where known may be approximate)

Does the proposal involve any of the following?
If yes, you will need to submit an appropriate contamination assessment with your application.

Land which is known to be contaminated? ☐ Yes ☒ No

Land where contamination is suspected for all or part of the site? ☐ Yes ☒ No

A proposed use that would be particularly vulnerable to the presence of contamination? ☐ Yes ☒ No

Image 1 Questions 10 and 14 application form for application reference: 108736/FO/2015/N1

The application was refused on the 22nd June 2015 for the following reasons:

- 1) The development by reason of its siting scale and appearance would be detrimental to visual amenity and to the character and quality of the surrounding residential environment, and would therefore be contrary to saved UDP policies DM1, EN1 and SP1 of the Manchester Core Strategy.
- 2) The development, by reason of the movement of vehicles and the increased comings and goings to the site that are generated are in close proximity to residential properties, would, result in increased noise and disturbance and would be unduly detrimental to the amenities that occupiers of adjacent residential properties might reasonably expect to enjoy. As such the proposal would be contrary to policies SP1, DM1 of the Manchester Core Strategy and saved policy DC26 of the Unitary Development Plan
- 3) The development does not provide suitable or sufficient accommodation within the site for the loading and unloading of vehicles, essential and incidental to the use of the site The resulting effects is large servicing vehicles servicing the development from Jessie Street and Cutland Street which has a harmful impact on the highway and pedestrian safety which is contrary to the provision of policies SP1 and DM1 of the Manchester Core Strategy (2007) The Guide to Development in Manchester SPD (2007) and the NPPF/NPPG.

Enforcement action was authorised by the Head of Planning, Building Control and Licensing on 4 October 2016 , with the notices issued on 8 May 2017 requiring the following steps to be taken:

1. Cease the use of the land for the siting of storage containers and remove them, together with their contents from the land.
2. Clear the land of any debris arising from or as a result of carrying out Step 1.

The site photographs clearly show container wagons on the site (photo montages 1 and 2) in 2015 and 2016.

A further site visit on 14 September 2017 revealed that 2 storage containers were located on the land.

In an appeal (Ref: APP/C/17/317735) against the enforcement notice the Planning Inspector visited the site on the 22nd January 2018 and observed that

*The appeal site is a parcel of land where Cutland Street meets Jessie Street. During the period leading up to the issuing of the notice, the site was used for storing about four shipping-style cargo containers. Timber pallets were also kept on the land in the open-air. **At the time of my site visit, there was one container on the land.** The metal container is used for storage of various building materials in connection with a business.*

In reaching a decision on the appeal Inspector A U Ghafoor not only concluded that in addition to its harmful effect upon the character and appearance of the locality that they found the development cannot show safe access and parking within the site and has the potential to adversely affect highway safety contrary to policy DM1 of the Core Strategy.

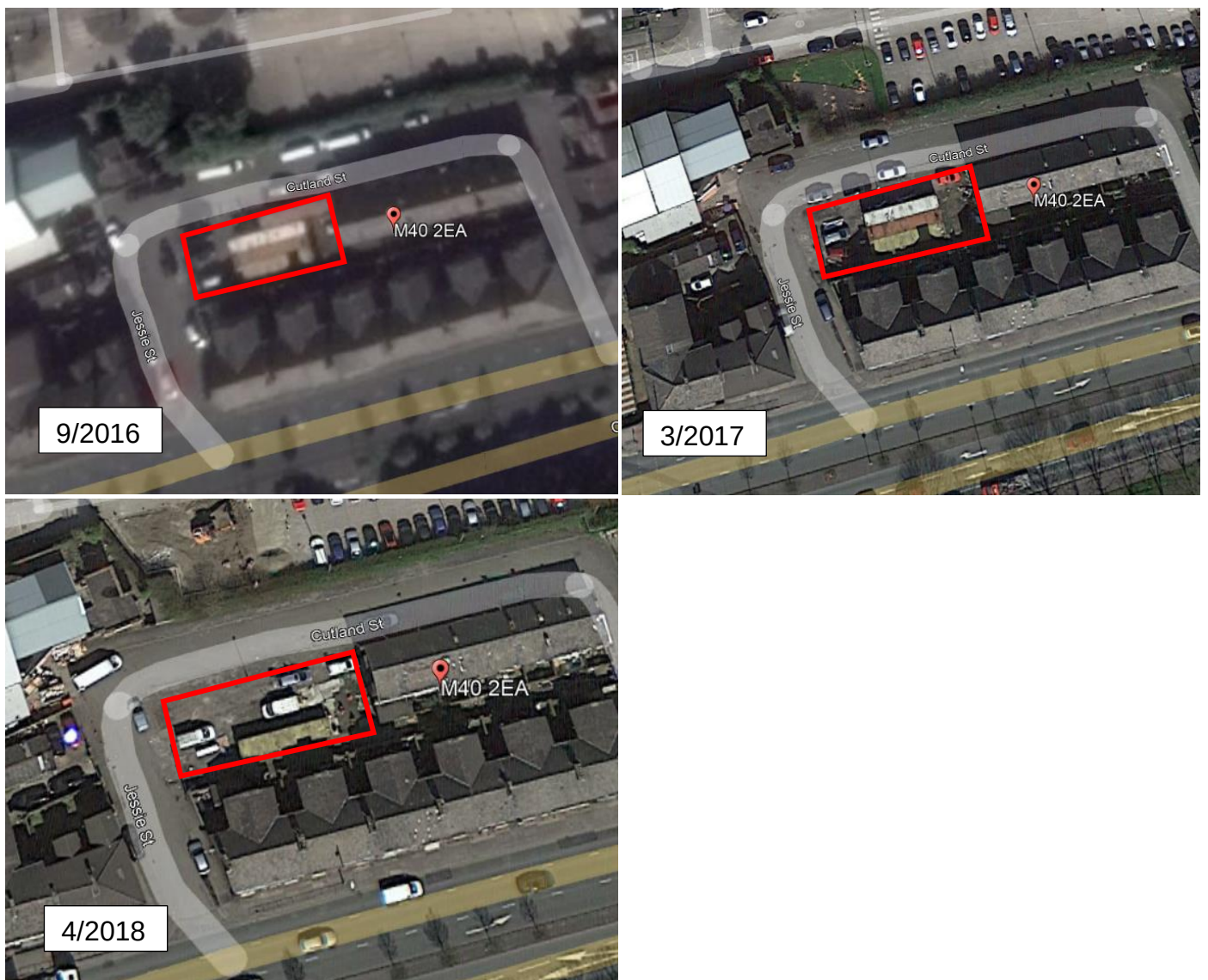
Therefore, the appeal against enforcement notice was dismissed at appeal on the 16 February 2018 and Council records confirm that this was complied with on the 6th July 2018.



Photograph Montage 1 Case Officer Site Photographs application reference: 108736/FO/2015/N1



Photograph Montage 2 Google Streetview years 2015 and 2016 source: <https://www.google.com/maps> accessed 07.03.2023



Photograph Montage 3 Google Earth years 2016, 2017 and 2018 source: <https://www.google.com/Earth> accessed 07.03.2023

The evidence above clearly demonstrates that for the years 2015 up to 2018 that there were containers stored on the site, which is within the 10 year period claimed by the applicant that the site was in use as a car park in connection with the business at 2-10 Thorpe Street and residential use.

Therefore, it cannot be said that the land has been continually used for 10 years as a car park and the certificate should therefore be refused.

Other Matters - In an application of this type, the planning merits are not matters which can be considered. The decision relates only to the lawfulness of the use.

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 the land at the Junction Of Land At Jessie Street and Cutland Street, Manchester, M40 2EA has been in use as a car park (sui generis) 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

Flat 3, 2A Thorp Road, Manchester, M40 5BJ
Flat 2, 2A Thorp Road, Manchester, M40 5BJ
Flat 1, 2A Thorp Road, Manchester, M40 5BJ
2 Thorp Road, Manchester, M40 5BJ
Specialised Transmission Services, Worrall Street, Manchester, M40 2ED
2 Kerswell Walk, Manchester, M40 2AH
907 Oldham Road, Manchester, M40 2EE
24 Cutland Street, Manchester, M40 2EA
903 Oldham Road, Manchester, M40 2EE
899 Oldham Road, Manchester, M40 2EE
893 Oldham Road, Manchester, M40 2EE
891 Oldham Road, Manchester, M40 2EE
887 Oldham Road, Manchester, M40 2EE
885 Oldham Road, Manchester, M40 2EE
6 Worrall Street, Manchester, M40 2ED
921 Oldham Road, Manchester, M40 2EB
917 Oldham Road, Manchester, M40 2EB
30 Cutland Street, Manchester, M40 2EA
28 Cutland Street, Manchester, M40 2EA
26 Cutland Street, Manchester, M40 2EA
22 Cutland Street, Manchester, M40 2EA
18 Cutland Street, Manchester, M40 2EA
16 Cutland Street, Manchester, M40 2EA
129 Troydale Drive, Manchester, M40 2AP
121 Troydale Drive, Manchester, M40 2AP
8 Worrall Street, Manchester, M40 2ED
1 Thorp Road, Manchester, M40 5BJ
Saxon Solicitors, Ground Floor, 879 Oldham Road, Manchester, M40 2EE
First Floor Flat, 879 Oldham Road, Manchester, M40 2EE
Funeral Parlour, 879 Oldham Road, Manchester, M40 2EE
Flat B, 897 Oldham Road, Manchester, M40 2EE
Flat A, 897 Oldham Road, Manchester, M40 2EE
First Floor Flat, 881 - 883 Oldham Road, Manchester, M40 2EE
905 Oldham Road, Manchester, M40 2EE
889 Oldham Road, Manchester, M40 2EE
4 Worrall Street, Manchester, M40 2ED
20 Cutland Street, Manchester, M40 2EA
127 Troydale Drive, Manchester, M40 2AP
2 Worrall Street, Manchester, M40 2ED
4 Kerswell Walk, Manchester, M40 2AH
909 Oldham Road, Manchester, M40 2EE
901 Oldham Road, Manchester, M40 2EE
895 Oldham Road, Manchester, M40 2EE
919 Oldham Road, Manchester, M40 2EB
125 Troydale Drive, Manchester, M40 2AP
123 Troydale Drive, Manchester, M40 2AP
119 Troydale Drive, Manchester, M40 2AP
881 - 883 Oldham Road, Manchester, M40 2EE

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 - Not Affected

Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA

Historic Landfill Site 250m Buffer -

Manchester Cathedral Ownership - Manchester Cathedral Newton Heath Manor

Area Team Boundary - Name: NORTH AREA