

Planning

Growth & Development

Delegated officer report for planning application

Application no. 136723/LE/2023

Date registered valid: 11 April 2023

Proposal: Use of property and site as vehicle repairs and tyre fitting place (Use Class B2)

Address: 53 Middleton Old Road, Manchester, M9 8DS

Ward(s): Higher Blackley Ward

Applicant: Mr Oliver Okonkwo

Agent (if any): Mr Raja Riaz

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

Recommendation: GRANT

Date of recommendation: 1 June 2023

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: 09 May 2023

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 2 May 2023 Expired: 23 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 small cluster of structures, including office, workshop/garages, and a shipping container. The site is located on the higher section of Middleton Old Road leading to the junction with Rochdale Road.



Photographs 1 and 2; Officers Site Photos

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The site lies within an area of smaller commercial properties centred around a former cotton mill, a church (St Peter's) and is near to areas of green open space including Boggart Hole Clough.

Description of development

Certificate Lawful Development Existing for use of property and site as vehicle repairs and tyre fitting place (Use Class B2).

Consultations & Notification Responses

Publicity – Notification letters were sent to nearby residential properties (appendix 1).

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.

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 and site as vehicle repairs and tyre fitting place (Use Class B2) commenced more than ten years prior to the date of the application (i.e. by 11 April 2013) and continued without a significant break for ten years.

The Town and Country Planning (Use Classes) Order 1987 (as amended) defines the classes of use for the purposes of section 55(2)(f) of the 1990 Act. Class B2 in Schedule 2 Part A is defined as:

Class B2. General industrial

Use for the carrying on of an industrial process other than one falling within the uses described in Schedule 2, Class E, sub-paragraph (g).

Uses falling within Class E, sub-paragraph (g) are as follows:

- (i) an office to carry out any operational or administrative functions,
- (ii) the research and development of products or processes, or
- (iii) any industrial process,

Assessment– The application site is a cluster of single storey structures comprising an office cabin, three garage/workshops and a shipping container. The sites boundaries are demarcated with a brick yellow and blue painted wall where access to the site is taken from Middleton Old Road.

According to the documentation submitted with the application, the current owners purchased the property in 2018 and was previously operating under the name of Blackley Exhaust and Motor. The site now operates under the name of CT Contact Tyres and according to their About Us section on their website, they describe themselves as follows:

Contact tyres is fully independent, AA Accredited and NTDA Accredited garage and we promise to BEAT not meet, any competitor's advertised price or substantiated quote, like for like, even internet prices. So you don't need to go anywhere else!

Although it has not been long since we entered the automotive industry, our facility has already become the landing place for many people looking for high quality **tyres Blackley**.

Source: <https://www.contacttyres.co.uk/about-us> accessed 01.06.2023

The website also reveals that their primary address is the application site.

The information provided by the applicant has been separated into three distinctive periods, these are 2013-15, 2016-17 and 2018-23.

For the years 2013 – 15, a selection of gas, phone bills, invoices and bank statements have been provided all relate to the previous company name Blackley Exhaust and Motor. From the documentation provided there appears to be little dispute that the applicant has demonstrated a B2 use for the period of the previous operator's ownership and use of the site.

Similarly, again a smaller selection of phone bills, invoices and bank statements have been provided that all relate to the previous company name Blackley Exhaust and Motor at the site address for the years 2016 to 2017. Again, there is little dispute that the site was in operating in a B2 use.

The documents from 2018 to 2023 relate to the new owner, the correspondence appears to be solely between the applicant and AJ Accountancy Services relating to various matters from 16th October 2019 to 24th June 2022.

Google Street View reveals that in August 2019 (image1), the site had been sold by auction and by September 2020 (image 2) had undergone aesthetic improvements for the new owner, which again are similar to the case officers site photographs (photographs 1 and 2).

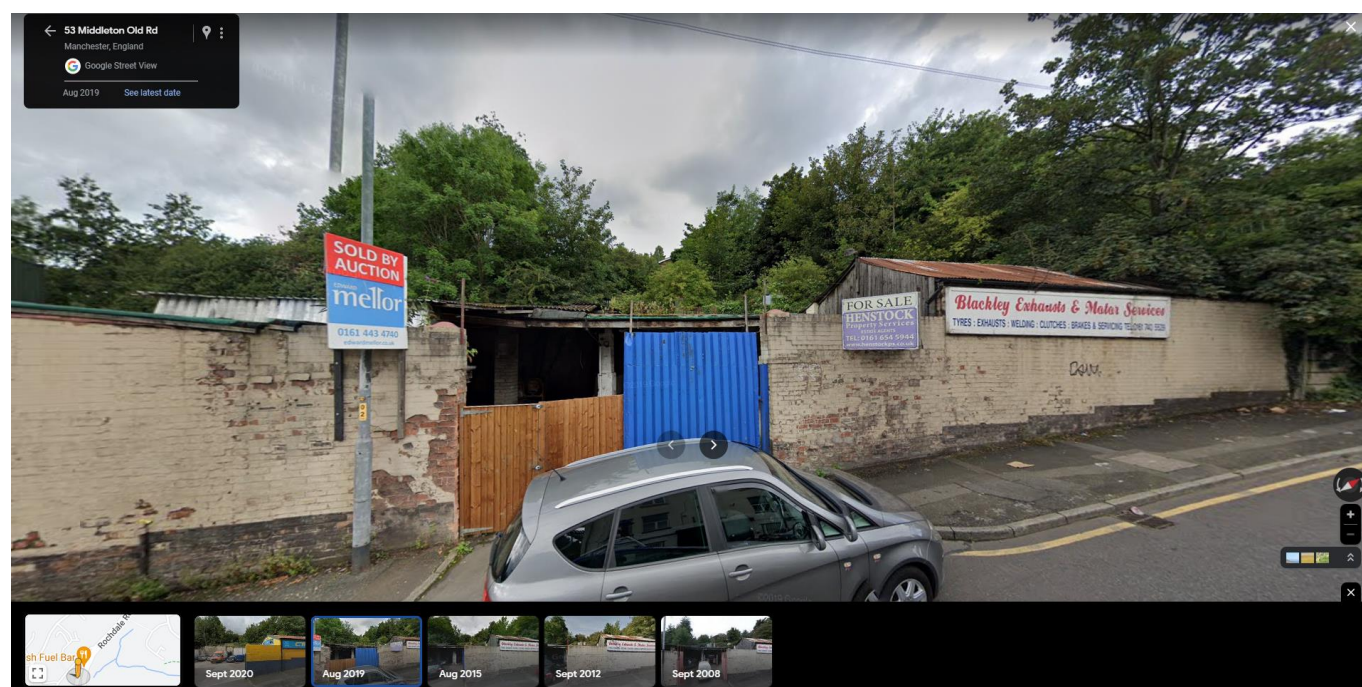


Image 1 Google Streetview from August 2019. Source: <https://www.google.com/maps/@53.5237129,-2.2160718,3a,90y,301.66h,90.92t,359.9r/data=!3m7!1e1!3m5!1sHGTE84N3R8xOAp8l8bhlw!2e0!5s20190801T000000!7i16384!8i8192?entry=ttu> accessed 01.06.2023

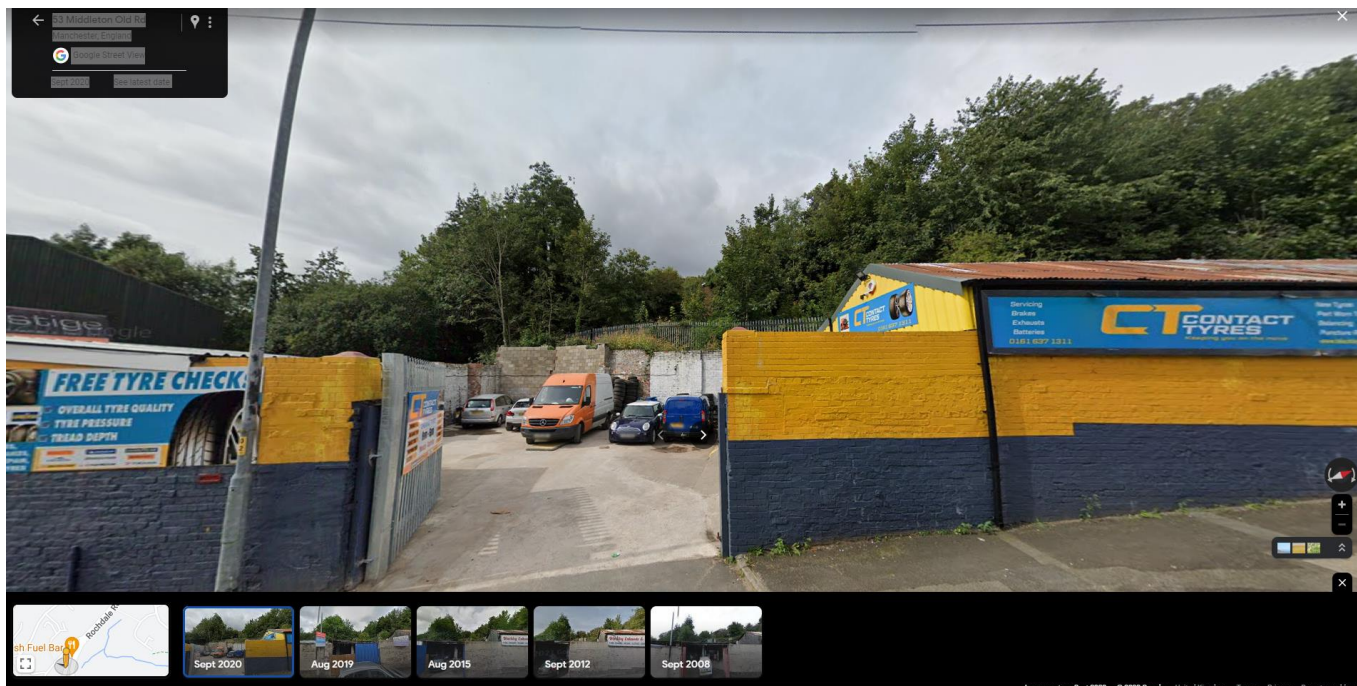


Image 2 Google Streetview from September 2020. Source: <https://www.google.com/maps/@53.5237129,-2.2160718,3a,90y,301.66h,90.92t,359.9r/data=!3m7!1e1!3m5!1sHGETE84N3R8xOAp8l8bhlw!2e0!5s20190801T000000!7i16384!8i8192?entry=ttu> accessed 01.06.2023

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. In this case whilst not all evidence provided includes the year 2023, as such, it would allow the Council as LPA to conclude with sufficient confidence that the property and site has been in continuous use as a vehicle repairs and tyre fitting place (Use Class B2) for the required 10 years from 11 April 2013.

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: 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

Unit 4 And Unit 5, Lion Works, Old Market Street, Manchester, M9 8FY
2A Lion Brow, Manchester, M9 8PY
2B Lion Brow, Manchester, M9 8PY
1129 Rochdale Road, Manchester, M9 7FW
1131 Rochdale Road, Manchester, M9 7FW
8 Lion Brow, Manchester, M9 8FF
58 Lion Brow, Manchester, M9 8PY
Flat 10, 1133 Rochdale Road, Manchester, M9 7FW
Flat 9, 1133 Rochdale Road, Manchester, M9 7FW
58A Lion Brow, Manchester, M9 8PY
Unit 2, Lion Works, Old Market Street, Manchester, M9 8FY
1127 Rochdale Road, Manchester, M9 7FW
Village Garage, 30 Middleton Old Road, Manchester, M9 8DS
Daisy Bank Works, 1139 Rochdale Road, Manchester, M9 7FW
14 Lion Brow, Manchester, M9 8FF
Blackley Service Station, 976 Rochdale Road, Manchester, M9 7EP
958 Rochdale Road, Manchester, M9 7EP
10 Brow Walk, Manchester, M9 6AY
4 Brow Walk, Manchester, M9 6AY
24 Brow Walk, Manchester, M9 6AY
18 Brow Walk, Manchester, M9 6AY
2 Tumbling Bank, Manchester, M9 6AU
Lion Works, Old Market Street, Manchester, M9 8FY
17 Tumbling Bank, Manchester, M9 6AU
23 Tumbling Bank, Manchester, M9 6AU
11 Tumbling Bank, Manchester, M9 6AU
5 Tumbling Bank, Manchester, M9 6AU
13 The Fold, Manchester, M9 6PA
15 The Fold, Manchester, M9 6PA
17 The Fold, Manchester, M9 6PA
11 The Fold, Manchester, M9 6PA
9 The Fold, Manchester, M9 6PA
946 Rochdale Road, Manchester, M9 7EP
954 Rochdale Road, Manchester, M9 7EP
950 Rochdale Road, Manchester, M9 7EP
948 Rochdale Road, Manchester, M9 7EP
952 Rochdale Road, Manchester, M9 7EP
956 Rochdale Road, Manchester, M9 7EP
27 Middleton Old Road, Manchester, M9 8DS
1139A Rochdale Road, Manchester, M9 7FW
Flat 2, 1133 Rochdale Road, Manchester, M9 7FW
Flat 1, 1133 Rochdale Road, Manchester, M9 7FW
Flat 4, 1133 Rochdale Road, Manchester, M9 7FW
Flat 3, 1133 Rochdale Road, Manchester, M9 7FW
Flat 8, 1133 Rochdale Road, Manchester, M9 7FW
Flat 6, 1133 Rochdale Road, Manchester, M9 7FW
Flat 7, 1133 Rochdale Road, Manchester, M9 7FW
Flat 5, 1133 Rochdale Road, Manchester, M9 7FW
Lock Up 1 Adjacent Unit 8, Old Market Street, Manchester, M9 8FY
Offices, Lion Works, Old Market Street, Manchester, M9 8FY

First Floor To Third Floor, Lion Works, Old Market Street, Manchester, M9 8FY
Unit 4A, Lion Works, Old Market Street, Manchester, M9 8FY
Lock Up 2 Adjacent Unit 8, Old Market Street, Manchester, M9 8FY
Unit 3, Lion Works, Old Market Street, Manchester, M9 8FY
Store Adjacent Unit 1, Lion Works, Old Market Street, Manchester, M9 8FY
Unit 1, Lion Works, Old Market Street, Manchester, M9 8FY
Unit 10, Lion Works, Old Market Street, Manchester, M9 8FY
60 Lion Brow, Manchester, M9 8PY
54 Lion Brow, Manchester, M9 8PY
28 Lion Brow, Manchester, M9 8PY
20 Lion Brow, Manchester, M9 8PY
1143 Rochdale Road, Manchester, M9 7FW
Unit 11, Lion Works, Old Market Street, Manchester, M9 8FY
Unit 8, Lion Works, Old Market Street, Manchester, M9 8FY
Unit 9, Lion Works, Old Market Street, Manchester, M9 8FY
Unit 6, Lion Works, Old Market Street, Manchester, M9 8FY
7 Lion Brow, Manchester, M9 8FF
12 Lion Brow, Manchester, M9 8FF
2 Lion Brow, Manchester, M9 8FF
1139 Rochdale Road, Manchester, M9 7FW
19 Tumbling Bank, Manchester, M9 6AU
7 Tumbling Bank, Manchester, M9 6AU
1 The Fold, Manchester, M9 6PA
12 Brow Walk, Manchester, M9 6AY
10 Lion Brow, Manchester, M9 8FF
50 Lion Brow, Manchester, M9 8PY
46 Lion Brow, Manchester, M9 8PY
18 Lion Brow, Manchester, M9 8PY
21 Tumbling Bank, Manchester, M9 6AU
9 Tumbling Bank, Manchester, M9 6AU
16 Brow Walk, Manchester, M9 6AY
14 Brow Walk, Manchester, M9 6AY
5 Lion Brow, Manchester, M9 8FF
56 Lion Brow, Manchester, M9 8PY
30 Lion Brow, Manchester, M9 8PY
24 Lion Brow, Manchester, M9 8PY
15 Tumbling Bank, Manchester, M9 6AU
1 Tumbling Bank, Manchester, M9 6AU
52 Lion Brow, Manchester, M9 8PY
44 Lion Brow, Manchester, M9 8PY
34 Lion Brow, Manchester, M9 8PY
6 Tumbling Bank, Manchester, M9 6AU
6 Brow Walk, Manchester, M9 6AY
4 Lion Brow, Manchester, M9 8FF
48 Lion Brow, Manchester, M9 8PY
26 Lion Brow, Manchester, M9 8PY
13 Tumbling Bank, Manchester, M9 6AU
7 The Fold, Manchester, M9 6PA
5 The Fold, Manchester, M9 6PA
3 Tumbling Bank, Manchester, M9 6AU
3 The Fold, Manchester, M9 6PA
2 Brow Walk, Manchester, M9 6AY
1145 Rochdale Road, Manchester, M9 7FW
1149 Rochdale Road, Manchester, M9 7FW

42 Lion Brow, Manchester, M9 8PY
38 Lion Brow, Manchester, M9 8PY
40 Lion Brow, Manchester, M9 8PY
36 Lion Brow, Manchester, M9 8PY
32 Lion Brow, Manchester, M9 8PY
12 Tumbling Bank, Manchester, M9 6AU
22 Lion Brow, Manchester, M9 8PY
6 Lion Brow, Manchester, M9 8FF
16 Lion Brow, Manchester, M9 8FF
8 Tumbling Bank, Manchester, M9 6AU
20 Brow Walk, Manchester, M9 6AY
10 Tumbling Bank, Manchester, M9 6AU
22 Brow Walk, Manchester, M9 6AY
1141 Rochdale Road, Manchester, M9 7FW
4 Tumbling Bank, Manchester, M9 6AU
8 Brow Walk, Manchester, M9 6AY

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 -
Area Team Boundary - Name: NORTH AREA