

Planning

Growth & Development

Delegated officer report for planning application

Application no. 136019/LE/2023
Date registered valid: 19 January 2023
Proposal: Use of property as 4 apartments (Class C3)
Address: 1460 Ashton Old Road, Manchester, M11 1HL
Ward(s): Clayton & Openshaw Ward

Applicant: Dr Qasim Abbasali 613 Manek Ltd
Agent (if any): Mr Ronald Gonshaw Gonshaw Associates
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: GRANT
Date of recommendation: 14 March 2023

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit:

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 1 February 2023 Expired: 22 February 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

Application site relates a large two storey brick built semi-detached dwellinghouse with additional accommodation in the form of dormers at both the front and rear of the property.



Listed building: Not applicable

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area is predominantly residential with properties organised around grid iron streets. The area also contains a major highway in and out of the City Centre.

Description of development

The applicant seeks a certificate for the use of property as 4 apartments (Class C3

Consultations & Notification Responses

Publicity – Notification letters were sent to nearby residential properties (see appendix 1 for the list of properties).

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

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

In a case of this type, the onus is on the applicant to substantiate their case, on the balance of probability. The applicant needs to demonstrate that the use as two flats commenced more than 4 years prior to the date of the application (i.e. by 19 January 2019) and continued without a significant break for 4 years.

Evidence – The following evidence has been submitted for consideration:

General Documents

- A site location plan edged in red.

Flat 1

- Energy performance certificate dated 3 October 2016
- Council tax bill 2021 2022 dated 18 May 2022
- Payment of housing benefit 5th of September 2017 to 2nd of April 2018
- Electrical installation condition report dated 2nd November 2016
- Gas installation safety record dated 1st October 2016
- Assured shorthold Tenancy agreement dated 21st November 2016
- Resident permit
- Council tax bill adjustment dated 2nd December 2016
- Council tax bill adjustment dated 30 June 2022

Flat 2

- Council tax final notice dated 7 March 2017
- Electrical installation condition report dated 2 November 2016
- Energy performance certificate dated 3 October 2016
- Gas installation safety record dated 1 October 2016
- Assured shorthold tenancy agreement dated 23 November 2016

Flat 3

- Energy performance certificate dated 3 October 2016
- Gas installation safety record dated 1 October 2016
- Assured shorthold tenancy agreement dated 25 November 2016
- Council tax bill 2020 to 2021 dated 9 March 2020
- Suspension of housing benefit dated 11 September 2017
- Electrical installation condition report dated 2 to November 2016
- Council tax bill 2019 2020 dated 3 February 2020
- Council tax bill adjustment dated 12 March 2020
- Council tax bill 2016 2017 dated 11 September 2020

Flat 4

- Electrical installation condition report dated 2nd November 2016
- Domestic electrical installation condition report dated 12 October 2021
- Energy performance certificate dated 3 October 2016
- Landlord home owner gas safety record dated 18 September 2018
- Gas safety certificate dated 19 September 2021
- Assured shorthold tenancy agreement dated 21 September 2017

- Council tax bill 2017 2018 dated 30 June 2017
- Council tax bill dated 1 September 2017
- Council tax bill 2018 2019 dated 22 to June 2018
- Council tax bill 2018/2019 dated 15 February 2019

The applicant has provided Energy Performance Certificates (EPC) for each flat which show that for at least 12 years the property has been divided into 4 separate flats as shown on the submitted floor plan.

In addition, some tenancy agreements have been provided together with more recent gas safety records.

LPA have no evidence to contradict the applicant's version of events or make them less then probable. Indeed, the Council Tax Valuation Website (image 1) and EPC Website (image 2) show that the property continues to be in use as four flats.

Check and challenge your Council Tax band

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Address	Council Tax band	Local Authority
1436 ASHTON OLD ROAD, Manchester, M11 1HL	Deleted	Manchester
1438A ASHTON OLD ROAD, Manchester, M11 1HL	A	Manchester
1438 ASHTON OLD ROAD, Manchester, M11 1HL	A	Manchester
1440 ASHTON OLD ROAD, Manchester, M11 1HL	C	Manchester
1442 ASHTON OLD ROAD, Manchester, M11 1HL	B	Manchester
1444 ASHTON OLD ROAD, Manchester, M11 1HL	B	Manchester
1446 ASHTON OLD ROAD, Manchester, M11 1HL	B	Manchester
1448 ASHTON OLD ROAD, Manchester, M11 1HL	B	Manchester
1450 ASHTON OLD ROAD, Manchester, M11 1HL	B	Manchester
FLAT 1 AT 1458 ASHTON OLD ROAD, Manchester, M11 1HL	A	Manchester
FLAT 2 AT 1458 ASHTON OLD ROAD, Manchester, M11 1HL	A	Manchester
FLAT 3 AT 1458 ASHTON OLD ROAD, Manchester, M11 1HL	A	Manchester
FLAT 4 AT 1458 ASHTON OLD ROAD, Manchester, M11 1HL	A	Manchester
FLAT 5 AT 1458 ASHTON OLD ROAD, Manchester, M11 1HL	Deleted	Manchester
FLAT 1 AT 1460 ASHTON OLD ROAD, Manchester, M11 1HL	A	Manchester
FLAT 2 AT 1460 ASHTON OLD ROAD, Manchester, M11 1HL	A	Manchester
FLAT 3 AT 1460 ASHTON OLD ROAD, Manchester, M11 1HL	A	Manchester
FLAT 4 AT 1460 ASHTON OLD ROAD, Manchester, M11 1HL	A	Manchester
1462 ASHTON OLD ROAD, Manchester, M11 1HL	B	Manchester

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FLAT 1 AT 1460 ASHTON OLD ROAD, Manchester, M11 1HL	A	Manchester
FLAT 2 AT 1460 ASHTON OLD ROAD, Manchester, M11 1HL	A	Manchester
FLAT 3 AT 1460 ASHTON OLD ROAD, Manchester, M11 1HL	A	Manchester
FLAT 4 AT 1460 ASHTON OLD ROAD, Manchester, M11 1HL	A	Manchester

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Image 1 Council Tax Valuation source: <https://www.tax.service.gov.uk/check-council-tax-band> accessed 13.03.2023

54 EPCs for M11 1HL

Flat 1, 1460 Ashton Old Road, MANCHESTER, M11 1HL	D	24 January 2027
Flat 2, 1460 Ashton Old Road, MANCHESTER, M11 1HL	D	2 October 2026
Flat 3, 1460 Ashton Old Road, MANCHESTER, M11 1HL	D	2 October 2026
Flat 4, 1460 Ashton Old Road, MANCHESTER, M11 1HL	E	2 October 2026

Image 2 Energy Performance Certificate source: <https://find-energy-certificate.service.gov.uk/find-a-certificate/search-by-postcode?postcode=M11+1HL> Accessed 14.03.2023

Conclusion - From the information that has been provided it is considered, that on the balance of probabilities, the rooms comprising the property has been let as four flats at least 4 years.

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 4 years up to the date of this application.

Appendix 1 – List of consultees & neighbours notified

1447 Ashton Old Road, Manchester, M11 1HJ
1462 Ashton Old Road, Manchester, M11 1HL
1473 Ashton Old Road, Manchester, M11 1HH
1466 Ashton Old Road, Manchester, M11 1HL
1444 Ashton Old Road, Manchester, M11 1HL
1453 Ashton Old Road, Manchester, M11 1HJ
2 Cheeryble Street, Manchester, M11 1PB
1457 Ashton Old Road, Manchester, M11 1HH
1459 Ashton Old Road, Manchester, M11 1HH
1461 Ashton Old Road, Manchester, M11 1HH
1463 Ashton Old Road, Manchester, M11 1HH
1455 Ashton Old Road, Manchester, M11 1HH
1451 Ashton Old Road, Manchester, M11 1HJ
1449 Ashton Old Road, Manchester, M11 1HJ
Flat 4, 1460 Ashton Old Road, Manchester, M11 1HL
1464B Ashton Old Road, Manchester, M11 1HL
Flat 4, 1467 Ashton Old Road, Manchester, M11 1HH
Flat 3, 1467 Ashton Old Road, Manchester, M11 1HH
Flat 2, 1467 Ashton Old Road, Manchester, M11 1HH
Flat 1, 1467 Ashton Old Road, Manchester, M11 1HH
Flat 1, The Firs, 1471 Ashton Old Road, Manchester, M11 1HH
Flat 1, 1469 Ashton Old Road, Manchester, M11 1HH
1464A Ashton Old Road, Manchester, M11 1HL
1469 Ashton Old Road, Manchester, M11 1HH
1467 Ashton Old Road, Manchester, M11 1HH
Flat 5, 1458 Ashton Old Road, Manchester, M11 1HL
Flat 4, 1458 Ashton Old Road, Manchester, M11 1HL
Flat 3, 1458 Ashton Old Road, Manchester, M11 1HL
Flat 2, 1458 Ashton Old Road, Manchester, M11 1HL
Flat 1, 1458 Ashton Old Road, Manchester, M11 1HL
Flat 3, 1460 Ashton Old Road, Manchester, M11 1HL
Flat 2, 1460 Ashton Old Road, Manchester, M11 1HL
Flat 1, 1460 Ashton Old Road, Manchester, M11 1HL
Flat 3, The Firs, 1471 Ashton Old Road, Manchester, M11 1HH
Flat 2, The Firs, 1471 Ashton Old Road, Manchester, M11 1HH
Flat 3, 1469 Ashton Old Road, Manchester, M11 1HH
Flat 2, 1469 Ashton Old Road, Manchester, M11 1HH
1470 Ashton Old Road, Manchester, M11 1HL
1450 Ashton Old Road, Manchester, M11 1HL
1448 Ashton Old Road, Manchester, M11 1HL
1446 Ashton Old Road, Manchester, M11 1HL
1442 Ashton Old Road, Manchester, M11 1HL

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

Area Team Boundary - Name: NORTH AREA