

Planning

Growth & Development

Delegated officer report for planning application

Application no. 135993/LE/2023
Date registered valid: 1 February 2023
Proposal: Use of property as homeopathy pharmacy and clinic (Use Class E)
Address: 321 Dickenson Road, Manchester, M13 0NR
Ward(s): Rusholme Ward

Applicant: Mr Mahboob Butt
Agent (if any):
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: GRANT
Date of recommendation: 11 May 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: 14 February 2023 Expired: 7 March 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 the ground floor of a 3-storey mid-terraced building. The property is located an area with a mix of commercial and is approximately 16 metres from Longsight District Centre.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The application site relates to the ground floor of a 3-storey mid-terraced building. The property is located an area with a mix of commercial and is approximately 16 metres from Longsight District Centre.

Description of development

The applicant is seeking a certificate of lawful development for the use of property as homeopathy pharmacy and clinic (Use Class E)

Consultations & Notification Responses

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

Local residents/public opinion – Three representations were received all objecting to the proposal the common issues raised as follows:

- Car Parking Problems (lack of spaces, inconsiderate car parking) and Traffic Congestion in the area;
- Customers congregate outside making it difficult for customers of other business accessing the building.

Planning History – There has been two previous applications at this address for a lawful development certificate relating to use of property as: one, self contained basement flat, landlords residential accommodation, four rented bedrooms with shared facilities and ground floor pharmacy / homeopathy business for a period exceeding 4 and 10 years under planning reference: 128541/LE/2020 which was refused for the following reason:

The applicant has failed to demonstrate on the balance of probability that the property was partially in use/occupation one, self-contained basement flat (Class C3), landlord's residential accommodation (sui generis) and four rented bedrooms with shared facilities comprising a (Class C4) under the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), for a continual period of 4 years (for Class C3 use) and 10 years (for the Class C4 and sui generis use) (up to the date of the receipt of the CLEUD application on 10 January 2022).

The second application relating to the use of property as homeopathy pharmacy and clinic (Use Class E) under planning reference: 134634/LE/2022 which was refused for the following reason:

The applicant has failed to demonstrate that the Ground Floor, 321 Dickenson Road, Manchester, M13 0NR has been occupied as a homeopathy pharmacy and clinic, Use Class E 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.

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 then 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 provided:

- Application Form
- Business Rates
- Water Bill and Waste Water Bill (2010 to 2023)
- Company House Documents

The Company House Documents show that the registered address for the following business was the same as the application site/address.

- Homeopathic Healthy Herbs LTD
 - Incorporated on the 18th December 2006 and dissolved 10th May 2011;
- Homeopathic Healthy Herbs (Manchester) LTD;
 - Incorporated on 22nd December 2010 and dissolved on the 26th January 2016
- Homeopathic Medicine LTD
 - Incorporated on the 28th October 2014 and remains active.

The 'nature of the business' is classified as 'other service not elsewhere classified'.

These company names correspond with the those named on the business rates email (dated 24 June 2021), however, the email does say that no assurances are provided as to the business activity undertaken at the address.

The name to which the water and waste water bills are addressed too is also named as an Active Company Director on the Companies House Website (<https://find-and-update.company-information.service.gov.uk/company/09845917/officers>, accessed 11 May 2023)

The onus of proof 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.

The current and active company director business name and address matches the documents supplied from Companies House and on the Water Bills. Google street view from the years 2008 until 2021 (the latest streetview image) show business signs related to a Homeopathic Healthy Herbs name at the address.

The responses to the notification letters do not raise any doubts on the business use, rather they object because of car parking concerns.

In this case, the LPA has no evidence to contradict the applicant's version of events or make them less than probable.

The applicant has therefore demonstrated that the Ground Floor, 321 Dickenson Road, Manchester, M13 0NR has been occupied as a homeopathy pharmacy and clinic, Use Class E 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.

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

Flat 4, 309 Dickenson Road, Manchester, M13 0NR
Flat 3, 309 Dickenson Road, Manchester, M13 0NR
Flat 2, 309 Dickenson Road, Manchester, M13 0NR
Flat 1, 309 Dickenson Road, Manchester, M13 0NR
Basement, 315 Dickenson Road, Manchester, M13 0NR
317 Dickenson Road, Manchester, M13 0NR
312 Dickenson Road, Manchester, M13 0NG
20 Honor Street, Manchester, M13 0WY
18 Honor Street, Manchester, M13 0WY
16 Honor Street, Manchester, M13 0WY
12 Honor Street, Manchester, M13 0WY
10 Honor Street, Manchester, M13 0WY
8 Honor Street, Manchester, M13 0WY
6 Honor Street, Manchester, M13 0WY
336 Dickenson Road, Manchester, M13 0NG
332 Dickenson Road, Manchester, M13 0NG
330 Dickenson Road, Manchester, M13 0NG
328 Dickenson Road, Manchester, M13 0NG
314 Dickenson Road, Manchester, M13 0NG
Room 3 First Floor, 319 Dickenson Road, Manchester, M13 0NR
Room 2 First Floor, 319 Dickenson Road, Manchester, M13 0NR
Room 1 Ground Floor, 319 Dickenson Road, Manchester, M13 0NR
Flat 4, 311 Dickenson Road, Manchester, M13 0NR
Flat 5, 311 Dickenson Road, Manchester, M13 0NR
Flat 6, 311 Dickenson Road, Manchester, M13 0NR
Flat 3, 311 Dickenson Road, Manchester, M13 0NR
Flat 2, 311 Dickenson Road, Manchester, M13 0NR
Flat 1, 311 Dickenson Road, Manchester, M13 0NR
Room 1A, 317 Dickenson Road, Manchester, M13 0NR
Second Floor, 321 Dickenson Road, Manchester, M13 0NR
321A Dickenson Road, Manchester, M13 0NR
First Floor, 321 Dickenson Road, Manchester, M13 0NR
Room 4, 317 Dickenson Road, Manchester, M13 0NR
Room 2, 317 Dickenson Road, Manchester, M13 0NR
Room 1, 317 Dickenson Road, Manchester, M13 0NR
Ground Floor Rear, 321 Dickenson Road, Manchester, M13 0NR
Ground Floor Front, 321 Dickenson Road, Manchester, M13 0NR
315 Dickenson Road, Manchester, M13 0NR
First Floor, 315 Dickenson Road, Manchester, M13 0NR
Ground Floor, 315 Dickenson Road, Manchester, M13 0NR
325 - 327 Dickenson Road, Manchester, M13 0NR
322 Dickenson Road, Manchester, M13 0NG
Flat 1, 320 Dickenson Road, Manchester, M13 0NG
Flat 2, 322 Dickenson Road, Manchester, M13 0NG
14 Honor Street, Manchester, M13 0WY
323 Dickenson Road, Manchester, M13 0NR
324 Dickenson Road, Manchester, M13 0NG
313 Dickenson Road, Manchester, M13 0NR
319 Dickenson Road, Manchester, M13 0NR
Flat 3, 320 Dickenson Road, Manchester, M13 0NG

Flat 2, 320 Dickenson Road, Manchester, M13 0NG
Flat 3, 322 Dickenson Road, Manchester, M13 0NG
Flat 1, 322 Dickenson Road, Manchester, M13 0NG
4 Honor Street, Manchester, M13 0WY
2 Honor Street, Manchester, M13 0WY
334 Dickenson Road, Manchester, M13 0NG
326 Dickenson Road, Manchester, M13 0NG
318 Dickenson Road, Manchester, M13 0NG
316 Dickenson Road, Manchester, M13 0NG

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
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: NORTH AREA