

Planning

Growth & Development

Delegated officer report for planning application

Application no. 135420/LE/2022

Date registered valid: 8 November 2022

Proposal: Use of the property as a small House in Multiple Occupation (Class C4)

Address: 184 Brailsford Road, Manchester, M14 6QA

Ward(s): Fallowfield Ward

Applicant: Mr Robin Bora RBA Securities Ltd Thandi Nicholls Ltd, C/o Creative Industries Centre, Glaisher Drive, Wolverhampton, WV10 9TG

Agent (if any):

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

Recommendation: GRANT

Date of recommendation: 24 January 2022

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 December 2022

Expired: 4 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

The application site relates to an Edwardian two storey mid terraced dwellinghouse as shown in The property is red brick, with decorative bands, shaped stone lintels and a slate tiled roof. The property has a rear yard and a limited sized front garden.

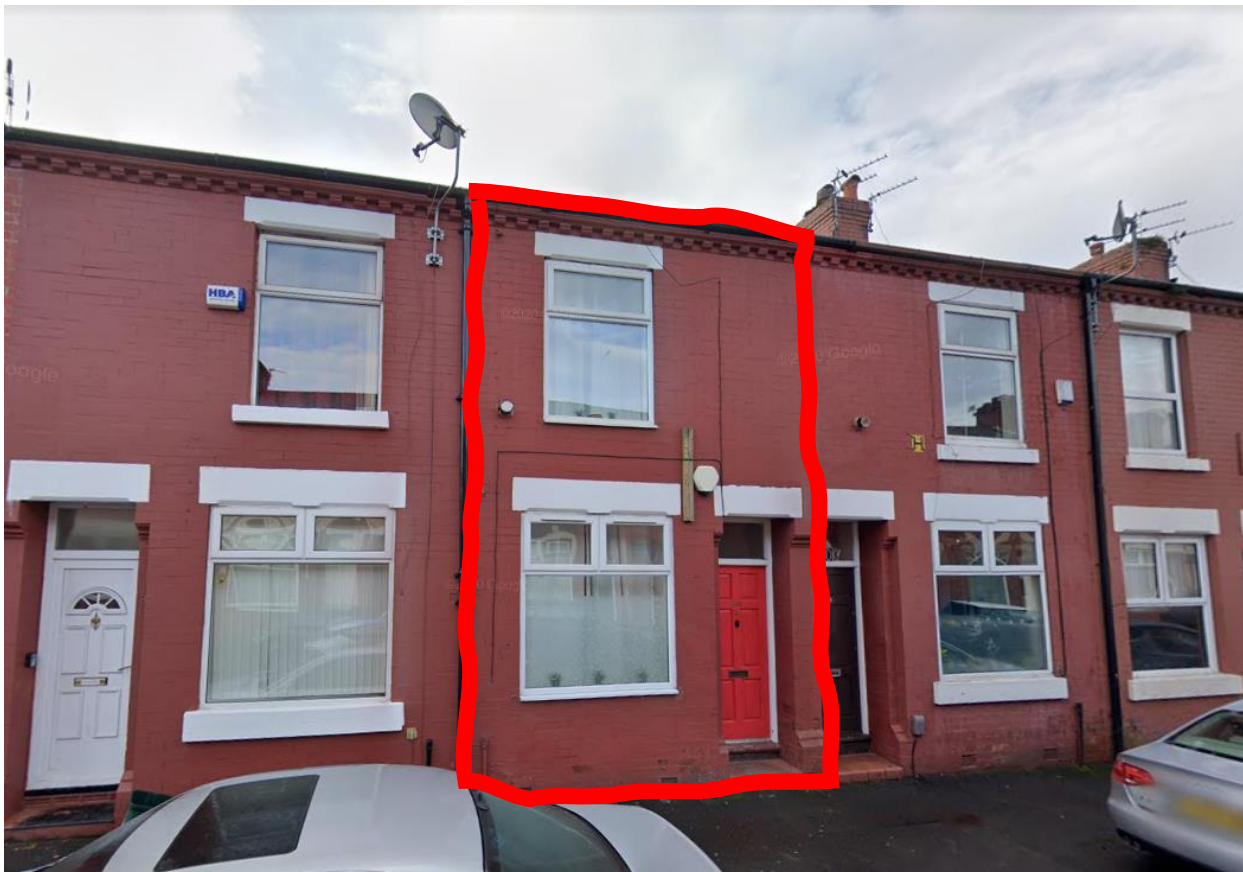


Image 1 Application Site as outlined in red. Source: www.google.com/maps accessed 24.01.2023

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The site is located roughly between Fallowfield District Centre and Levenshulme District Centre and comprises mostly residential, University of Manchester's sport facilities and a small retail park on Birchfield Road.

Description of development

Use of the property as a small House in Multiple Occupation (Class C4)

Consultations & Notification Responses

Local Residents/Public Opinion – One representation was received objecting to the application:

- Approving the application would be contrary to Council policy. However, this would be unfair due to the presence of other HMOs in the area. A wholesale change of housing type is needed in this area
- HMOs cause a strain on the land and services
- Raised concerns with the management of the property and lack of communication with the management/landlord regarding maintenance issues;
- Highlighted previous tenants' behaviour such as (lack of) disposal of waste

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 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 of 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 subsection (1) of section 192, which provides for an application to determine whether any proposed use or operations would be lawful for planning purposes.

Evidence – The applicant has submitted the following evidence in support of their application

1. A site location plan edged in red.
2. Copies of tenants' agreements from 1 July 2010 to 30 June 2022;

No.Tenants	Dates	Evidence
5	2022/23	Tenancy Agreement
5	2021/22	Tenancy Agreement
5	2020/21	Tenancy Agreement
5	2019/20	Tenancy Agreement
5	2018/19	Tenancy Agreement
5	2017/18	Tenancy Agreement
5	2016/17	Tenancy Agreement
7*	2015/16	Tenancy Agreement
5	2014/15	Tenancy Agreement
4	2013/14	Deposit Protection Scheme
5	2012/13	Tenancy Agreement

4	2011/12	Tenancy Agreement
4	2010/11	Tenancy Agreement

Table 1 Tenancy Summary

3. Copy of Premises Licence Ref: 136735/OL2
4. Copy of Premises Licence Ref: 136735/OL2
5. Existing Floor plan of the property that shows 5 bedrooms.

Assessment of Evidence

The submitted tenancy agreements show that between 1 July 2010 and 30th June 2022 the number of tenants there has been consistently 4 or 5, the only exception to this was in 2015/16 where the property appears to have been let to 7 tenants. Clarification was sought from the applicant as to why there had been 7 tenants as the property has only 5 bedroom. The applicant has provided additional information in the form of an email response from the landlord. The landlord (freeholder) has confirmed 5 no. tenants were in occupation of the property in 2015/16 and that 3 tenants never moved into the property and that the rent schedule and deposit return email for that year shows only 5 persons at the property.

From the information that has been provided it is considered, that on the balance of probabilities, that the property has been consistently let to 5 tenants as a house in multiple occupancy (Use Class C4) for at least 10 years and this use has subsequently continued accommodating up to 5 people. The LPA have no evidence to contradict the applicants version of events or make them less then probable.

Other Matters

The comments from the objector are noted, however, there is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

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.

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Recommendation:

Article 35 Declaration

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

182 Brailsford Road, Manchester, M14 6QA
177 Brailsford Road, Manchester, M14 6PZ
175 Brailsford Road, Manchester, M14 6PZ
186 Brailsford Road, Manchester, M14 6QA
173 Brailsford Road, Manchester, M14 6PZ

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

Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Moseley Road/Ladybarn Lane)

Area Team Boundary - Name: SOUTH AREA