

Planning

Growth & Development

Delegated officer report for planning application

Application no. 135671/LP/2022
Date registered valid: 6 December 2022
Proposal: Proposed use of the premises as a clinic (Class E)
Address: 79 Newton Street, Manchester, M1 1EX
Ward(s): Piccadilly Ward

Applicant: NUPAS
Agent (if any): Mrs Ruth Child Q+A Planning Ltd
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation:
Date of recommendation: 23 January 2023

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit:

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

No neighbour notifications have been printed and sent.

Site notice

No site notice has been produced

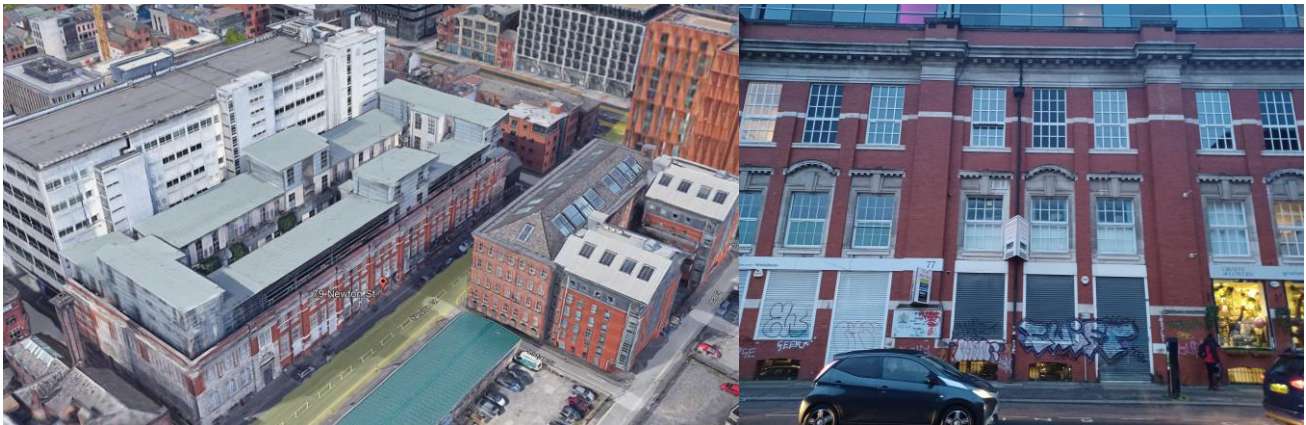
Press advert

No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building and area



79 Newton Street forms part of a terrace occupying a central position within a wider block of building fronting onto Newton Street in central Manchester. The application property occupies the ground and first floors and has a traditional red brick frontage with timber sash windows and recessed entrance door above street level via a rise of steps. The wider block is in mixed office and residential use. The premises share communal basement parking/cycle parking/refuse facilities with other buildings in the block.

The application property was formerly used as a bank (Bank of India).

The site is adjoined to either side by office/commercial uses. The upper floors of the wider building contain residential accommodation including a more recent modern upward extension set back from the original building parapet.

The surrounding area is mixed commercial in character, including retail, restaurants, bars, banks, and office uses.

Listed building: Not applicable

Conservation area: No

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a Lawful Development Certificate to confirm that the use of the premises falls within Class E would be lawful.

Consultations & Notification Responses

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

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 – There has been one previous application

Application No. 125468/FO/2019

Description: Change of use of premises from A2 to D1 (Clinic) with minor external alterations to building including foldaway wheelchair lift to entrance door frontage and louvre panels to rear.

Status: Approved 28.01.2020

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 Government published the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 in July 2020 which came into force on the 1st September 2020. The changes included revisions of the classification of uses of property. Former Classes A, B1 and D, applicable to retail, office and non-residential institutions and assembly and leisure uses were removed and a new use class introduced in their place.

The new Class E includes commercial, business and service and brings together the former A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes) and B1 (business) as well as parts of classes D1 (non-residential institutions) and D2 (assembly and leisure) into one single use class to allow for changes of use without the need of planning permission.

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 E in Schedule 2 Part A is defined as:

"Class E. Commercial, Business and Service

Use, or part use, for all or any of the following purposes –

(a) For the display or retail sale of goods, other than hot food, principally to visiting members of the public,

(b) For the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises.

(c) For the provision of the following kinds of services principally to visiting members of the public -

i). Financial services,

ii). Professional services (other than health or medical services), or

iii). Any other services which it is appropriate to provide in a commercial, business or service locality,

(d) For indoor sport, recreation, or fitness, not involving motorised vehicles or firearms or use as a swimming pool or skating rink, principally to visiting members of the public,

(e) For the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,

(f) For a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,

(g) For-

- a. An office to carry out any operational or administrative functions,
- b. The research and development of products or processes, or
- c. Any industrial process.

being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Section 55(1) of the Town and Country Planning Act 1990 defines the term 'development' which includes the change of use of a building. Section 55(2)(f) explains that in the case of buildings used for a purpose of any class specified in an order made by the Secretary of State, the use of that building for any purpose within the same class shall not be taken, for the purpose of the Act, as amounting to 'development'.

Therefore, as the previous use was a bank that meets the definition of Class E(i) and that a clinic would meet the definition of Class E (e) this would not constitute change of use and therefore is excluded from the definition of development and no planning permission would be required.

Article 3(4) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states:

“(4) Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.”

As the change of use described here does not constitute development by the Use Classes Order and that the change of use is not reliant on the GPDO to change, article 3(4) does not apply here. Therefore, no conditions apply from previous planning applications are a change of use allowed by the GPDO.

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) Grant on the basis that the existing property is in use as a Class E(c)(i) Financial Services as prescribed by the Town and Country Planning (Use Classes) Order 1987 (as amended) and the proposed use, as detailed within the submitted application form and supporting information, indicates the use as being for a Clinic as defined within Class E (e) of the same order. As the change is within the same use class, it is excluded from the definition of development.

Appendix 1 – List of consultees & neighbours notified

Appendix 2 – Planning constraints

Article 4 Direction - City Centre PD Restriction - Class B1(c) To C3

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4

Article 4 Direction - City Centre PD Restriction - Class B1(a) To C3

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 (Middle) -

Area Team Boundary - Name: CENTRAL