

Planning**Growth & Development****Delegated officer report for planning application**

Application no. 135891/LE/2023

Date registered valid: 4 January 2023

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

Address: 25 Derby Road, Manchester, M14 6UX

Ward(s): Withington Ward

Applicant: Mr Henry Wyld

Agent (if any):

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

Recommendation: GRANT

Date of recommendation: 27 February 2023

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: None Required

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 17 January 2023 Expired: 7 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



The application site relates to a two-storey mid terraced town house located in the Withington ward of Manchester. The property is brick built with projecting from bay windows and a two-storey rear outrigger.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The surrounding area is predominantly residential.

Description of development

The applicant is seeking a Certificate of Existing Lawful Development for use of the property as a small House in Multiple Occupation (Class C4)

Consultations & Notification Responses

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

Local residents/public opinion - A total of 2 representations have been received one objecting and one in support.

The objection raised concerns about another property turned into an HMO for transient people who won't foster a community spirit in the area, the majority of properties in the area are HMOs and should be turned back into family homes or rented accommodation for people who would contribute to the community.

The comments in support of the application raised a variety of issues regarding the property, with comments of an alarm that sounds at weekends and during student vacations when the property is empty and the disturbance this inevitably leads to disturbance for the neighbouring properties. The representation also raised concerns with a partly felled tree.

Planning History

An application for a certificate of existing lawful use reference:134284/LE/2022 which sought "use of property as small House in Multiple Occupation (Class C4)" was refused on 31 August 2022 by Manchester City Council and so far, no appeal against this refusal has been made.

The application was refused for the following reason:

"The applicant has failed to demonstrate that number 25 Derby Road, Manchester, M14 6UX has been occupied as a small scale house in multiple occupation Class C4 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."

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 applicant’s 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.

Evidence

In reviewing the previous application reference 134284/LE/2022, records available to the Council indicated that the property was previously split into two flats, this was confirmed by the Council Tax Valuation website which showed that property was converted back from two flats into one dwellinghouse on the 1st July 2015. Therefore, together with the gaps in the information provided by the applicant, it could not be said, on balance of probability, that the property has been rented out continually as an HMO (3-6 unrelated persons) for 10 years and the certificate was therefore refused.

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The applicant has submitted a new application to address the reason for refusal under application reference 134284/LE/2022.

The applicant has submitted the following evidence for consideration:

1) Statement of case

2) The Applicant provides tenancy agreements, covering dates from:

- (a) 2010 to 2011 – [REDACTED]
- (b) 2011 to 2012 – [REDACTED]
- (c) 2015 to 2016 - [REDACTED]
- (d) 2020 to 2021 – [REDACTED]
- (e) 2021 to 2022 – [REDACTED]
- (f) 2022 to 2023 - [REDACTED]

3) Proof of payment statements

4) Current HMO Licence dated 16 July 2018 until 15 July 2023.

5) Lasting power of attorney

6) Site Location and layout plans

7) Kate Barry, Neighbourhood Compliance Officer, email of 8 September 2022

8) Correspondence Council's Rating Department 2012 -2015

The covering letter and supporting statement details that the property was acquired by the applicant's father in 2000 as two self-contained units and it was let as such. As demand in the locality was greater for student occupation in larger units, the Property was altered in 2006, by opening one door that had previously been blocked off, thus turning the Property to a single dwellinghouse. As of July 2006, it was let as one dwelling annually for 12 months to 5 students.

In July 2008 the property received an HMO licence as one entire single dwelling. This was renewed in 2013, and further amended in 2016 when an additional bedroom was created, making the house a 6-bed dwelling. A further 6-bed HMO licence was granted on 16th July 2018, with renewal set for 15th July 2023.

The applicant has provided a copy of correspondence between him and the Council's Rating Department in 2012; here the applicant's father sought to rerate the property as one dwelling rather than two flats. The applicant argues that the issue of payment of rates was and is irrelevant, as from July 2006, the occupiers were always University undergraduates entitled to council tax exemptions within the property.

The statement indicates that it took the Council's Rating Department until 2015 before they implemented the change of rates to one single property. An email dated 11 September 2015 to the applicant's father from the Council's Revenues and Benefits Unit states that flats 1 and 2 had been deleted effective of 01 July 2015, this would correspond with the Council Tax Valuation website (see images 1 and 2).

Property information for

25, DERBY ROAD, MANCHESTER, M14 6UX

Local Authority	Manchester
Local authority reference number	4105903
Council Tax band	C
Improvement indicator	No
With effect from	1 July 2015
Mixed-use property	No
Court code	None

► [What does my property information mean?](#)

Image 1 Screenshot of the Council Tax Valuation website <https://www.tax.service.gov.uk/check-council-tax-band/property/9964358000> Accessed 31.08.2022

Search results for M14 6UX

[Search again](#)

Showing 21 - 40 of 44 results

Last updated on 28 August 2022

Address	Council Tax band	Local Authority
FLAT 1 AT 25 DERBY ROAD, Manchester, M14 6UX	Deleted	Manchester
FLAT 2 AT 25 DERBY ROAD, Manchester, M14 6UX	Deleted	Manchester
25 DERBY ROAD, Manchester, M14 6UX	Deleted	Manchester
25 DERBY ROAD, Manchester, M14 6UX	C	Manchester

Image 2 Screenshot of the Council Tax Valuation website <https://www.tax.service.gov.uk/check-council-tax-band/search?postcode=uff6SWsMuv6N4POccO4ZAw&page=1> accessed 31.08.2022

The applicant also explains that in 2008, the requirement for an HMO licence was 5 or more unrelated people forming more than two households sharing amenities residing in any building 3 or more storeys. This was confirmed in an email to the applicant from Kate Barry, Neighbourhood Compliance Officer, email of 8 September 2022. Ms Barry further stated that "...if all the criteria was not met it would not have been licensed". Thus, the applicant's position is that evidence further tips the probability balance, as it effectively confirms that the property has been used continually as an HMO since 2008, having met these criteria to be issued with a licence.

The LPA have no evidence to contradict the applicant's version of events or make them less than probable.

Conclusion - From the information that has been provided, it is considered that on the balance of probabilities, the rooms comprising the property had been let to individual tenants with access to shared facilities. It is therefore considered that the premises were in use as a house in multiple occupancy (C4 Use) for at least 10 years and this use has subsequently continued accommodating up to 6 people. The use of the premises as a house in multiple occupation (C4 Use) is considered to be the lawful use of the dwellinghouse known as 25 Derby Road.

Other Matters – Paragraph 3 of the planning statement raises that the property benefited from Permitted Development Rights under Class I of Part 3 of Schedule 2 of the 1995 GPDO as amended (now Class L of Part 3 of Schedule 2). The first application sought to confirm that the property has been in use for the past 10 years from the date the application was submitted as an HMO and was therefore reviewed in this way. It did not seek to confirm whether permitted development rights applied or not prior to the article 4 direction coming into force.

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

39 Derby Road, Manchester, M14 6UX
Withington Bowling Club, 31A Derby Road, Manchester, M14 6UX
62B Derby Road, Manchester, M14 6US
26 Beech Grove, Manchester, M14 6UY
13 Derby Road, Manchester, M14 6UX
13 Amherst Road, Manchester, M14 6UG
62A Derby Road, Manchester, M14 6US
30 Beech Grove, Manchester, M14 6UY
28 Beech Grove, Manchester, M14 6UY
24 Beech Grove, Manchester, M14 6UY
22 Beech Grove, Manchester, M14 6UY
20 Beech Grove, Manchester, M14 6UY
43 Derby Road, Manchester, M14 6UX
33 Derby Road, Manchester, M14 6UX
29 Derby Road, Manchester, M14 6UX
15 Derby Road, Manchester, M14 6UX
62 Derby Road, Manchester, M14 6US
60 Derby Road, Manchester, M14 6US
58 Derby Road, Manchester, M14 6US
54 Derby Road, Manchester, M14 6US
52 Derby Road, Manchester, M14 6US
17 Amherst Road, Manchester, M14 6UG
15 Amherst Road, Manchester, M14 6UG
16 Beech Grove, Manchester, M14 6UY
9A Amherst Road, Manchester, M14 6UG
11A Amherst Road, Manchester, M14 6UG
Ground Floor Flat, 21 Derby Road, Manchester, M14 6UX
Top Flat, 21 Derby Road, Manchester, M14 6UX
11B Amherst Road, Manchester, M14 6UG
Flat 6, 23 Derby Road, Manchester, M14 6UX
Flat 5, 27 Derby Road, Manchester, M14 6UX
Flat 2, 27 Derby Road, Manchester, M14 6UX
Flat 3, 23 Derby Road, Manchester, M14 6UX
Flat 3, 19 Derby Road, Manchester, M14 6UX
48 Derby Road, Manchester, M14 6US
40 Derby Road, Manchester, M14 6US
9 Amherst Road, Manchester, M14 6UG
Flat 4, 27 Derby Road, Manchester, M14 6UX
Flat 3, 27 Derby Road, Manchester, M14 6UX
Flat 1, 27 Derby Road, Manchester, M14 6UX
Flat 5, 23 Derby Road, Manchester, M14 6UX
Flat 4, 23 Derby Road, Manchester, M14 6UX
Flat 2, 23 Derby Road, Manchester, M14 6UX
Flat 1, 23 Derby Road, Manchester, M14 6UX
Flat 6, 19 Derby Road, Manchester, M14 6UX
Flat 5, 19 Derby Road, Manchester, M14 6UX
Flat 4, 19 Derby Road, Manchester, M14 6UX
Flat 2, 19 Derby Road, Manchester, M14 6UX
Flat 1, 19 Derby Road, Manchester, M14 6UX
60B Derby Road, Manchester, M14 6US

60A Derby Road, Manchester, M14 6US
32 Beech Grove, Manchester, M14 6UY
18 Beech Grove, Manchester, M14 6UY
45 Derby Road, Manchester, M14 6UX
35 Derby Road, Manchester, M14 6UX
41 Derby Road, Manchester, M14 6UX
37 Derby Road, Manchester, M14 6UX
31 Derby Road, Manchester, M14 6UX
17 Derby Road, Manchester, M14 6UX
56 Derby Road, Manchester, M14 6US
50 Derby Road, Manchester, M14 6US
46 Derby Road, Manchester, M14 6US
44 Derby Road, Manchester, M14 6US
42 Derby Road, Manchester, M14 6US
38 Derby Road, Manchester, M14 6US
36 Derby Road, Manchester, M14 6US
7 Amherst Road, Manchester, M14 6UG

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

Flood Zones Type 2 (low to medium risk) -

Flood Zones Type 3 (high risk) -

Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Wilmslow Road/Egerton Road)

Susceptible to Surf Water Flood (Less) -

Area Team Boundary - Name: SOUTH AREA