

Planning

Growth & Development

Delegated officer report for planning application

Application no. 135364/LE/2022

Date registered valid: 3 November 2022

Proposal: Use of the property as a large 7 bedroom house in multiple occupation (Sui Generis)

Address: 25 Lausanne Road, Manchester, M20 3EU

Ward(s): Old Moat Ward

Applicant: Mr Lee Brocklehurst 1 The Hawthorns, Tarporley, CW6 0DN

Agent (if any):

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

Recommendation: GRANT

Date of recommendation: 28 December 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: 11 November 2022

Expired: 2 December 2022

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

The application relates to a two storey mid terrace property on Lausanne Road in close proximity to Withington District Centre. The property has a low red brick boundary wall to the front with a small front private yard area. To the rear the property has a three-storey outrigger and rear yard leading onto an alleyway serving the rear of the terrace of properties.

The surrounding area is characterised as being mostly residential, outdoor open space and a few commercial properties on Mauldeth Road West.

Listed building: Not applicable

Conservation area: No

Tree Preservation Order: No

Description of development

Use of the property as a large 7 bedroom house in multiple occupation (Sui Generis)

Consultations & Notification Responses

Local Residents/Public Opinion – Three representations have been received objecting to the proposal, the main concerns raised are issues to do with existing HMOs in the area, problems identified include:

- Too many properties are HMOs;
- Issues on bin collection days and waste;
- Parking difficulties
- Flooding

- Anti-Social behaviour

Councillor Gavin White - Whilst this house had been a HMO for a number of years, it has not been well managed with regular fly tipping in the garden, bins left overflowing on the street and blocking the pavement and associated noise and ASB due to the overcrowded nature of 7 people living in a former 3-4 family home. There is an over supply of HMOs on Lausanne Road leading to many neighbourhood issues and loss of residential amenity. We hope this application isn't being submitted as a pre- cursor to extend this over developed property further.

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.

Planning History

There have been one previous planning applications at this address, details are provided below:

Application Reference: 088908/FH/2009/S1

Proposal: Erection of part single, part two storey extension at the rear of the existing dwelling house.

Decision: Refused

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 2011 to 30 June 2022;

No.Tenants	Dates	Evidence
7	2022/23	Tenancy Agreements
7	2021/22	Tenancy Agreements
7	2020/21	Tenancy Agreements
7	2019/20	Tenancy Agreements
7	2018/19	Tenancy Agreements Philip James Email
7	2017/18	Tenancy Agreements
7	2016/17	Tenancy Agreements
7	2015/16	Tenancy Agreements
7	2014/15	Tenancy Agreements
7	2013/14	Tenancy Agreements
7	2012/13	Tenancy Agreements
7	2011/12	Tenancy Agreements

Table 1 Tenancy Agreements Summary for 25 Lausanne Road

3. Tenancy List History/Summary prepared by applicant for 14 years
4. Email correspondence with Philip James Lettings regarding 2018/19 tenancy.
5. Email correspondence with Housing Compliance & Enforcement Team
6. Copy of Premises Licence Ref: 267778/OL2

7. Copy of Premises Licence Ref: 091283 /OL2

8. Gas Safety Record

Assessment of Evidence

The submitted tenancy agreements show that between 1 July 2012 and 1 July 2022 the number of tenants there has been consistently 7,

From the information that has been provided it is considered, that on the balance of probabilities, that the property has been let to 7 tenants as a house in multiple occupancy (Sui Generis) for at least 10 years and this use has subsequently continued accommodating up to 7 people. The LPA have no evidence to contradict the applicants version of events or make them less than probable.

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: Approve

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

19 Lausanne Road, Manchester, M20 3EU
38 Ripplingham Road, Manchester, M20 3EX
34 Ripplingham Road, Manchester, M20 3EX
24 Lausanne Road, Manchester, M20 3EU
23 Lausanne Road, Manchester, M20 3EU
21 Lausanne Road, Manchester, M20 3EU
18 Lausanne Road, Manchester, M20 3EU
16 Lausanne Road, Manchester, M20 3EU
14 Lausanne Road, Manchester, M20 3EU
12 Lausanne Road, Manchester, M20 3EU
40 Ripplingham Road, Manchester, M20 3EX
36 Ripplingham Road, Manchester, M20 3EX
27 Lausanne Road, Manchester, M20 3EU
22 Lausanne Road, Manchester, M20 3EU
20 Lausanne Road, Manchester, M20 3EU
38B Ripplingham Road, Manchester, M20 3EX
38A Ripplingham Road, Manchester, M20 3EX
25B Lausanne Road, Manchester, M20 3EU
25A Lausanne Road, Manchester, M20 3EU

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 (Yew Tree Road/Mauldeth Road West)
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Middle) -
Area Team Boundary - Name: SOUTH AREA