

Planning

Growth & Development

Delegated officer report for planning application

Application no. 135529/LE/2022

Date registered valid: 18 November 2022

Proposal: Use of part of the ground floor, basement and sub-basement of Sunlight House as Class E (a-g)

Address: Sub Basement And Basement And Ground Floor, Sunlight House, Quay Street, Manchester, M3 3JZ

Ward(s): Deansgate Ward

Applicant: Kinrise (Sunlight Limited)

Agent (if any): Mr Jay Patel Savills UK Ltd

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

Recommendation: GRANT

Date of recommendation: 11 January 2023

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: 10.01.2022

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 1 December 2022 Expired: 22 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

This application relates to part of the ground floor, basement and sub-basement of Sunlight House which is currently in use as a gym/heath studio for visiting members of the public.

Sunlight House is located on the corner of Quay Street and Little Quay Street in the city centre of Manchester. The part of the building which relates to this certificate fronts Quay Street and incorporates part of the ground floor, basement and sub-basement.



Photograph 1 Site as viewed from Quay Street source: case officer photograph taken 10.01.2022

The building is within Deansgate Conservation Area and is seen in context with other listed buildings including the Manchester Opera House on Quay Street, Royal London House at the junction of Deansgate and Quay Street and the former County Court building on Deansgate, which are all Grade II Listed and the former County Court building on Quay Street, which is Grade II* Listed.

The building is also adjacent Spinningfields, which has become established as a premium financial and professional services destination set within world class architecture and public realm. It is a mixed use destination with civic, residential, leisure and retail uses complementing the commercial offer, all in a high quality, planned, managed and safe environment.

Other surrounding uses include shops, offices, a theatre, a hotel, residential accommodation, bars, restaurants and cafés.

Listed building: Not applicable

Conservation area: Deansgate Conservation Area 1985

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a Lawful Development Certificate to confirm that the use of part of the ground floor, basement and sub-basement of Sunlight House as Class E (a-g)

Consultations & Notification Responses

Letters were sent to all the addresses listed in appendix 1. From the 69 letters sent, no comments, objections, 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.

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 application relates to part of the ground floor, basement and sub-basement of Sunlight House which is currently in use as a gym/heath studio for visiting members of the public.

This application is seeking to confirm the lawful use of the building as operating within use Class E (a-g), for the required continuous 10 year period.

The Government published the Town and County 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.

Evidence – The table below sets out the evidence provide by the applicant to support their application.

Evidence Date	Evidence Document
20 Nov 1990	Planning Permission - Change of use of ground floor from a nightclub to a health club (MCC ref: 037880)
30 Nov 1990	Listed Building Consent - Internal alterations in connection with change of use of ground floor from nightclub to a health club. (MCC Ref: 037870)
10 Nov 1997	Listed Building Consent - Replacement of railings to pool area in basement (MCC Ref: 052934/LO/CITY1/97)
09 Nov 2013	Bannatyne Fitness Ltd - Agreement for Surrender and Lease

Evidence Date	Evidence Document
02 January 2014	Bannatyne Fitness Ltd - Signed lease for lower ground and ground floor
02 January 2014	Bannatyne Fitness Ltd - Land Reg Transfer of Lease TR1 form
09 June 2020	Bannatyne Fitness Ltd - Access Licence relating to gym premises on the basement, lower ground and ground floors of Sunlight House, Quay Street, Manchester
From July 2014 to September 2022	Trip Advisor Reviews for Bannatyne Spa
July 2008 to Current	Goggle Map Street View Images showing Bannatyne Occupation
16 November 2022	Timestamped photographs demonstrating it is still in use as a fitness facility/ gym

The site relates to the part of sunlight house that fronts Quay Street and incorporates part of the ground floor, basement and sub-basement.

As shown in the evidence provided the planning history of the site that concerns this application dates to November 1990 when planning permission (ref: 037880) was granted to change the use from a night club to a health club in addition to this application a listed building consent was also granted for the internal alterations in connection with the change of use of the ground floor (ref: 037870).

Planning history reveals that there was an approved application to change the use of the basement to health centre, leisure facilities, bar, shop and ground floor to a restaurant night club, disco and associated leisure facilities (ref: 033987) approved in May 1989 together with an associated listed building consent also approved in May 1989 for the internal alterations (ref: 034050).

A further listed building consent application was approved to replace the railings to the pool area in the basement in November 1997 (ref: 052934/LO/CITY1/97). There have been no other planning applications to this site

The additional documents provided by the applicant show a variety of documents ranging from a lease for the basement, lower ground and ground floors to access licence, Trip advisor reviews, google streetviews (from July 2008 to August 2021) and the agents site visit photographs to show that the property was still in use as a fitness facility/gym at the time the application was submitted.

From the evidence provided the ground floor, basement and sub-basement of Sunlight House that front Quay Street shows that this part of the building has been in use as a gym/fitness facility for just over three decades and the Council as LPA have no evidence to contradict the applicants version of events or make them less than probable.

Other Matters - Class E Uses

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 use was a gym that meets the definition of Class E(d) and therefore a change to any other sub use within the use class would not constitute change of use and therefore would be excluded from the definition of development and no planning permission would be required.

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 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

Suite 608 Part Sixth Floor, Sunlight House, Quay Street, Manchester, M3 3LE
Suite 201 Second Floor, Sunlight House, Quay Street, Manchester, M3 3LE
Suite 603 Part Sixth Floor, Sunlight House, Quay Street, Manchester, M3 3LE
Suite 102B Part First Floor, Sunlight House, Quay Street, Manchester, M3 3LE
Suite 102A Part First Floor, Sunlight House, Quay Street, Manchester, M3 3LE
Suite 202 Second Floor, Sunlight House, Quay Street, Manchester, M3 3LE
Old Grapes Inn, Quay Street, Manchester, M3 3JU
Thirteenth Floor Room 1B, Sunlight House, Quay Street, Manchester, M3 3LE
Basement And Ground Floor, Oddfellows House, 184 - 186 Deansgate, Manchester, M3 3WB
First Floor And Second Floor, Oddfellows House, 184 - 186 Deansgate, Manchester, M3 3WB
First Floor, Royal London House, 196 Deansgate, Manchester, M3 3WF
Third Floor, Royal London House, 196 Deansgate, Manchester, M3 3WF
188 - 192 Deansgate, Manchester, M3 3ND
15 Quay Street, Manchester, M3 3HN
Eighth Floor, Sunlight House, Quay Street, Manchester, M3 3LU
Eleventh Floor, Sunlight House, Quay Street, Manchester, M3 3JZ
First Floor, Sunlight House, Quay Street, Manchester, M3 3JZ
Unit 1, Overseas House, Quay Street, Manchester, M3 3HN
Suite 106, Sunlight House, Quay Street, Manchester, M3 3JZ
Room 1301, Sunlight House, Quay Street, Manchester, M3 3LE
Suite 114, Sunlight House, Quay Street, Manchester, M3 3JZ
Suites 110 And 112 And 114, Sunlight House, Quay Street, Manchester, M3 3JZ
624 - 628 Sunlight House, Quay Street, Manchester, M3 3LE
Thirteenth Floor, Sunlight House, Quay Street, Manchester, M3 3LE
Fourth Floor And Fifth Floor, Sunlight House, Quay Street, Manchester, M3 3LE
111 Sunlight House, Quay Street, Manchester, M3 3LE
Fifth Floor, 15 Quay Street, Manchester, M3 3HN
Fourth Floor, 15 Quay Street, Manchester, M3 3HN
Third Floor, 15 Quay Street, Manchester, M3 3HN
First Floor, 15 Quay Street, Manchester, M3 3HN
Second Floor, 15 Quay Street, Manchester, M3 3HN
Overseas House, Quay Street, Manchester, M3 3HN
Unit 2, Overseas House, Quay Street, Manchester, M3 3HN
Sixth Floor, Sunlight House, Quay Street, Manchester, M3 3JZ
Second Floor, Sunlight House, Quay Street, Manchester, M3 3JZ
Suite 101 Part First Floor, Sunlight House, Quay Street, Manchester, M3 3LE
Seventh Floor, Sunlight House, Quay Street, Manchester, M3 3LF
Rooms 625 627 And 629, Sunlight House, Quay Street, Manchester, M3 3LE
MANSON INSURANCE LTD, Ground Floor, 15 Quay Street, Manchester, M3 3HN
5 - 7 Byrom Street, Manchester, M3 4PF
Pt Ground Floor, Sunlight House, Quay Street, Manchester, M3 3JZ
1302 Sunlight House, Quay Street, Manchester, M3 3LE
109 Sunlight House, Quay Street, Manchester, M3 3LE
Opera House, Quay Street, Manchester, M3 3HP
17 Quay Street, Manchester, M3 3HN
194 Deansgate, Manchester, M3 3ND
198 Deansgate, Manchester, M3 3NE
Royal London House, 196 Deansgate, Manchester, M3 3WF
200 - 204 Deansgate, Manchester, M3 3NN
Flat, Sunlight House, Quay Street, Manchester, M3 3JZ

Third Floor, Sunlight House, Quay Street, Manchester, M3 3JZ
Fourth Floor, Royal London House, 196 Deansgate, Manchester, M3 3WF
Moxy Hotel, 8 Atkinson Street, Manchester, M3 3HH
Basement, Royal London House, 196 Deansgate, Manchester, M3 3WF
Third Floor Right, London House, 193 Deansgate, Manchester, M3 3NE
London House, 193 Deansgate, Manchester, M3 3NE
Fifth Floor, Sunlight House, Quay Street, Manchester, M3 3JZ
Store Rear Of 192, Deansgate, Manchester, M3 3ND
The Blues Kitchen, 13 Quay Street, Manchester, M3 3HN
Second Floor, Royal London House, 196 Deansgate, Manchester, M3 3WF
Room 614, Sunlight House, Quay Street, Manchester, M3 3JZ
Sixth Floor Room 631, Sunlight House, Quay Street, Manchester, M3 3LE
Sainsbury's Ground Floor, Overseas House, Quay Street, Manchester, M3 3HN
Part Thirteenth And Mezzanine Floor, Sunlight House, Quay Street, Manchester, M3 3LE
Thirteenth Floor Maintenance Room, Sunlight House, Quay Street, Manchester, M3 3LE
Sunlight House, Quay Street, Manchester, M3 3JZ
1 Little Quay Street, Manchester, M3 3JU
1 Byrom Place, Manchester, M3 3HG
Fifth Floor, Royal London House, 196 Deansgate, Manchester, M3 3WF

Appendix 2 – Planning constraints

Article 4 Direction - City Centre PD Restriction - Class B1(a) To C3
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
Conservation Area - Deansgate Conservation Area 1985
Area Team Boundary - Name: CENTRAL