

Planning

Growth & Development

Delegated officer report for planning application

Application no. 134211/LE/2022

Date registered valid: 30 June 2022

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

Address: 148 Braemar Road, Manchester, M14 6PW

Ward(s): Fallowfield Ward

Applicant: Miss Stephanie Nash 148 Braemar Road, Manchester, M14 6PW

Agent (if any):

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

Recommendation: REFUSE

Date of recommendation: 24 August 2022

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: 6 July 2022 Expired: 27 July 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

The application site relates to a mid terraced two storey dwellinghouse. The property has a small rear yard and no front garden.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area is located to the roughly between Fallowfield District Centre and Levenshulme District Centre and comprises mostly residential, University sport facilities and a few commercial properties on Birchfields Road.

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, one representation was received objecting to the certificate of lawfulness. A summary of the objection is provided below:

- Raised concerns regarding the lack of evidence submitted with the application;

- Requested that the council review their tax records for all properties where HMO lawful development certificate have been applied for;
- No objection to rental properties in general but article 4 was imposed to stop these type of developments;
- Where there is a lack of evidence applications should be refused;
- Neighbours have confirmed that these properties weren't all let to students;

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.

Evidence – The following evidence has been submitted for consideration:

- A site location plan edged in red.
- Tenancy Agreements covering periods dating 2016/17, 2017/18, 2018/19, 2019/20, 2020/21 and 2021/22
- Statutory Deceleration signed and dated 07 March 2017 confirming property has 3 bedrooms and has been rented out to various people since 31 August 2001.

Other than the documents listed above the applicant has not provide any further information. Rightmove website indicates that

Planning Practice Guidance (Paragraph: 006 Reference ID: 17c-006-20140306) advises the following with regard to this type of application:

“In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability”.

Source: <https://www.gov.uk/guidance/lawful-development-certificates>

Records available to the Council indicate that from October 2011 to April 2015 show that the property was occupied by a married couple responsible for paying council tax. In addition, Council records show that between July 2015 to March 2017 the property was occupied by another married couple and a third person.

Therefore, it cannot be said that the property has been rented out continually as an HMO (3-6 unrelated persons) continually for 10 years and the certificate should therefore be refused.

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 polices 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:**Article 35 Declaration****Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse**

1) The applicant has failed to demonstrate that number 148 Braemar Road, Manchester, M14 6PW 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.

Appendix 1 – List of consultees & neighbours notified

High Speed Two (HS2) Limited

171 Brailsford Road, Manchester, M14 6PZ
163 Brailsford Road, Manchester, M14 6PZ
144 Braemar Road, Manchester, M14 6PW
179 Brailsford Road, Manchester, M14 6PZ
177 Brailsford Road, Manchester, M14 6PZ
175 Brailsford Road, Manchester, M14 6PZ
165 Brailsford Road, Manchester, M14 6PZ
138 Braemar Road, Manchester, M14 6PW
167 Brailsford Road, Manchester, M14 6PZ
159 Braemar Road, Manchester, M14 6PN
149 Braemar Road, Manchester, M14 6PN
147 Braemar Road, Manchester, M14 6PN
Kwik Fit, Belvedere Road, Manchester, M14 6PD
169 Brailsford Road, Manchester, M14 6PZ
153 Braemar Road, Manchester, M14 6PN
173 Brailsford Road, Manchester, M14 6PZ
150 Braemar Road, Manchester, M14 6PW
146 Braemar Road, Manchester, M14 6PW
142 Braemar Road, Manchester, M14 6PW
140 Braemar Road, Manchester, M14 6PW
157 Braemar Road, Manchester, M14 6PN
155 Braemar Road, Manchester, M14 6PN
151 Braemar Road, Manchester, M14 6PN
17 Belvedere Road, Manchester, M14 6BA
Autopoint, 15 Belvedere Road, Manchester, M14 6BA
181 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
HS2 Phase 2b Safeguarding Zones - HS2 Safeguarding Zones (June 2022)
HS2 Phase 2b Safeguarding Zones - HS2 Safeguarding Zones (October 2020)
Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Moseley Road/Ladybarn Lane)
Area Team Boundary - Name: SOUTH AREA