

Planning

Growth & Development

Delegated officer report for planning application

Application no. 134781/LE/2022

Date registered valid: 25 August 2022

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

Address: 3 Westbourne Grove, Manchester, M20 1JA

Ward(s): Old Moat Ward

Applicant: Mark Tucker 16B Darley Avenue, Manchester, M20 2XF

Agent (if any): Mr Kieran Hibbs kieranhibbsarchitecture 27 Pioneer Road, Macclesfield, SK11 7ZB

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

Recommendation: GRANT

Date of recommendation: 13 October 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: 1 September 2022

Expired: 22 September 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 site relates to a two storey mid-terraced dwellinghouse with a single storey rear outrigger located within the ward Old Moat to the north of West Didsbury Local Centre. The property appears to have been enlarged with a dormer in the rear roofspace. The property is located within a cul-de-sac and has no off street car parking.



Listed building: Not applicable

Conservation area: No

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a certificate of lawful development for the use of property as a small House in Multiple Occupation (Use Class C4).

Consultations & Notification Responses

A total of 7 representations were received for this application of which 5 objected to the application, 1 no objection and 1 was neutral.

Objections

- The majority of objections raised concerns with the residential and visual disamenity of the shared house with associated disturbance from noise (parties, the residents comings and goings), refuse bins left full and in the street.
 - One of the representations raised that the occupancy increase from 3 to 5 tenants has exacerbated the issues experienced by neighbours from the property;
- The second most raised concern was the impact on car parking within the street and the lack of on street car parking for a dwellinghouse that may require multiple vehicles.

Neutral / No Objection Comments

- The neutral comments raised that the property has been used as HMO for 5 persons and that they would not support an increase in the number of tenants at the property.
- Residents have recently experienced problems with late night parties at the application site and lack of refuse disposal.
- The implementation of a residents parking scheme for a local hospital and other TROs also limits the availability of on street car parking. Requested that the impact of car parking should be considered as part of this application.
- Both comments raised that they would not support increase in occupancy.

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 2011/12 to 2022/23 these include group, summer tenancy and individual tenancy agreements.
- HMO Licence Ref 141534/OL2 and associated documents

From the information provided there have been up to 5 occupants have lived at the property continuously for 10 years and the LPA have reviewed records and found no evidence to contradict the applicants version of events or make them less then probable.

The representations submitted have not provided any doubt to the use, the concerns raised appear to be associated with a C4 Use.

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 small house in multiple occupancy (C4 use) for at least 10 years and this use has subsequently continued accommodating up to 6 people.

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: 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

14 Westbourne Grove, Old Moat, Manchester, M20 1JA
6 Newton Avenue, Old Moat, Manchester, M20 1JJ
10 Newton Avenue, Old Moat, Manchester, M20 1JJ
4 Newton Avenue, Old Moat, Manchester, M20 1JJ
16 Westbourne Grove, Old Moat, Manchester, M20 1JA
11 Westbourne Grove, Old Moat, Manchester, M20 1JA
7 Westbourne Grove, Old Moat, Manchester, M20 1JA
4 Westbourne Grove, Old Moat, Manchester, M20 1JA
10 Westbourne Grove, Old Moat, Manchester, M20 1JA
5 Westbourne Grove, Old Moat, Manchester, M20 1JA
2 Westbourne Grove, Old Moat, Manchester, M20 1JA
7 Newton Avenue, Old Moat, Manchester, M20 1JJ
30 Chatham Court, Burton Road, Manchester, M20 1HR
28 Chatham Court, Burton Road, Manchester, M20 1HR
26 Chatham Court, Burton Road, Manchester, M20 1HR
23 Chatham Court, Burton Road, Manchester, M20 1HR
20 Chatham Court, Burton Road, Manchester, M20 1HR
19 Chatham Court, Burton Road, Manchester, M20 1HR
12 Westbourne Grove, Old Moat, Manchester, M20 1JA
9 Westbourne Grove, Old Moat, Manchester, M20 1JA
8 Westbourne Grove, Old Moat, Manchester, M20 1JA
6 Westbourne Grove, Old Moat, Manchester, M20 1JA
1 Westbourne Grove, Old Moat, Manchester, M20 1JA
9 Newton Avenue, Old Moat, Manchester, M20 1JJ
5 Newton Avenue, Old Moat, Manchester, M20 1JJ
8 Newton Avenue, Old Moat, Manchester, M20 1JJ
29 Chatham Court, Burton Road, Manchester, M20 1HR
27 Chatham Court, Burton Road, Manchester, M20 1HR
25 Chatham Court, Burton Road, Manchester, M20 1HR
24 Chatham Court, Burton Road, Manchester, M20 1HR
22 Chatham Court, Burton Road, Manchester, M20 1HR
21 Chatham Court, Burton Road, Manchester, M20 1HR
18 Chatham Court, Burton Road, Manchester, M20 1HR
17 Chatham Court, Burton Road, Manchester, M20 1HR
16 Chatham Court, Burton Road, Manchester, M20 1HR
15 Chatham Court, Burton Road, Manchester, M20 1HR
14 Chatham Court, Burton Road, Manchester, M20 1HR
13 Chatham Court, Burton Road, Manchester, M20 1HR

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
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: SOUTH AREA