

Planning

Growth & Development

Delegated officer report for planning application

Application no. 134017/LE/2022

Date registered valid: 4 July 2022

Proposal: Certificate of lawful existing use of the property as a C4 House in Multiple Occupation

Address: 17 Lausanne Road, Manchester, M20 3EU

Ward(s): Old Moat Ward

Applicant: Miss Donna Quinn 17 Lausanne Road, Manchester, M20 3EU

Agent (if any):

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

Recommendation: Refuse

Date of recommendation: 26 August 2022

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit:

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 7 July 2022 Expired: 28 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 two storey mid terraced dwellinghouse.



Image 1 Application site as viewed from Lausanne Road Source: Google Streetview
<https://www.google.com/maps/place/17+Lausanne+Rd,+Withington,+Manchester+M20+3EU/@53.4364234,-2.2278313,3a,68.8y,235.79h,96.14t/data=!3m6!1e1!3m4!1spqOIHsUQqIPjC5NVvo03JA!2e0!7i16384!8i8192!4m5!3m4!1s0x487bb238cb9a3225:0xb509bd6644ad734e!8m2!3d53.4363251!4d-2.2280092> accessed 26.08.2022

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area is located to the north of Withington District Centre and comprises mostly residential, outdoor open space and a few commercial properties on Mauldeth Road West.

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, no representations were received to the notification letters.

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.
- HMO Licence Ref: 092669/OL2
- Tenancy Agreements: -
 - 2022/23 – 7 Persons
 - 2021/22 – 7 Persons
 - 2020/21 – 7 Persons
 - 2019/20 – 7 Persons
 - 2018/19 – Not provided
 - 2017/18 – Not provided
- Deposit Protection Schemes:-
 - 2016/17 - 7 Persons
 - 2015/16 - 7 Persons
 - 2014/15 - 7 Persons
 - 2013/14 - 7 Persons
 - 2012/13 – 7 Persons
- Letter from NMC Property Management

The above list of documents indicates an incomplete records for the 10 years, the 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>

The website for NMC Property Management (image 2) shows that the property is a 7 Bedroom dwellinghouse with bedrooms on all floors of the dwellinghouse.

HOME
SERVICES
ABOUT US
OUR HOLIDAY HOMES
CONTACT US

1 Bed
2 Bed
3 Bed
4 Bed
5 Bed
6 Bed
7 Bed
8/9 Bed
10+ Bed

17 Lausanne Road
£120.00



Type: 7 Bedroom
Area: Withington
Address: 17 Lausanne Road
Available: 1st July 2023
Bedrooms: 7
Bathrooms: 2
Toilets: 2

VIRTUAL TOUR

Description
 Superb, spacious, seven bedroom, period bay fronted house. Right in the heart of Withington. Close all amenities & Wilmslow Road for excellent public transport routes to the University and City Centre.

Features

- Large double bedrooms all fitted with television points
- Well equipped fitted kitchen, dishwasher & washing machine
- Laminate floors throughout
- Living area with leather suites and plasma television
- Finished to HMO standards, fully alarmed
- Private garden
- Property is finished to a high specification
- Off-road parking with additional roadside parking

- **Parking**
- **Fully equipped Kitchen**
- **Internet access**
- **Garden**
- **TV**
- **Laundry Facilities**
- **Hardwood floors**

LOTS OF SPACE FOR SEVEN

ENQUIRE

Go back



Image 2 NMC Property Website <https://www.nmc-properties.co.uk/17-lausanne-road> accessed 26.08.2022

As noted, there are gaps within the documentation provided by the applicant. The records available to the Council show that for the years 2013/14, 2014/15, 2015/16, 2016/17, 2019/20, 2020/21 and 2021/22 that there were 7 tenants within the property. The exception to this is for the year 2012/13 our records show that only 5 tenants were in occupation, and these appear to be different names to those provided by the applicant. Whilst a 5-bedroom property would be within the criteria for a C4 small HMO (3-6 unrelated persons), a 7-bedroom HMO falls outside a designated use class and is therefore a sui generis use.

Streetview indicates that there were improvement works at the property between October 2012 (image 3) and August 2014 (image 4). Which may indicate the period the property changed from a small HMO into a larger HMO. Between July 2011 and June 2012, our records indicate that 5 persons were in occupation at that time.

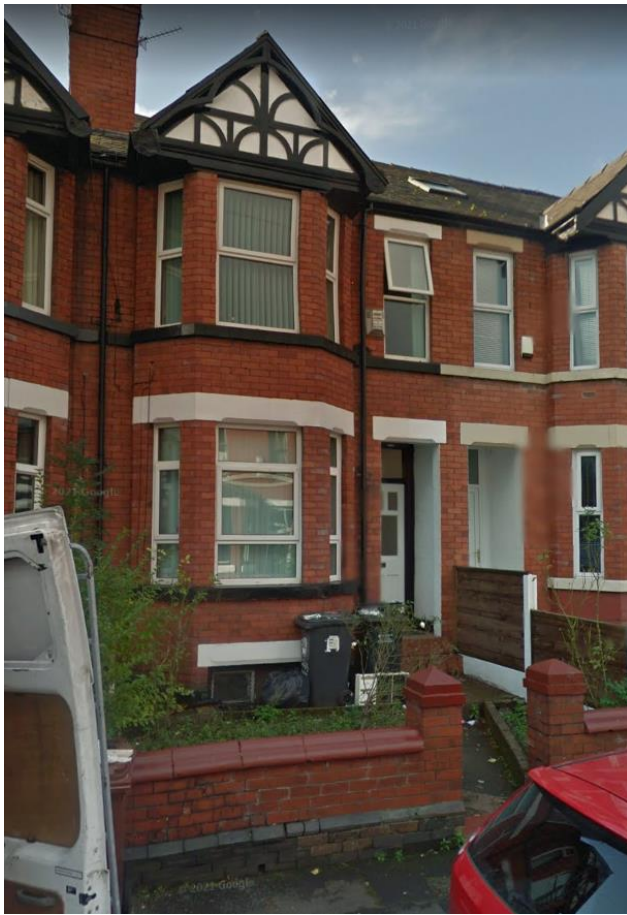


Image 3 - 2012 Google Streetview Accessed 26.08.2022



Image 4 - 2014 Google Streetview shows a new window to basement and changes to the front steps. Accessed 26.08.2022

The description of development on the application form makes it clear that the applicant is seeking to confirm a C4 use, however, the evidence provided by the applicant would suggest that the certificate is being sought for use as a large 7-bedroom HMO (Sui Generis) since 2013 up to the date the application; the relevant 10 year period would therefore only be achieved in June 2023, as no information provided by the applicant supports the use in this manner prior to 2013. In addition, records available to the Council indicate that prior to 2013 the property was occupied by 5 persons between July 2011 and June 2012, thereby directly contradicting the claims made by the applicant; a certificate cannot be issued as the property has failed to demonstrate 10 consecutive years as a large 7-bedroom HMO up to the date of the application and at this time is not said to be in use as a C4 HMO.

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: REFUSE

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

1) The applicant has failed to demonstrate that number 17 Lausanne Road 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 and at the time of the application was not in use as a Class C4 HMO.

Appendix 1 – List of consultees & neighbours notified

32 Ripplingham Road, Manchester, M20 3EX
19 Lausanne Road, Manchester, M20 3EU
28 Ripplingham Road, Manchester, M20 3EX
15 Lausanne Road, Manchester, M20 3EU
15A Lausanne Road, Manchester, M20 3EU
6 Lausanne Road, Manchester, M20 3EU
30 Ripplingham Road, Manchester, M20 3EX
8 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: CMPLNC