

Planning

Growth & Development

Delegated officer report for planning application

Application no. 134987/LE/2022

Date registered valid: 20 September 2022

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

Address: 2 Davenport Avenue, Manchester, M20 3EY

Ward(s): Old Moat Ward

Applicant: Mr D McKenna Filport Properties Limited 8 Mullaghroddan Road,
Carland, Dungannon, County Tyrone, BT70 3LU

Agent (if any): Mr William McCall William McCall The Old Post Room, 34 Chew
Valley Road, Saddle Worth, OL3 7DA

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

Recommendation: GRANT

Date of recommendation: 10 November 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: 23 September 2022 Expired: 14 October 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 rendered end terrace property on Davenport Avenue in close proximity to the 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 single storey outrigger and rear yard leading onto an alleyway serving the rear of the terrace of properties.

Listed building: Not applicable

Conservation area: Withington Conservation Area 1983

Tree Preservation Order: None

Description of development

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

Consultations & Notification Responses

Local residents/public opinion – No objections, comments or representations in support of the application have been received.

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 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

Application Reference and Decision	Description of Development
131501/LE/2021 Application Refused - 07.12.2021	Certificate of lawful use of the property as a House in Multiple Occupation
023430 Recv: 20.12.1984 Application Approved - 22.01.1985	Single storey rear extension to ground floor flat to form a kitchen
F10141 Recv: 08.01.1979 Application Approved - 04.04.1979	Conversion of shop with living accommodation over into 2 flats.

Table 1 Applications Summary

It should also be noted that the applicant is seeking a Certificate of Existing Lawful Development for use of the property as a House in Multiple Occupation (Use Class C4) for 2A Davenport Avenue, which is understood to be the first floor flat under planning reference: 134988/LE/2022.

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	Address
4 tenants	01.07.2011 - 30.06.2012	(2 Davenport Avenue)
4 tenants	01.07.2012 - 30.06.2013	(2A Davenport)
4 tenants	01.07.2013 – 30.06.2014	(2A Davenport)
4 tenants	01.07.2014 - 30.06.2015	(2A Davenport)
4 tenants	01.07.2015 -30.06.2016	(2A Davenport)
4 tenants	01.07.2016 - 30.06.2017	(2A Davenport)
4 tenants	01.07.2017 – 30.06.2018	(2A Davenport)
4 tenants	01.07.2018 - 30.06.2019	(2A Davenport)
4 tenants	01.07.2019 - 30.06.2020	(2 Davenport Avenue)
3 tenants	21.12.2020 - 21.06.2021	(2 Davenport Avenue)
4 tenants	01.07.2022 – 30.06.2023	(2 Davenport Avenue)

Table 2 Tenancy Agreements Summary for 2 Davenport Avenue

3. Statement prepared by agent.
4. Statutory Deceleration /Affidavit provided by Dermott McKenna of Filport Properties Limited and Neil Ryder, Branch Manager of Philip James Letting;
5. Copy of the Land Registry Title Document and Plan;
6. Council Tax Banding information from GOV.UK
7. Copy of case officer delegated report for app reference: 131501/LE/2021
8. Copy of planning approval decision notice reference: F10141

Assessment of Evidence

The submitted tenancy agreements show that between 1 July 2011 and 30 June 2022 the number of tenants there has been consistently 4, the only exception to this was in 2020/21 where the property was let to only 3 tenants and on what appears to be a 6 month (signed in December 2020) contract.

As with the previous application it is noted that the tenancy agreements submitted for the period 2012 -2019 cover a differing addresses reference (2 and 2A Davenport Avenue). The applicant indicated

in response to this matter that there are two addresses at this property. A review of the governments Council tax pages identifies addresses at 2 and 2A Davenport Avenue. As such the application is accompanied by tenancy agreements for two property addresses yet the local planning authority is being asked to consider that the use of 2 Davenport Avenue has been used as a C4 HMO since prior to the introduction of the Councils Article 4 direction removing permitted development rights for a change of use from C3 to C4. To provide an explanation for the differences the affidavits signed by both Dermot McKenna of Filport Properties Limited (property owner) and Neil Ryder a Branch Manager of Philip James Lettings (managing agents) declare that:

3. From the years 2012-2019 the property was incorrectly addressed on tenancy agreements as Flat 2A Davenport Avenue, Withington Manchester, M20 3EY. This was an administrative error and was rectified on the tenancy agreements from 2019 onward

4. We confirm that the tenancy agreements submitted for the years 2012-2019 relate to the property Flat 2 Davenport Avenue, Withington, Manchester, M20 3EY and not Flat 2A Davenport Avenue, Withington, Manchester, M20 3EY.

Under consideration at the same time as this application is application reference: 134988/LE/2022 for 2A Davenport Avenue which is also seeking to confirm the use of the first floor flat as a House in Multiple Occupation (Use Class C4). A comparison of the tenancy agreements can be made between Table 2 and Table 3, where table 2 shows that the ground floor flat has consistently had four tenants and table 3 shows that the first floor flat has had consistently three tenants.

No.Tenants	Dates	Address
3 tenants	01.07.2011 - 30.06.2012	2B Davenport Avenue
3 tenants	01.07.2012 - 30.06.2013	2B Davenport Avenue
3 tenants	01.07.2013 – 30.06.2014	2B Davenport Avenue
3 tenants	01.07.2014 - 30.06.2015	2B Davenport Avenue
3 tenants	01.07.2015 -30.06.2016	2B Davenport Avenue
3 tenants	01.07.2016 - 30.06.2017	2B Davenport Avenue
3 tenants	01.07.2017 – 30.06.2018	2B Davenport Avenue
3 tenants	01.07.2018 - 30.06.2019	2B Davenport Avenue
3 tenants	01.07.2019 -30.06.2020	2A Davenport Avenue
3 tenants	01.07.2020 -30.06.2021	2A Davenport Avenue

Table 3 Tenancy Agreements Summary for 2A Davenport Avenue

Conclusion - From the information that has been provided it is considered, that on the balance of probabilities, that the property has been let to 3 tenants as a house in multiple occupancy (sui generis use) for at least 10 years and this use has subsequently continued accommodating up to 3 people. The differences in the address have been explained in the affidavits and the LPA have no evidence to contradict the applicants version of events or make them less then probable.

The use of the premises as a house in multiple occupation (Class C4) is considered to be the lawful use of the dwellinghouse known as 2 Davenport Avenue, Manchester, M20 3EY.

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 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

Unit 1A, 160 - 164 Wellington Road, Old Moat, Manchester, M20 3FU
7A Davenport Avenue, Manchester, M20 3GA
13A Davenport Avenue, Manchester, M20 3GA
Flat 1, 1 Rippingham Road, Manchester, M20 3FX
Flat 2, 1 Rippingham Road, Manchester, M20 3FX
3 Rippingham Road, Manchester, M20 3FX
10 Davenport Avenue, Manchester, M20 3EY
6 Davenport Avenue, Manchester, M20 3EY
1 Davenport Avenue, Manchester, M20 3GA
Jordan Fishwick, Unit 1B, 160 - 164 Wellington Road, Old Moat, Manchester, M20 3FU
Unit 1C, 160 - 164 Wellington Road, Old Moat, Manchester, M20 3FU
5 Davenport Avenue, Manchester, M20 3GA
First Floor, 160 - 164 Wellington Road, Old Moat, Manchester, M20 3FU
Ground Floor Rear, 160 - 164 Wellington Road, Old Moat, Manchester, M20 3FU
418 Wilmslow Road, Manchester, M20 3BW
412A Wilmslow Road, Manchester, M20 3BW
2A Davenport Avenue, Manchester, M20 3EY
11A Davenport Avenue, Manchester, M20 3GA
11 Davenport Avenue, Manchester, M20 3GA
Workshop Rear Of 13, Davenport Avenue, Manchester, M20 9EZ
414 Wilmslow Road, Manchester, M20 3BW
412 Wilmslow Road, Manchester, M20 3BW
420 Wilmslow Road, Manchester, M20 3BW
416 Wilmslow Road, Manchester, M20 3BW
9A Davenport Avenue, Manchester, M20 3GA
Flat 9, 160 - 164 Wellington Road, Old Moat, Manchester, M20 3FU
Flat 6, 160 - 164 Wellington Road, Old Moat, Manchester, M20 3FU
Flat 4, 160 - 164 Wellington Road, Old Moat, Manchester, M20 3FU
Flat 2, 160 - 164 Wellington Road, Old Moat, Manchester, M20 3FU
9B Davenport Avenue, Manchester, M20 3GA
9 Davenport Avenue, Manchester, M20 3GA
Flat 8, 160 - 164 Wellington Road, Old Moat, Manchester, M20 3FU
Flat 7, 160 - 164 Wellington Road, Old Moat, Manchester, M20 3FU
Flat 5, 160 - 164 Wellington Road, Old Moat, Manchester, M20 3FU
Flat 3, 160 - 164 Wellington Road, Old Moat, Manchester, M20 3FU
Flat 1, 160 - 164 Wellington Road, Old Moat, Manchester, M20 3FU
7 Rippingham Road, Manchester, M20 3FX
5 Rippingham Road, Manchester, M20 3FX
8 Davenport Avenue, Manchester, M20 3EY
4 Davenport Avenue, Manchester, M20 3EY
13 Davenport Avenue, Manchester, M20 3GA
7 Davenport Avenue, Manchester, M20 3GA

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
Conservation Area - Withington Conservation Area 1983

Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Yew Tree Road/Mauldeth Road West)

Susceptible to Surf Water Flood (Less) -

Area Team Boundary - Name: SOUTH AREA