

Planning

Growth & Development

Delegated officer report for planning application

Application no. 133657/LE/2022

Date registered valid: 3 May 2022

Proposal: Certificate of lawful existing use of the property as a class C4 (house of multiple occupation)

Address: 66 Davenport Avenue, Manchester, M20 3ET

Ward(s): Old Moat Ward

Applicant: Mrs Amanda Marshall Barn House, Silverbank, Coniston, LA21 8HW

Agent (if any): Miss Courtney Evason Steven Abbott Associates Balmoral House, Ackhurst Business Park, Foxhole Road, Chorley, PR7 1NY

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

Recommendation: Approve

Date of recommendation: 27 June 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: 13 May 2022 Expired: 3 June 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 brick built mid terraced dwellinghouse as shown in photograph 1. The property has a small front and rear gardens and provides no off road car parking.



Photograph 1: Application site shown in red. (Source: Google Streetview accessed 27.06.2022)

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area is located to the west of Withington District Centre and comprises a mixture of residential, commercial buildings with local amenity space provided by Old Moat Park.

Description of development

The applicant is seeking a certificate to establish the lawful existing use of the property as a class C4 (house of multiple occupation).

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 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:

1. A site location plan edged in red.
2. Planning Supporting Statement which includes timeline of the property being in use as a class C4 house in multiple occupation (HMO), copies of the HMO licenses from May 2012 to May 2022 and deposit receipts.
3. Statutory Declaration
4. Tenant Deposit Information from 13th July 2012 to 22nd March 2022

Assessment – The information provided by the applicant claims that the property known as 66 Davenport Avenue, M20 3ET was purchased by the applicant in February 2011 and following a period of refurbishment (building regulations application FP/11/00396), the property was in use as an HMO from 14th September 2011. Two HMO licences have been provided which show that the property from 11th May 2012 until 10th May 2017 was licenced for 5 occupants and renewed for period beginning on 10th May 2017 until 9th May 2022.

In addition, the applicant has provided a deposit scheme which shows that as of 29 September 2011 that five people paid a deposit on the property.

The original submitted information (as discussed above) can only confirm that the property was and is currently suitable for two HMO licences to be granted and that on the 29th September 2011, five people paid a deposit to the applicant for the property. Planning history does not provide any insights of the use as there have been no planning applications at the address, the applicant was asked if they could provide any further evidence and in turn further information was provided regarding the tenant deposits, although this additional document does not provide enough detail to prove that the number of occupants within the property.

The applicant has also provided a statutory declaration to show that the property has been let to five individuals since 8th September 2011 and has been in constant use which no room being vacant from no more than 14 days.

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 has be in use for Class C4

purposes and subsequently continued accommodating up to 5 people for the last 10 years. 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 66 Davenport Avenue, Manchester, M20 3ET

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: Approve

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 in relation to the property referred to in the Second Schedule here to, the use described in the First Schedule, 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

67 Ripplingham Road, Manchester, M20 3FT
61 Davenport Avenue, Manchester, M20 3FS
59 Davenport Avenue, Manchester, M20 3FS
65 Ripplingham Road, Manchester, M20 3FT
63 Davenport Avenue, Manchester, M20 3FS
64 Davenport Avenue, Manchester, M20 3ET
63 Ripplingham Road, Manchester, M20 3FT
68 Davenport Avenue, Manchester, M20 3ET

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
Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Yew Tree Road/Mauldeth Road West)
Area Team Boundary - Name: SOUTH