

Planning**Growth & Development****Delegated officer report for planning application**

Application no. 134617/LE/2022
Date registered valid: 5 August 2022
Proposal: Creation of 3no. x 1 bedroom self contained flats
Address: 330 Slade Lane, Manchester, M19 2BY
Ward(s): Levenshulme Ward

Applicant: Mr Hozan Rahman 48 Norman Road, Fallowfield, Manchester, M14 5LE
Agent (if any): Mrs Lydia Dunne Whiteacre Planning Ltd The Hollies, Cabbage Lane, Horsington, Templecombe, BA8 0DA
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: REFUSE
Date of recommendation: 21 October 2022

Application details

Type of application: Certificate of Lawfulness of Existing Use or Development (CLEUD)

Development type: Certificates of lawfulness

Date of site visit: 21 September 2022

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 11 August 2022 Expired: 1 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



Photograph 1 Application Site as viewed from the junction of Moseley Road and Slade Lane. Source Case Officer Photographs date as shown.

The application site relates to the roofspace of this corner property at the junction of Moseley Road and Slade Lane in the ward of Levenshulme (photograph 1). The building, formerly accommodated 3no. retail units at ground floor which were converted to residential uses under application No: 105687/PIAPA/2014/N2, this having been preceded by the change of use of the

first floor to 3 no. self contained flats under application reference 101979/FO/2013/N2. Subsequent permission allowed further changes to the building in the form of front and rear dormer extensions to form additional living accommodation in the roofspace for the first floor flats and a site managers office under planning application reference 109120/FO/2015/N2

The building is constructed of red brick and has a curved facade which faces the traffic light-controlled junction to the south. The site has a deep forecourt which were previously demarcated for several vehicles associated with the former retail use; the boundary between this and the public highway having been enclosed intermittently by an approximately 1 metre high brick wall. The applicant also added small canopies over each door at ground floor level and a name sign on the fascia. The first floor of the site has existing residential uses which are accessed via the ground floor.

Listed building: Not applicable

Conservation area: None

Tree Preservation Order: None

Description of area

The application site is located on the junction of Moseley Road and Slade Lane. The building marks the end of a parade that continues north along Slade Lane where the rest of ground floor uses are commercial / retail. There is a commercial and retail parade located to the south of the Slade Lane with Monica Grove and Grange Avenue, respectively. Notwithstanding the above, the surrounding area is predominantly residential comprising a mix of semi-detached and terraced housing.

Description of development

The applicant is seeking a Certificate of Existing Lawful Development for the Creation of 3no. x 1 bedroom self-contained flats in the roofspace / on the second floor.

Consultations & Notification Responses

Publicity – Notification letters were sent to nearby residential properties (appendix 1).

Local residents/public opinion –One representation was received objecting to the proposal raising concerns over the standard of accommodation and the means to which the applicant is now seeking to legalise the development.

Planning History – There have been five previous planning applications at this site. Details are as follows.

Application details	Description
109120/FO/2015/N2 Application Approved - 26.08.2015	Erection of front and rear dormer extensions to form additional living accommodation and new ground floor site managers office.
105687/PIAPA/2014/N2 Application Approved - 06.08.2014	Notice of prior approval for conversion of ground floor retail unit to 3 apartments and associated external alterations

101979/FO/2013/N2 Application Approved - 11.07.2013	Change of use of first floor to 3 no. self contained flats
039725 Application Approved - 09.09.1991	Change of use from light industrial to retail shop with associated storage and offices
019612 Application Approved - 06.07.1983	Use of vacant premises for light industrial purposes, warehousing and a garage

There is currently one application which is still under consideration at the time this report was written. Details are provided below:

Application details	Description
134416/FO/2022 Recv: 25.08.2022 Application Pending Consideration -	Change of use of three ground floor flats into 2 x commercial units (Class E) and 1 x hot food takeaway (sui generis) together with associated elevational alterations and fume extraction equipment

Issues

Legislative Issues

Section 191 of the Town and Country Planning Act 1990 (the Act) 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 issued by the LPA certifying that the existing use of buildings or land, or operations carried out in, on, over or under land, or the failure to comply with any condition or limitation attached to a planning permission is lawful. This is known as certificate of lawfulness of existing use or development (CLEUD). The LPA needs to determine whether, on the facts of the case, the specific matter is lawful.

For the purposes of a CLEUD, lawful development is development:

- against which no enforcement action can be taken
- not in contravention of any planning enforcement notice or breach of condition notice which is in force.

A CLEUD cannot be granted if the LPA is entitled to take planning enforcement action. The relevant date for determining whether the statutory time limits for taking enforcement action has expired is the date of the application of the CLEUD.

Planning enforcement action cannot be taken after four years where the breach of planning control relates to:

- building, engineering, mining or other operations in, on, over or under land, starting with the date on which the operations were substantially completed
- a material change of use of any building, or any part of a building, to use as a single dwelling house.

(Section 171B of the Act)

The above-mentioned statutory time limit for taking enforcement action will not have expired if the time for applying for a planning enforcement order (PEO) has not expired (Section 191(3A)(a) of the Act).

An LPA can apply to a magistrates' court for a PEO where it believes there may have been a breach of planning control concerning any land in England, (Section 171BA(1) of the Act). Such an application can be made at any time within six months following the date the LPA considers it has sufficient evidence to justify an application to the magistrates' court (Section 171BB(1) the Act).

Ultimately a PEO can only be made if the magistrates' court where it:

- is satisfied on the balance of probabilities, that the apparent breach of planning control or any of the matters constituting the apparent breach has (to any extent) been deliberately concealed by any person or persons, and
- considers it just to make the PEO, having regard to all the circumstances.

(Section 171BC(1) of the Act.)

As regards the CLUED, the onus of proof 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 applicant’s own evidence does not need to be corroborated by independent evidence. If the LPA have no evidence to contradict the applicant’s version of events or make them less than probable, there is no good reason to refuse the issue of a certificate.

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.

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.

Address – During the course of the application the address was corrected as the officer sought clarification as to the correct address. For example, the original submitted application form and statement referred to the address as 332 Slade Lane, however the flats at 1st floor were shown as flats 1, 2 and 3, 330 Slade Lane on the original drawings.

Consequently, the agent updated the information to show the address as Flats 4,5 and 6, 330 Slade Lane, Manchester, M19 2BY.

Evidence – The following evidence has been submitted for consideration:

1. Elevations, Floor Plans, location and site plan.
2. Final Certificate from Aedis, an Approved Building Inspector - Reference: AD40811
3. Statutory Deceleration by the applicant
4. Statutory Deceleration by the Director of Dalaho Builders Limited
5. Statutory Deceleration by a tenant who lives in one of the other flats within the building on the first floor

6. Planning Statement by Whiteacre Planning Ltd.

The statement and floor plan drawings indicate that the accommodation within the property is divided across three floors as follows:

- Ground Floor – 3 flats granted by 105687/PIAPA/2014/N2 known as 332 Slade Lane, 269 and 267 Moseley Road.
- First Floor – 3 flats granted by 101979/FO/2013/N2 known as Flats 1, 2 and 3 330 Slade Road.
- Second Floor – 3 flats created and occupied in March 2016 known as Flats 4, 5 and 6. These are the subject of this application.

The applicant considers that the evidence provided is sufficient to demonstrate that, on the balance of probabilities, Flats 4, 5 and 6 have been in existence and occupied as C3 residential use for a period in excess of four years and as such the flats are now considered to be immune from enforcement action.

Planning Practice Guidance (Paragraph: 006 Reference ID: 17c-006-20140306) advises the following in cases 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 planning history of the site reveals that the building, formerly accommodated 3no. retail units at ground floor which were converted to residential uses under application No: 105687/PIAPA/2014/N2, this having been preceded by the change of use of the first floor to 3 no. self contained flats under application reference 101979/FO/2013/N2. Subsequent permission allowed further changes to the building in the form of front and rear dormer extensions to form additional living accommodation for the first floor flats and a site managers office under planning application reference 109120/FO/2015/N2.

With the later application the intention of the applicant was to create three duplex flats at the first and second floors. However, according to the owner in his own statutory declaration, after completing the building works that he obtained planning permission for, the applicant then *“...created 3 further flats on the second floor. Each flat has sleeping accommodation, a kitchen and a bathroom. Each is separated from the rest of the building by a fitted lockable door. These flats are known as Flats 4, 5 and 6.”*

There is no record of flats 4, 5 and 6 as ever being registered for Council Tax and nor have they been registered with street naming and numbering. Furthermore, upon completion of the physical works, the Council’s Building Control section received a final certificate in March 2016 from Aedis, an Approved Inspector, which stated that “The work does not concern a new dwelling”. It is therefore considered that the subsequent conversion of the second floor into three flats was deliberately concealed by the applicant/owner, who has then waited for approximately six years before applying for a certificate of lawfulness.



Photograph 2 Front Entrance to 330 Slade Lane. Source Case Officer Photographs date as shown.

During a visit to the site, it was observed that there are door numbers for the flats known as 332 Slade Lane, 269 and 267 Moseley Road. In addition, the side entrance for the flats is according to the submitted documents accessed from the door shown in photograph 2. However, there is no indication that Flats 4,5 and 6 are accessed from this entrance nor are Flats 1,2 and 3 for that matter.

Conclusion – Whilst the breach of planning control comprising the creation of 3no. x 1 bedroom self contained flats on the second floor of the building (flats 4, 5 and 6) appear to have been completed and occupied for more than four years, it is considered that on the balance of probabilities the breach has been deliberately concealed by the applicant/owner.

In such circumstances the council may apply for a PEO in relation to that apparent breach of planning control.

Where the time for applying for a PEO has not expired, the ordinary time limits under s.171B of the Act for taking enforcement action are to be taken not to have expired.

Consequently, the creation of 3no. x 1 bedroom self contained flats on the second floor of the building are not lawful within the meaning of s.191 of the Act.

Other Matters – During the course of the application it was noted that there been some additional operational development in the form of the addition of a shower room between when comparing the plans approved under planning reference: 109120/FO/2015/N2 and those submitted with the drawings. A comparison of the floor plans is shown below:



Photograph 3 Shower room as observed from the side alleyway between 267 Moseley Road and Moseley Court

Had the application been one that could be approved then clarification would have been sought regarding this discrepancy. However, the unauthorised development is viewed as part-and-parcel of the unauthorised development comprising the creation of 3no. x 1 bedroom self contained flats on the second floor of the building.

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

Recommended reasons to refuse

1) Following the receipt of the application it appears to the council that there may have been a breach of planning control involving deliberate concealment.

In such circumstances the council may apply for an order under section 171BA(1) of the Town and Country Planning Act 1990 (the Act) (a "planning enforcement order") in relation to that apparent breach of planning control.

Where the time for applying for a planning enforcement order in relation to such a matter has not expired, the time limits under s.171B of the Act for taking enforcement action are to be taken not to have expired (s.191(3A)(a) of the Act).

Consequently, the creation of 3no. x 1 bedroom self contained flats on the second floor of the building are not lawful within the meaning of s.191 of the Act.

Appendix 1 – List of consultees & neighbours notified

Flat 2, 310A Slade Lane, Manchester, M19 2BY
Flat 1, 310A Slade Lane, Manchester, M19 2BY
310 Slade Lane, Manchester, M19 2BY
Levenshulme Cricket And Lawn Tennis Club, Slade Lane, Manchester, M13 0QE
308 Slade Lane, Manchester, M19 2BY
Flat 34, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
326 Slade Lane, Manchester, M19 2BY
269 Moseley Road, Manchester, M19 2LJ
267 Moseley Road, Manchester, M19 2LJ
Flat 3, 330 Slade Lane, Manchester, M19 2BY
Flat 2, 330 Slade Lane, Manchester, M19 2BY
Flat 1, 330 Slade Lane, Manchester, M19 2BY
Flat 2, 320A Moseley Road, Manchester, M19 2LH
Flat 1, 320A Moseley Road, Manchester, M19 2LH
320 - 322 Moseley Road, Manchester, M19 2LH
265 Moseley Road, Manchester, M19 2LJ
265A Moseley Road, Manchester, M19 2LJ
320A Slade Lane, Manchester, M19 2BY
Flat Above, 324 Slade Lane, Manchester, M19 2BY
316A Slade Lane, Manchester, M19 2BY
209 Slade Lane, Manchester, M19 2AE
203 Slade Lane, Manchester, M19 2AE
314 Slade Lane, Manchester, M19 2BY
320A Moseley Road, Manchester, M19 2LH
Flat 33, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 31, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 3, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 27, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 25, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 22, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 20, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 18, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 16, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 12, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 10, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
324 Slade Lane, Manchester, M19 2BY
207 Slade Lane, Manchester, M19 2AE
205 Slade Lane, Manchester, M19 2AE
201 Slade Lane, Manchester, M19 2AE
318 Slade Lane, Manchester, M19 2BY
316 Slade Lane, Manchester, M19 2BY
312 Slade Lane, Manchester, M19 2BY
Flat 9, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 8, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 7, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 6, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 5, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 4, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 32, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ

Flat 30, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 29, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 28, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 26, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 24, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 23, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 21, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 2, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 19, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 17, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 15, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 14, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 11, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
Flat 1, Moseley Court, 263 Moseley Road, Manchester, M19 2LJ
328 Slade Lane, Manchester, M19 2BY
322 Slade Lane, Manchester, M19 2BY
320 Slade Lane, Manchester, M19 2BY

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
Coal Authority - Surface Coal Resources - Name: Coal bearing strata at surface
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Middle) -
Area Team Boundary - Name: NORTH AREA