

Planning

Growth & Development

Delegated officer report for planning application

Application no. 134813/LE/2022

Date registered valid: 30 August 2022

Proposal: Use of the property as a single dwellinghouse with care provision (Class 3b)

Address: 35 Monica Grove, Manchester, M19 2BQ

Ward(s): Burnage Ward

Applicant: Sarah Tattersall Calico Homes C/o Agent

Agent (if any): Catherine Thomas Smith & Love Planning Consultants Rational House, 32 Winckley Square, Preston, PR1 3JJ

Case officer: Robert Tyrer
Tel: 0161 234 4068
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Recommendation: GRANT

Date of recommendation: 31 October 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

No neighbour notifications have been printed and sent.

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 end terraced dwellinghouse located on the corner of Monica Grove and Edenhall Avenue. The property has little outdoor amenity space in the form a small rear and front gardens.



Listed building: Not applicable

Conservation area: No

Tree Preservation Order: No

Description of area

The surrounding streets are residential in nature comprising of similar two storey terraced properties with small rear yards.

Description of development

The applicant is seeking a certificate of lawful development to confirm the use of the property as a single dwellinghouse with care provision (Class 3b).

Consultations & Notification Responses

None Required - There is no statutory requirement to consult third parties including neighbours; views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

Issues

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.

Planning History

There have been no previous planning applications at this address.

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.

Class C3(b) is defined as the use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents. The fundamental question is whether the residents of the property form a single household with an assessment based on a 'fact and degree' as to whether there is a material change of use.

Evidence

The following evidence has been submitted for consideration:

1. Site location plan;
2. Existing floor plans (prior to current use being implemented);
3. Proposed floorplans (property layout since current use was implemented);
4. Copy of lease agreement between former owners of property and the Alcohol and Drugs Abstinence (ADAS);
5. Service dated 1st October 2007;
6. Copy of tenancy list;
7. Correspondence from ADAS; and,
8. Statutory Deceleration/Sworn affidavit from Darren Lang.

Assessment of Evidence

From the evidence provided, the property was first occupied for Use Class3 (b) purposes in 2007, following an agreement (in the form of a lease) between the former owners of the property and the Alcohol and Drug Abstinence Service (ADAS). The existing and proposed floor plans show the property layout before and after ADAS took control of the property, the proposed floor plans show.

The submitted proposed floor plans show that the layout of the property is largely what one would expect of any family home, 4 bedrooms with a separate communal lounge and kitchen. The property would have up to 3 residents with members of staff providing care and support including night cover.

A tenancy list has been submitted too although this is of limited material weight due the lack of personal details, however it does show that the property has been occupied on a short term basis with 3 bedrooms being occupied each time from the 1st April 2014 until 9th June 2022. The statutory declaration by Darren Lang from ADAS who is the Service Manager who is responsible for managing the property and indicates that residents typically stay between 6 to 12 months

The applicant has also submitted additional evidence to confirm the use of the property over time. In the correspondence file from ADAS, there are letters confirming the January and April 2009 rent payments for the property.

Also attached is a letter written by Lynn Barker, the Manager of ADAS in August 2007 which indicates that the organisation was using properties in Monica Grove to provide supported living accommodation for people recovering from drug or alcohol abuse.

The statutory declaration by Darren Lang confirms that the premises have been used by ADAS and their successor organisations Acorn Recovery Projects and Calico Homes for the purposes of supported living accommodation under Class C3(b) of the Town and Country Planning Use Classes Order for an uninterrupted period in excess of 10 years.

From the information provided the LPA have reviewed records and found no evidence to contradict the applicant's version of events or make them less than probable. Therefore, there is no reason to suggest that the residents would not form a household for the purposes of Class C3(b). A certificate of lawfulness should be issued on the basis that the property would be used as a dwellinghouse as defined by Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended) and no material change of use had taken place from the previous lawful use within Class C3(a) of that Order

Lastly there are no known conditions attached to any previous planning permission which would restrict the use in such a way as to prevent any such change being made.

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) Grant on the basis that the proposed occupation of 35 Monica Grove, Manchester, M19 2BQ as detailed on the submitted application form, documents and drawings constitutes a Class C3(b) use for occupation by up to six people living together as a single household where care is provided for residents defined by Town and Country Planning (Use Classes) Order 1987 (as amended), or as defined in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Appendix 1 – List of consultees & neighbours notified

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

Area Team Boundary - Name: SOUTH AREA