

Planning

Growth & Development

Delegated officer report for planning application

Application no. 134284/LE/2022

Date registered valid: 6 July 2022

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

Address: 25 Derby Road, Manchester, M14 6UX

Ward(s): Withington Ward

Applicant: Mr Henry Wyld 129 Tranmere Road, London, SW18 3QP

Agent (if any):

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

Recommendation: REFUSE

Date of recommendation: 31 August 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: 15 July 2022 Expired: 5 August 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 town house located in the Withington ward of Manchester. The property is brick built with projecting from bay windows and a two storey rear outrigger.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The surrounding area is predominantly residential.

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 (appendix 1).

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

Planning History – No previous planning applications.

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.

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.
- Tenancy Agreements covering periods dated 2010/11, 2011/12, 2017/18, 2020/21, 2021/22 and 2022/23
- Statement of June 2013, 2014 and 2015 Proof of Payment
- Copy of lasting power of attorney dated 22.09.2016
- Covering Letter
- HMO Licence 16th July 2018

There are several gaps within the information provided with an explanation provided for years 2015/16, 2016/17 and 2019/20 as being mislaid. The information provided would indicate that the property was rented to

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>

Records available to the Council indicate that the property was previously split into two flats, with the Council Tax Valuation website (see images 1 and 2) confirms that the property was converted back from two flats into one dwellinghouse on the 1st July 2015. Therefore, together with the gaps in the information provided, it cannot be said that the property has been rented out continually as an HMO (3-6 unrelated persons) continually for 10 years and the certificate should therefore be refused.

Property information for

25, DERBY ROAD, MANCHESTER, M14 6UX

Local Authority	Manchester
Local authority reference number	4105903
Council Tax band	C
Improvement indicator	No
With effect from	1 July 2015
Mixed-use property	No
Court code	None

► [What does my property information mean?](#)

Image 1 Screenshot of the Council Tax Valuation website <https://www.tax.service.gov.uk/check-council-tax-band/property/9964358000> Accessed 31.08.2022

Search results for M14 6UX

[Search again](#)

Showing 21 - 40 of 44 results

Last updated on 28 August 2022

Address	Council Tax band	Local Authority
FLAT 1 AT 25 DERBY ROAD, Manchester, M14 6UX	Deleted	Manchester
FLAT 2 AT 25 DERBY ROAD, Manchester, M14 6UX	Deleted	Manchester
25 DERBY ROAD, Manchester, M14 6UX	Deleted	Manchester
25 DERBY ROAD, Manchester, M14 6UX	C	Manchester

Image 2 Screenshot of the Council Tax Valuation website <https://www.tax.service.gov.uk/check-council-tax-band/search?postcode=uff6SWsMuv6N4POccO4ZAw&page=1> accessed 31.08.2022

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 25 Derby Road, Manchester, M14 6UX 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.

Appendix 1 – List of consultees & neighbours notified

Withington Bowling Club, 31A Derby Road, Manchester, M14 6UX
29 Derby Road, Manchester, M14 6UX
15 Amherst Road, Manchester, M14 6UG
Ground Floor Flat, 21 Derby Road, Manchester, M14 6UX
Top Flat, 21 Derby Road, Manchester, M14 6UX
Flat 6, 23 Derby Road, Manchester, M14 6UX
Flat 5, 27 Derby Road, Manchester, M14 6UX
Flat 2, 27 Derby Road, Manchester, M14 6UX
Flat 3, 23 Derby Road, Manchester, M14 6UX
Flat 3, 19 Derby Road, Manchester, M14 6UX
48 Derby Road, Manchester, M14 6US
Flat 4, 27 Derby Road, Manchester, M14 6UX
Flat 3, 27 Derby Road, Manchester, M14 6UX
Flat 1, 27 Derby Road, Manchester, M14 6UX
Flat 5, 23 Derby Road, Manchester, M14 6UX
Flat 4, 23 Derby Road, Manchester, M14 6UX
Flat 2, 23 Derby Road, Manchester, M14 6UX
Flat 1, 23 Derby Road, Manchester, M14 6UX
Flat 6, 19 Derby Road, Manchester, M14 6UX
Flat 5, 19 Derby Road, Manchester, M14 6UX
Flat 4, 19 Derby Road, Manchester, M14 6UX
Flat 2, 19 Derby Road, Manchester, M14 6UX
Flat 1, 19 Derby Road, Manchester, M14 6UX
17 Derby Road, Manchester, M14 6UX
50 Derby Road, Manchester, M14 6US
46 Derby Road, Manchester, M14 6US
44 Derby Road, Manchester, M14 6US
42 Derby Road, Manchester, M14 6US

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 (Wilmslow Road/Egerton Road)
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: SOUTH AREA