

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

Application no. 133914/LP/2022

Date registered valid: 9 June 2022

Proposal: Certificate of Lawful Proposed Development from Class E office to Class E indoor, sport, recreation and fitness and operation on a 24 hours basis.

Address: Ground Floor Unit, Wilmslow Park, 211 Hathersage Road, Manchester, M13 0JR

Ward(s): Ardwick Ward

Applicant: Mike Hosie The Gym Ltd C/o Agent

Agent (if any): Matt Brewer Urbanspace Planning Ltd 5 Duncombe Close, Hertford, SG14 3DB

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

Recommendation: GRANT

Date of recommendation: 16 September 2022

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: 01 August 2022

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

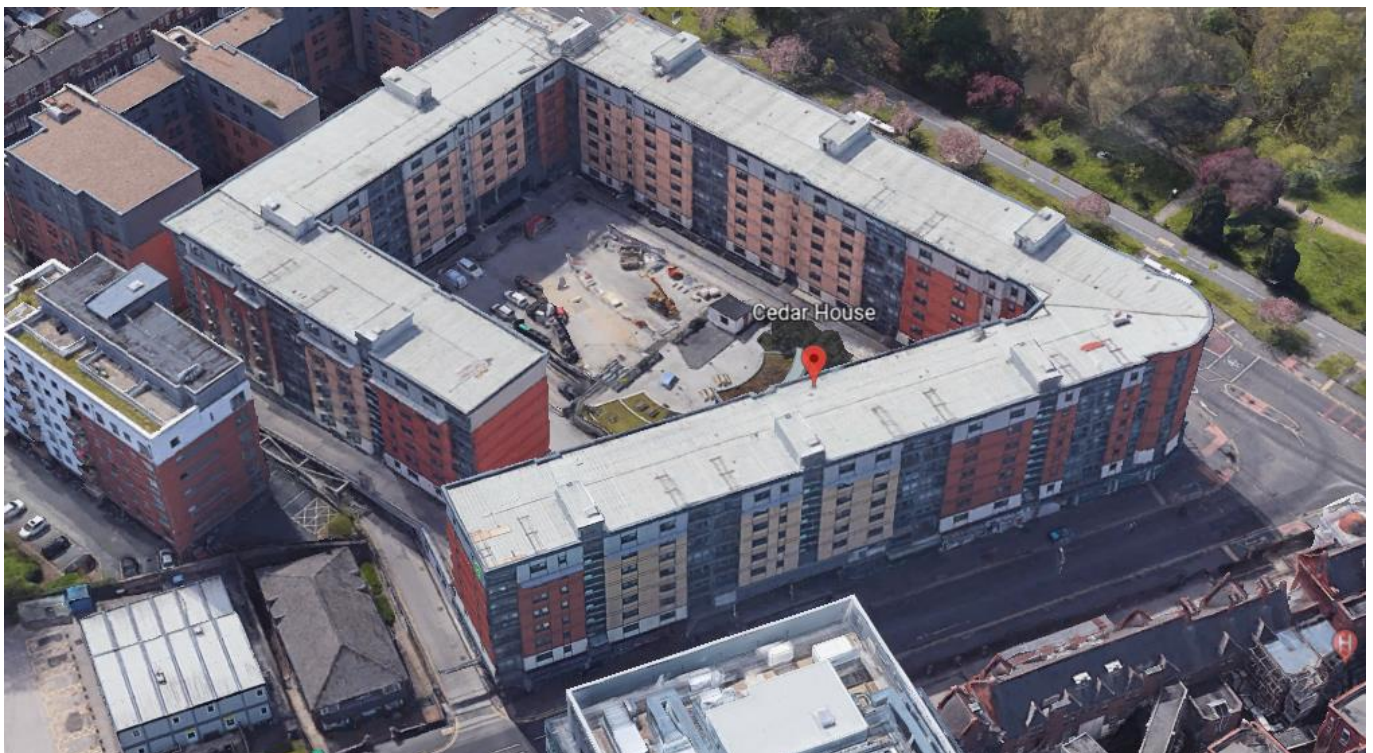
No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building

The application site relates to a vacant ground floor unit of a multi-storey building situated at the corner of Oxford Road and Hathersage Road. The building is used as student accommodation on the upper floors, with commercial/retail units on the ground floor. The site fronts Hathersage Road and was previously occupied as offices Class E(g)(i), but the former occupier has vacated and the current unit is empty.



Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The application site lies to the south of St.Marys Hospital, a grade 2 Listed Building, to the east of Wilmslow Park, a recreational green park and includes Whitworth Art Gallery and to the north of Rusholme District Centre.

Description of development

The applicant is seeking a Lawful Development Certificate to confirm that the use of the premises falls within Class E(d) and its operation on a 24 hour basis would be lawful.

Consultations & Notification Responses

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

Environmental Health – Requested conditions relating to acoustic insulation both internal and external plant/equipment and construction hours.

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.

The Application

This application is pursued under subsection (1) of section 192, which provides for an application to determine whether any proposed use or operations would be lawful for planning purposes.

The ground floor unit forms part of a mixed used development consisting of basement parking with ground floor retail/office/parking plus 7 storeys of 948 student bedrooms and 56 flats for key workers under approved application reference: 061649/FO/NORTH2/01 in 2001.

In 2019, permission was granted for the change of use from ground floor offices, Class B, (now Class E(g)(i) to 24 hour gym, Class D2, (now Class E (d) indoor, sport, recreation and fitness) under planning ref: 122235/FO/2018.

The Government published the Town and County Planning (Use Classes) (Amendment) (England) Regulations 2020 in July 2020 which came into force on the 1st September 2020. The changes included revisions of the classification of uses of property. Former Classes A, B1 and D, applicable to retail, office and non-residential institutions and assembly and leisure uses were removed and a new use class introduced in their place.

The new Class E includes commercial, business and service and brings together the former A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes) and B1 (business) as well as parts of classes D1 (non-residential institutions) and D2 (assembly and leisure) into one single use class to allow for changes of use without the need of planning permission.

The Town and Country Planning (Use Classes) Order 1987 (as amended) defines the classes of use for the purposes of section 55(2)(f) of the 1990 Act. Class E in Schedule 2 Part A is defined as:

"Class E. Commercial, Business and Service

Use, or part use, for all or any of the following purposes –

(a) For the display or retail sale of goods, other than hot food, principally to visiting members of the public,

(b) For the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises.

(c) For the provision of the following kinds of services principally to visiting members of the public

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i). Financial services,

ii). Professional services (other than health or medical services), or

iii). Any other services which it is appropriate to provide in a commercial, business or service locality,

(d) For indoor sport, recreation, or fitness, not involving motorised vehicles or firearms or use as a swimming pool or skating rink, principally to visiting members of the public,

(e) For the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,

(f) For a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,

(g) For-

a. An office to carry out any operational or administrative functions,

b. The research and development of products or processes, or

c. Any industrial process.

being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Section 55(1) of the Town and Country Planning Act 1990 defines the term 'development' which includes the change of use of a building. Section 55(2)(f) explains that in the case of buildings used for a purpose of any class specified in an order made by the Secretary of State, the use of that building for any purpose within the same class shall not be taken, for the purpose of the Act, as amounting to 'development'.

Therefore, as the previous use was an office that meets the definition of Class E(g)(i) and that a gym would meet the definition of Class E (d) this would not constitute change of use and therefore is excluded from the definition of development and no planning permission would be required.

Article 3(4) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states:

“(4) Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.”

As the change of use described here does not constitute development by the Use Classes Order and that the change of use is not reliant on the GPDO to change, article 3(4) does not apply here. Therefore, no conditions apply from previous planning applications are a change of use allowed by the GPDO.

Comments received from Environmental Health are noted however, the LPA is required to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. The conditions requested cannot be imposed on this certificate.

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 existing property is in use as a Class E (g)(i) as prescribed by the Town and Country Planning (Use Classes) Order 1987 (as amended) and the proposed use, as detailed within the submitted application form and supporting information, indicates the use as being for indoor sport, recreation or fitness as defined within Class E (d) of the same order. As the change is within the same use class, it is excluded from the definition of development.

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 - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: CMPLNC