

Planning

Growth & Development

Delegated officer report for planning application

Application no. 133652/LE/2022

Date registered valid: 29 April 2022

Proposal: Certificate of lawful use of the property as a large 10 bedroom house in multiple occupation (Sui Generis)

Address: 354 Wilmslow Road, Manchester, M14 6AB

Ward(s): Old Moat Ward

Applicant: David Navin Holdings Limited Clarke Nicklin House, Brooks Drive, Cheadle Royal Business Park, Cheadle, SK8 3TD

Agent (if any): Ms Kay Prendergast Gateley Legal Ship Canal House, 96 King Street, Manchester, M2 4WU

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

Recommendation: APPROVE

Date of recommendation: 22 June 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: 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 semi-detached dwellinghouse as show in photograph 1.



Photograph 1 Application site as viewed from Wilmslow Road. (Source: Google Streetview accessed 20.06.2022)

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area is located to the south of Fallowfield District Centre and comprises mostly residential with a few commercial properties facing Wilmslow Road.

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. Supporting Statement provided by Gateley Legal
3. Statutory Declaration of Rachel Cuthbert together with exhibits including floor plan, short hold tenancy agreements dating from 2007/08, 2010 to 2023 and deposit protection certificates dating from 2016.
4. Statutory Declaration of Neil Holland who was the project manager for the property's refurbishment in 2020-2021.

The tenancy agreements show that between the years of 2007/08, 2010 to 2019 the number of tenants within the property has been consistently 9. The exception to this was in 2011/12 where the property was let to only 8 tenants and between 2020/21 the property was not let to any tenants as the property was refurbished as set out by the statutory declaration of Neil Holland.

From 2019 to 2022 the tenancy agreements show that there have been 10 tenants within the property; the consistent use of the property has been that of a large HMO with no greater than 10 rooms over the relevant 10 year period and the LPA have no evidence to contradict the applicants version of events or make them less than probable.

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 were in use as a large house in multiple occupancy (sui generis use) for at least 10 years and this use has subsequently continued accommodating up to 10 people. The use of the premises as a large 10 bedroom house in multiple occupation (sui generis) is considered to be the lawful use of the dwellinghouse known as 354 Wilmslow Road.

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

Article 35 Declaration

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

1 Latchmere Road, Manchester, M14 6AL
2 Lorne Road, Manchester, M14 6AW
4 Latchmere Road, Manchester, M14 6AL
2 Latchmere Road, Manchester, M14 6AL
360 Wilmslow Road, Manchester, M14 6AB
Wilmslow Hotel, 356 - 358 Wilmslow Road, Manchester, M14 6AB
Flat 2, 350 Wilmslow Road, Manchester, M14 6AB
Flat 6, 350 Wilmslow Road, Manchester, M14 6AB
Flat 3, 350 Wilmslow Road, Manchester, M14 6AB
Flat 1, 350 Wilmslow Road, Manchester, M14 6AB
Flat 4, 350 Wilmslow Road, Manchester, M14 6AB
Flat 5, 350 Wilmslow Road, Manchester, M14 6AB
Flat 7, 350 Wilmslow Road, Manchester, M14 6AB
Flat 8, 350 Wilmslow Road, Manchester, M14 6AB
Flat 9, 350 Wilmslow Road, Manchester, M14 6AB
Flat 10, 350 Wilmslow Road, Manchester, M14 6AB
Flat 11, 350 Wilmslow Road, Manchester, M14 6AB
Flat 12, 350 Wilmslow Road, Manchester, M14 6AB

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 (Wilmslow Road/Wellington Road)
Area Team Boundary - Name: SOUTH