MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	144772/LE/2025
Date registered valid:	15 December 2025
Proposal:	Use of property as a house in multiple occupation (Use Class C4).
Address:	23 Burlington Road, Manchester, M20 4QA
Ward(s):	Withington Ward
Applicant:	Mr Mohsen Jalali
Agent (if any):	
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Refuse

Date of recommendation: 28 January 2026

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
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

Application site relates to a two-storey semi-detached dwellinghouse, located within a predominantly residential area.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

Certificates of lawfulness 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 (see appendix 1 for the list of properties).

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 applicant’s 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 191 which provides for an application to determine whether a specified existing use of buildings or other land(s191(1)(a)), operation (s191(1)(b)), or failure to comply with a planning condition or limitation (s191(1)(c)), which has already been carried out on the land and is lawful for planning purposes.

The application form specifies that that the reason for the application is *“an existing use”*; which is described as “C4 - Houses in multiple occupation”, the grounds of the application are that *“This property has been used as a HMO renting to six students since 2007. I have been advised by Manchester planning dept to apply for a CLEUD to regularise the planning status. The house was being used as a HMO before the Article 4 changes came into place”.*

In a case of this type, the onus is on the applicant to substantiate his or her case, on the balance of probability. The applicant needs to demonstrate that the use of property as a small House in

Multiple Occupation (Use Class C4) commenced more than ten years prior to the date of the application (i.e. by **15 December 2015**) and continued without a significant break for ten years.

Class C4 is defined in the Town and Country Planning (Use Classes) Order 1987, as amended, as "Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"." This latter term is as defined in S.254 of the Housing Act 2004.

The Planning Practice Guidance points to the need for evidence to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The relevant test, established by the court in Thrasyvoulou v SSE [1984], is the balance of probabilities – whether something is more likely than not.

Assessment

Planning history

There have been no previous planning applications at this address.

Applicants Evidence

The application states that the property has been in continuous use as a small House in Multiple Occupation (HMO) (Use Class C4) since 1 July 2007. This is supported by the following documents:

- Floor Plans
- Tenancy agreements covering the period from July 2023 to June 2024
- Council Tax Bills
- Email Correspondence with neighbours
- Subject Access Request (SAR) information correspondence
- Bank Statements
- HMO Licence covering the period from 6 March 2019 to 5 March 2024

A floor plan has been provided that shows a living room, a bedroom, kitchen and bathroom on the ground floor, three bedrooms and a bathroom on the first floor and two rooms labelled as "attic rooms".

For the years 2015 to 2020, there is very little information provided by the applicant, the evidence for this period relates to an email in response to SAR which says that there were files from 2008 relating to HMO licensing at the property and that there is currently a valid licence in place until 2029. The email is rather imprecise, as the email is lacking in exact details of tenants, dates of occupation and other relevant details of how the property was let and occupied.

A document titled "Notification of Change of Address", appears to relate to a call made on the 3 September 2020 by the applicant to the Council, the details provided appear to relate to two address, one that is subject of this application and another property within Manchester. Focusing on the relevant details for this application, the document provides details that 23 Burlington Road was vacated on 1st July 2020 and that the applicant and another person vacated the property, with two persons named as being the new occupants. However, this does not preclude the possibility that others may also have occupied the property during that period.

Turing to the period 2021 to 2026 the applicant has provided a copy of the HMO licence for the property which covers the period 2019 to 2024 and says that the property is licenced for no more

than six occupants. Whilst this document confirms the property an HMO for licencing purposes but again it does not provide details of tenants etc and does not confirm that the property was used as a HMO for all of the period it covers.

A single tenancy agreement has been provided for 2023 to 2024 which showed that there were six occupants within the property. For years 2021 to 2023, the applicant has provided emails sent to Council Tax enquiries informing them that there six tenants

The bank statements relate to payments made on 1 September 2010 and 1 December 2010, whilst these dates fall outside of the ten years, whilst reference is made to 23 Burlington Road the nature of payments has not been stated.

A council tax bill for 2008/2009 has been provided with note referring to five tenant names, however, these also falls outside of the ten years.

In reviewing the evidence, the Planning Practice Guidance advises that:

“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.” Paragraph: 006 Reference ID: 17c-006-20140306

When all of the evidence is considered as a whole, there are gaps within the qualifying ten-year period, and no explanation or supporting evidence has been provided to address these gaps.

Whilst a letter and two emails have been submitted from individuals who state that they have known the applicant and/or have knowledge of the property being rented to students or used as a HMO, these are not sworn statements and carry limited weight. When considered alongside the other evidence provided, they do not address the identified gaps.

The evidence submitted does not demonstrate, on the balance of probability, that the use of the property as a small House in Multiple Occupation (Use Class C4) commenced more than ten years prior to the date of the application and continued without significant interruption for a period of ten years.

Other Legislative Requirements

Equality Act 2010

Section 149 (Public Sector Equality Duty) of the Equality Act 2010 requires due regard to the need to: Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act and; Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. The Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment. Compliance with the Equality Duty involves consciously thinking about the aims of the Equality Duty as part of the process of decision-making.

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 polices 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

The applicant has failed to demonstrate that the use of property as a house in multiple occupation (Use Class C4) as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended), has continued for a 10-year period up to the date of the application.

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
Flood Zones Type 2 (low to medium risk) -
Flood Zones Type 2 (low to medium risk) -
Flood Zones Type 2 (low to medium risk) -
Flood Zones Type 3 (high risk) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Middle) -
Susceptible to Surf Water Flood (Middle) -
Susceptible to Surf Water Flood (More) -
Area Team Boundary - Name: SOUTH AREA