MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	144586/LE/2025
Date registered valid:	20 November 2025
Proposal:	Use of property as a house in multiple occupation (Use Class C4).
Address:	17 Edenhall Avenue, Manchester, M19 2BG
Ward(s):	Burnage Ward
Applicant:	Tokoro Capital
Agent (if any):	Mr Nathan McLoughlin McLoughlin Planning
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	**Refuse**
Date of recommendation:	12 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
Printed: 26 November 2025 Expired: 17 December 2025

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 in 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 – Three representations were received objecting to the application, a summary of the comments received are as follows:

- The evidence provided does not demonstrate 10 years of continuous use;
    - The evidence does not prove the property was occupied by 3 or more unrelated persons;
    - Voids in occupation are not inconsequential and break the chain of continuous use of the property as an HMO.

    - Request the Council check their own records, which may contradict the applicants claim.
- The area already contains far too many HMOs on Edenhall Avenue and surrounding roads.
- Granting the certificate would regularise development that is harmful to the character of the area and local amenity (waste, parking, noise, anti-social behaviour etc).

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"*; the grounds of the application are that *"The use began more than 10 years before the date of this application"*; and that a Certificate should be granted because, *"The property has been in use as a C4 HMO for over 10 years".*

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 **20 November 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

Whilst the property has been extended the planning history for the site shows that have been no previous planning applications at this address.

Neighbour Notification Responses

The neighbour notification resulted in three objections. While two of the representations questioned whether sufficient evidence had been provided, none of the three included any evidence to demonstrate whether the property has or has not been in use as claimed, as an HMO.

Applicants Evidence

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

The application states that the property has been in continuous use as a small House in Multiple Occupation (HMO) (Use Class C4) since 2 January 2013. This is supported by the following documents:

- Covering Letter/Summary Document

- Tenancy agreements covering the period from December 2013 to December 2017, January 2018 to March 2018 and from July 2018 to 2025 (current tenancy ending on the 30th June 2026)

No floor plan has been provided but the supporting letter states that the property contains five bedrooms.

The tenancy agreements show that from there were predominantly five tenants from 1st July 2018 up and to the current tenancy agreement which term ends of the 30th June 2026.

As set out above, the applicant must demonstrate 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 (i.e., by **20 November 2015**) and continued without a significant break for ten years. While the period from 2018 to 2025 is clear, with evidence showing that the property had five tenants meeting the definition of an HMO, what remains unclear is the period between November 2015 and the start of the tenancy agreement commencing on 1 July 2018.

The applicant has provided two partial tenancy agreements. The first began on 2 December 2013 and expired on 31 December 2017 and shows the rental amount for property per calendar month, but it does not include any details regarding the occupation of the property. The second agreement commenced on 1 January 2018 and expired on 31 March 2018. This also confirms the rental amount but, again, provides no information about occupancy.

Point 3 in the Schedule of Standards (page 16 on both tenancy agreements) specifically states that the landlord meets the standard that would have required them to obtain an HMO licence in any area where one is required. However, this does not demonstrate specifically that the property was in use as an HMO.

The covering letter provides some additional information, indicating that the property was rented to a management company, identified as “PPNW Ltd,” for use as an HMO. However, the two tenancy agreements (2013–2017 and January–March 2018) lack precise details of tenants, dates of occupation, and other relevant information about how the property was let and occupied.

As such, the evidence does not provide a sufficient basis to conclude with confidence that the property has been in continuous use as a house in multiple occupation for the 10 years from 20 November 2015.

Based on the information submitted, the Certificate should be refused.

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

18 Craighall Avenue, Manchester, M19 2BR
16 Edenhall Avenue, Manchester, M19 2BG
20 Edenhall Avenue, Manchester, M19 2BG
19 Edenhall Avenue, Manchester, M19 2BG
18 Edenhall Avenue, Manchester, M19 2BG
15 Edenhall Avenue, Manchester, M19 2BG
20 Craighall Avenue, Manchester, M19 2BR
16 Craighall Avenue, Manchester, M19 2BR

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Coal Authority - Surface Coal Resources - Name: Coal bearing strata at surface
Area Team Boundary - Name: SOUTH AREA