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Manchester City Council
Planning Department
VIA EMAIL ONLY

Dear Sir/Madam,

14 COLGATE CRESCENT, MANCHESTER, M14 6FN| CERTIFICATE OF LAWFUL DEVELOPMENT
USE OF PROPERTY AS A HOUSE IN MULTIPLE OCCUPATION WITH COMMUNAL FACILITIES AS A C4 HMO (5 BEDROOMS)

McLoughlin Planning has been appointed by Tokoro Capital ('The Applicant') to prepare and submit an application for a Certificate of Lawfulness for an Existing Use or Development ("CLEUD") at 14 Colgate Crescent ("the Site"). The Site comprises one 5-bedroom property, which is currently in use as a C4 HMO.

The CLEUD has been submitted to regularise the use of the property as a C4 HMO. This is on the grounds that the use of the property as a C4 HMO is lawful and benefits from being immune from enforcement action pursuant to Section 171B of the Town and Country Planning Act 1990, often referred to as the "10-year rule".

The supporting evidence set out in this letter and accompanying documents provides compelling evidence that, on the balance of probability, the property has been continuously used, for the last ten years, as a C4 HMO.

Site Description and Designations

The Site is currently a 5-bedroom semi-detached property in Fallowfield, Manchester. The Site's current use is a student let; this has been continuous for over 10 years.

The Site is not subject to any ecological or heritage designations. After a thorough search of the Council's online Local Plan Map, the Site is not subject to any planning policy designations.

After conducting a thorough search on the Local Planning Authority's planning system, there is no planning history attached to the Site.

Legislative Context and Relevant Guidance

The application is made under Section 171B(1) of the Town and Country Planning Act 1990 "TCPA" (as amended). The application seeks the lawful use of the building as a C4 HMO property, to provide up to 5 rooms for students. It is acknowledged that Manchester City Council imposed an Article 4 direction in October 2011.

Section 171B(1) states:

> *"Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 10 years beginning with the date on which the operations were substantially completed."*

In considering the evidence, the Courts have decided that the relevant test to be applied is whether "on the balance of probability" the use of the property has been consistent with an C4 use HMO. A good example of Case Law is:

F W Gabbitas V SSE and Newnham LBC (1985):

> *"the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted. If the LPA has no evidence of its own, or 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."*

The fact applications under Section 171 B (1) are determined on the balance of probability, which is a less stringent test than the criminal burden of proof, "beyond reasonable doubt", means that a degree of pragmatism from the decision-maker is required.

In terms of other sources of guidance, the Government's Planning Practice Guidance (PPG) reiterates the above-mentioned legislative provisions, stating:

> "where local planning authorities are satisfied that the appropriate legal tests have been met, it will grant a Lawful Development Certificate."

Paragraph 005 of the PPG makes it clear that applications:

> *"must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application" and "without sufficient or precise information, a local planning authority may be justified in refusing a certificate."*

The burden of proof to demonstrate the lawfulness of the use therefore, rests firmly on the Applicant. However, paragraph 006 also makes it clear that:

> "*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."*

Evidence to Support the Certificate

Section 39 of the Town and Country Planning (Development Management Procedure) Order (England) 2015 sets out that Certificates of Lawfulness are required to be accompanied by such evidence necessary to verify the information included in the application.

To support the application, continuous annual tenancy agreements dating back to 2015/16 have been provided. Whilst it is acknowledged that the building has been in consistent use, there have been short void periods (one to two months) where there have been no tenants renting out the property. This is typical of rental properties, as repairs or refurbishment

may be required, especially student lets where the residents have yet to move in or have moved away from the area over a summer break.

Rental / Tenancy Agreements

Supporting this application for a CLEUD are tenancy agreements, dating back to 2015/2016. These clearly show that 3 or more unrelated tenants have been sharing this property, as per the definition of C4 Use Class HMO. The property is currently, and has historically, been in use as a student let which falls under the C4 category.

Evidence has been provided, through these agreements, to demonstrate that the property has been in continuous use as a C4 HMO for over 10 years, which is well in excess of the time frame for a material change of use as stated by Section 171 B (3) of the TCPA.

Conclusion

This letter has set out the reasons for granting a CLEUD for the continued use of the property as a C4 HMO at 14 Colgate Crescent, Manchester.

The Applicant is not aware of any evidence that contradicts its version of events and the timeline of the use of the site, as set out in this letter. The balance of probability test requires a degree of pragmatism and reasonableness from the decision maker when weighing all the evidence in the overall balance. Therefore, in line with the above, there is no good reason to refuse the application, provided the Applicant's evidence alone is sufficiently precise and unambiguous to justify the granting of a certificate on the balance of probability.

Therefore, the CLEUD should be granted without delay.

Yours faithfully,

Nathan McLoughlin BSc (Hons) DipTP MRTPI
Managing Director

Index of Documents

Document Reference	Document	Date
Administration Documents		
A.1	Title Plan: LA218925	n/a
Rental Agreements		
B.1	14 Colgate Crescent AST 2015 - 2016	April 2015
B.2	14 Colgate Crescent AST 2016 – 2017	February 2016
B.3	14 Colgate Crescent AST 2017 - 2018	January 2018
B.4	14 Colgate Crescent AST 2018 – 2019	January 2018
B.5	14 Colgate Crescent AST 2019 – 2020	February 2019
B.6	14 Colgate Crescent AST 2020 - 2021	November 2019
B.7	14 Colgate Crescent AST 2021 - 2022	January 2021
B.8	14 Colgate Crescent AST 2022 - 2023	December 2021
B.9	14 Colgate Crescent AST 2023 - 2024	November 2022
B.10	14 Colgate Crescent AST 2024 - 2025	January 2024
B.11	14 Colgate Crescent AST 2025 - 2026	February 2025