

Planning

Growth & Development

Delegated officer report for planning application

Application no. 143990/LE/2025
Date registered valid: 17 September 2025
Proposal: Use of property as a house in multiple occupation (Use Class C4)
Address: 6 Maine Road, Manchester, M14 4DW
Ward(s): Moss Side Ward

Applicant: Sadie Malim Wakmoor (Assets) Ltd
Agent (if any): Mr Thomas Humphreys Icení Projects Ltd
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: **Grant**
Date of recommendation: 6 November 2025

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: 22 September 2025

Expired: 13 October 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

The application site relate specifically to a two storey semi-detached dwellinghouse with a ground floor bay window and a gable end roof.

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.

Issues

Planning History - There have been two previous planning applications at this address;

138040/LE/2023 – A lawful development certificate application was refused on the 30 November 2023 for the use of the property as a small House in Multiple Occupation (Class C4).

The application was refused for the following reason:

"The applicant has failed to demonstrate that number has been occupied as a small house in multiple occupation (Use Class C4 of the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended)) for a continual 10 year period up to the date of the application".

F05292 – An application for planning permission was **refused** on the 1 December 1976 for the change of use of ground floor front room of dwellinghouse to a shop and installation of a shop window.

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 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.

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 17 September 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 of 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 September 2009. This is supported by a statement of truth signed by the applicant, planning statement, a copy of the premises license covering the period 2016 to 2021, a floor plan of the property, and tenancy agreements covering the period from 2009 to 2025 (Image 1), with the exception of 2023/24. These documents show that most tenancies housed between 3 to 6 occupants, over the last 10 years, the exception is 2021/22 where the tenancy agreement shows only two residents.

The floor plan submitted with the application shows that the dwellinghouse contains a total of six bedrooms: two on the second floor, two along with a bathroom on the first floor, one bedroom, a bathroom, and a kitchen/lounge on the ground floor, and a further bedroom and bathroom in the basement.

The applicant has provided a redacted statement of truth, dated 9th September 2025, confirming that they purchased the property in September 2021. They state that the property was in residential use prior to the Article 4 Direction coming into effect in 2010, and that this use has remained continuous since then.

As noted, the 2021/22 tenancy agreement was signed by only two individuals. However, this does not preclude the possibility that others may also have occupied the property during that period. The planning statement provides further context, highlighting that this occurred during the Covid-19 pandemic, when many university students vacated their accommodation and returned home. Despite marketing efforts, the property was only occupied by two residents. Nevertheless, the use and character (locks on doors, shared facilities etc) of the property as a C4 HMO remained unchanged. This is considered a reasonable explanation for the temporary under-occupation, especially given that the property had previously been rented to five residents and that more than two persons may have occupied the property at that time.

Image 1 provides a summary of the tenancy agreements submitted in support of the application, as outlined in the accompanying planning statement. Notably absent from the list is the tenancy agreement for the 2023/24 period. No explanation has been provided for its omission, nor has any clarification been given as to whether the property was vacant during that time.

Tenants no.	AST Start Date	AST End Date
Six tenants	September 2009	August 2010
Six tenants	September 2010	August 2011
Six tenants	September 2012	August 2013
Six tenants	September 2013	August 2014
Six tenants	September 2014	August 2015
Six tenants	September 2015	August 2016
8		
Five tenants	September 2016	August 2017
Five tenants	September 2017	August 2018
Five tenants	September 2018	August 2019
Five tenants	September 2019	August 2020
Five tenants	September 2020	August 2021
Two Tenants	September 2021	August 2022
Five tenants	September 2022	August 2023
Three tenants	September 2024	August 2025

Image 1 Summary of the tenancy agreements submitted in support of the application, as outlined in the accompanying planning statement.

Panton & Farmer v SSETR & Vale of White Horse DC [1999] JPL 461 established that once lawful use rights have been established they can only be lost in one of three ways. These are (i) by evidence of abandonment; (ii) by the formation of a new planning unit; or (iii) by being superseded by a further change of use. A use which was merely dormant or inactive could still be “existing”, so long as it had already become lawful and had not been extinguished in one of these ways.

In *SSETR v Thurrock BC [2002] JPL 1278*, the Court of Appeal subsequently clarified that judgment on the need for continuity between the date of the breach and it becoming immune from enforcement action and, thereby, lawful. An unauthorised use could become lawful only if it continued throughout - in that case - the ten year period, to the extent that the local planning authority could have taken enforcement action at any time. If the use ceased during that period, the time could not count towards immunity.

Ideally, evidence demonstrating the use of the property during 2023/24 would have been provided in support of the application. However, there is no evidence to suggest that the property was vacant during that time, that its use was abandoned, that a new planning unit was created, or that a further material change of use occurred within that year. On the contrary, the tenancy agreement for 2024/25 indicates that the property continued to be in use as HMO.

Planning Practice Guidance emphasises that evidence must be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

There is no evidence to contradict the applicant's version of events or to render them less than probable. Accordingly, the Certificate should be granted.

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 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

From the evidence available, and with reference to the relevant planning legislation, Manchester City Council is satisfied that the use 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

47 Upper Lloyd Street, Manchester, M14 4HY
4 Maine Road, Manchester, M14 4DW
2 Ruskin Avenue, Manchester, M14 4DQ
8 Maine Road, Manchester, M14 4DW
45 Upper Lloyd Street, Manchester, M14 4HY
43 Upper Lloyd Street, Manchester, M14 4HY

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 Zone Plus Climate Change -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (More) -
Area Team Boundary - Name: SOUTH AREA