McLOUGHLIN PLANNING

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[redacted]

MP Ref: NM/1129

[redacted]

24/10/2025

Manchester City Council
Planning Department
**VIA EMAIL ONLY**

Dear Sir/Madam,

**17 EDENHALL AVENEUE, MANCHESTER, M19 2BG| 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 at 17 Edenhall Avenue ("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 10 years, as a C4 HMO.

**Site Description and Designations**

The Site is currently a 5-bedroom semi-detached property in Fallowfield, Manchester.

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 has imposed an Article 4 direction, which requires all buildings for HMOs to apply for planning permission before being used in a C4 context.

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 a 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 that applications under Section 171B(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 as is 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 / 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 three 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. It has also been rented out to a management company, "PPNW Ltd", between 2013 and 2018, for C4 HMO Use.

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 17 Edenhall Avenue, Manchester.

The Applicant is not aware of any evidence that contradicts its version of events and the timeline of the site's use, 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: GM46351 | n/a |
| **Rental Agreements** | | |
| B.1 | 17 Edenhall Avenue AST 2013-2017 | December 2013 |
| B.2 | 17 Edenhall Avenue AST 2018-2018 | January 2018 |
| B.3 | 17 Edenhall Avenue AST 2018-2019 | April 2018 |
| B.4 | 17 Edenhall Avenue AST 2019-2020 | March 2019 |
| B.5 | 17 Edenhall Avenue AST 2020-2021 | January 2020 |
| B.6 | 17 Edenhall Avenue AST 2021-2022 | December 2020 |
| B.7 | 17 Edenhall Avenue AST 2022-2023 | November 2021 |
| B.8 | 17 Edenhall Avenue AST 2023-2024 | December 2022 |
| B.9 | 17 Edenhall Avenue AST 2024-2025 | December 2023 |
| B.10 | 17 Edenhall Avenue AST 2025-2026 | November 2024 |