

Planning

Growth & Development

Delegated officer report for planning application

Application no. 143930/LE/2025
Date registered valid: 9 September 2025
Proposal: Use of land as a DIY Shop (Use Class E(a)).
Address: 170 Waterloo Road, Manchester, M8 8AE
Ward(s): Cheetham Ward

Applicant: MGM Healthcare
Agent (if any): Mrs Victoria Allan Trivantage Ltd
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse

Date of recommendation: 04 November 2025

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: 21 October 2025

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

The application site relates to a plot of land on the eastern side of Waterloo Road, located in an area with a history of industrial uses. On the opposite side of Waterloo Road, there are residential properties.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

A certificate of lawfulness of existing use or development for the use of the land as a DIY Shop (Use Class E(a)).

Consultations & Notification Responses

None

Issues

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, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land is lawful for planning purposes.

The applicant is seeking a certificate of lawful development existing use of the land as a DIY Shop (Use Class E(a)).

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 land as a DIY Shop (Use Class E(a)) commenced more than ten years prior to the date of the application (i.e. by 9th September 2015) and continued without a significant break for ten years.

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

Planning history

Planning history for the site shows that there has been three previous planning application and one advertisement consent at this address.

- Application reference **071888/FU/2004/N1**- Planning permission was **granted** on the 18th October 2004 to allow the change of use of land to sale of new and used car parts and storage of used machinery (including parts) together with siting of a portacabin to be used for office purposes .
- Application reference **042336** – Advertisement consent was **granted** on the 27th November 1992 for an illuminated free-standing gantry sign.
- Application reference **020018** – Planning permission was granted on the 22nd August 1983 to allow the use of land as a car compound and erection of a 2.7 metre high fence after demolition of existing building.
- Application reference **F06152** – Planning permission was **granted** on the 25th February 1977 to allow the erection of a single-storey building for washing and polishing cars.

Applicants Evidence

The application form states that the site began being used as DIY shop on the 10th September 2014. The planning statement states that the site is split into two parts and that the applicant is only seeking a certificate for the part of the site identified as Parcel A on the image below:

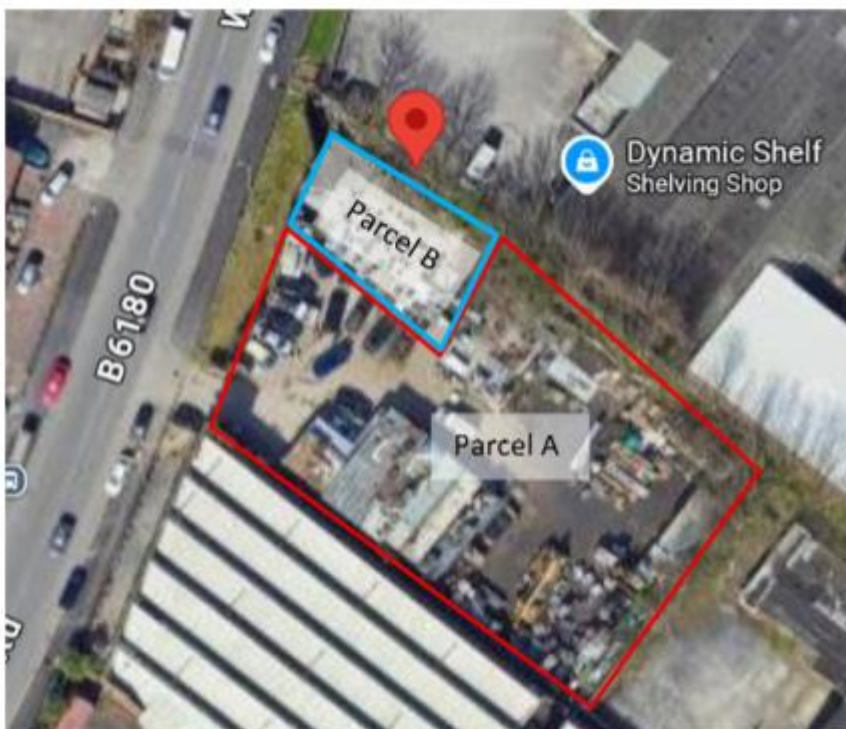


Image 1 Application site, image contained within the Planning Statement.

In addition to the application form and the planning statement the application was also supported with a sworn affidavit and a copy of the most recent tenancy agreement.

Images provided in the planning statement are taken from Google Streetview (Image 2) and show the entrance to the site off Waterloo Road showing three images spanning just under 6 years from July 2019 to May 2025.

In the first image there appears to be a single storey structure with partially visible signs on the structure with white text on an orange background with the words “PLUMBING & BUILDING” and “WATERLOO” clearly visible, the two other images show the entrance gate which has signs affixed to it with “DIY SHOP”, “UK TIMBER & PLUMBING”. In addition, there also signs for A-W Garage and MNA Exporters Ltd on the gate.

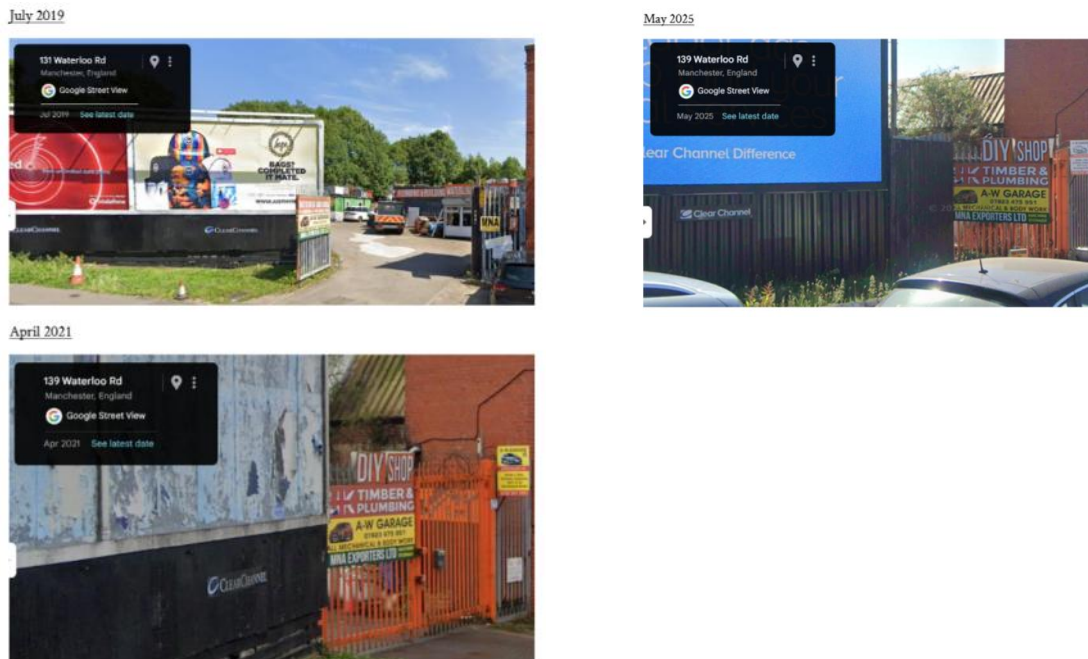


Image 2 – Google Streetview images included with the planning statement

The sworn affidavit has been provided by the current tenant and states that that they entered into a tenancy agreement which began on the 10th September 2014 and had been agreed to 10th September 2025. The document confirms that the land is being used for the purposes of their business which is retail for DIY related products and services.

The tenancy agreement/lease was signed on the 15th September 2014 for a period of 11 years, the tenant is listed on the document as having the same name and address as the sworn affidavit.

Planning Practice Guidance advises that in the cases 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.

In this case the applicant needs to demonstrate that the use of land as a DIY Shop (Use Class E(a)) commenced more than ten years prior to the date of the application (i.e. by 9th September 2015) and continued without a significant break for ten years.

The submitted Street View images show signage relating to the business; however, it is unclear what physical form the DIY shop took. For example, earlier Street View images not included in the application (e.g. August 2015, image 3) show shipping containers and signage for “M.A.

Garage” and “M.N.A Machines Storage,” which raises questions about the nature of the use at that time.

Subsequent images (image 3) from April 2016, July 2017, and May 2018 show minimal changes to the site, aside from the removal of shipping containers, the addition of signage for “Eusaki Denting & Painting,” and updated garage signage. However, unlike the July 2019 Street View image, these earlier images do not appear to show any visible activity or signage related to a DIY shop.



Image 3 Google Streetview August 2015 to May 2018.

While it is acknowledged that these images are snapshots in time, the absence of prominent signage and a physical structure in use as a shop, especially considering its visibility from 2019 onwards these casts doubt on whether a DIY shop was operating on the site during that earlier period. The most recent Street View image from July 2025 (images 4 and 5) shows a cleared site, with all structures and containers removed, although signage for the DIY shop remains. While a cleared site does not definitively indicate that the use has ceased, it again raises doubt, particularly as this falls within the later months of the required ten-year continuous use period.

A site visit by the case officer confirmed that the land is currently in use as a hand car wash, with a single canopy structure. This use would be classified as sui generis and does not fall within Use Class E. Although the exact commencement date of this use is unclear, it likely began after the site was cleared in July 2025. The site photographs (Photograph Montage 1) clearly show that the site is now operating in this manner. No further comments have been received from the applicant at the time of this report.

The applicant has submitted a signed affidavit asserting continuous use of the site as a DIY shop for over ten years. However, the supporting evidence, particularly the earlier Google Street View images from 2015 to 2018, does not clearly demonstrate the presence of a DIY shop during that period. Instead, the images show signage and structures associated with other uses, such as vehicle storage and repair, which casts doubt on the claimed use.

While later images from 2019 onwards show clearer indications of DIY shop signage, the absence of such evidence in the earlier part of the ten-year period undermines the claim of continuous use.

Additionally, the most recent image from July 2025 shows the site cleared of structures, and a site visit confirmed its current use as a hand car wash, that does not fall within Use Class E as it is a sui generis use.

Given the lack of sufficiently precise and unambiguous evidence to demonstrate continuous use of the land as a DIY shop for the required ten-year period, and in light of the current use of the site, it is therefore recommended that the application for a Certificate of Lawfulness be refused.



Image 4 Google Street View from within the site (July 2025)

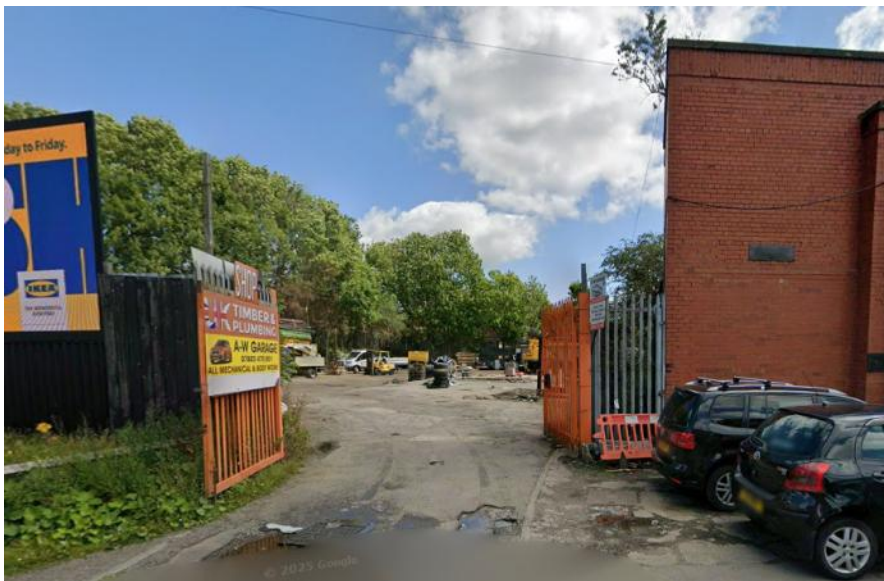


Image 5 Google Street View from July 2025



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: Refuse

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

The applicant has failed to demonstrate that the land at 170 Waterloo Road has been used as a DIY Shop (Use Class E(a)), as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended), 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 - City Centre PD Restriction - Class B1(c) To C3

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4

Article 4 Direction - City Centre PD Restriction - Class B1(a) To C3

Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA

Historic Landfill Site 50m Buffer -

Susceptible to Surf Water Flood (Less) -

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 (Middle) -

Susceptible to Surf Water Flood (Middle) -

Susceptible to Surf Water Flood (More) -

Susceptible to Surf Water Flood (More) -

Susceptible to Surf Water Flood (More) -

Susceptible to Surf Water Flood (More) -

Susceptible to Surf Water Flood (More) -

Susceptible to Surf Water Flood (More) -

Area Team Boundary - Name: NORTH AREA