

DELEGATED REPORT

Report by Sam Summers	Date of report: 24/04/2023	Ref: 68945/LDCE
Registration: 03/10/2022	LDFC:	Expiry Date: 28/11/2022
Site Visit:	Site Notice: N/A	Press Date: N/A
Objections:	Con Area: N/A	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: NREQ

Proposal: Lawful development certificate for existing use - Retail shop & 6 Studio apartments

Location: 418A Bury New Road, Prestwich, Manchester, M25 1BD

Description

Lawful development certificate for existing use - Retail shop & 6 Studio apartments- The change of use of part of a building to residential without the benefit of planning permission would be immune from enforcement action after a period of four years. The building in question is the end building in a row of shops on Bury New Road. The applicant states that part of the building has been converted into 6 studio flats whilst part of the ground floor has remained in use as a retail shop.

Relevant Planning History

58511 - Change of use from residential (Class C3) to offices (Class B1) at first floor - Approve with Conditions 21/04/2015

Publicity

None

Statutory/Non-Statutory Consultations

None

Pre-start Conditions - None

Unitary Development Plan and Policies

Issues and Analysis

A building is the whole of a building or any part of a building. Part of the building has been converted into 6 no. self contained flats without the benefit of planning permission. This application is to seek the lawfulness of the residential use.

S.171B of the Town and Country Planning Act 1990 says:- "Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach" "Building" includes any part of a building so Section 171B can apply to flats/apartments.

"Dwellinghouse" is not defined in the Act but in *Gravesham v O'Brien* [1983] it was accepted that the distinctive characteristic of a dwellinghouse was its ability to afford those who used it the facilities required for day-to-day private domestic existence. So a self-contained flat with its own bathroom and kitchen facilities will be considered a dwellinghouse but, if there are any shared kitchen/bathroom facilities, then it is not a dwellinghouse.

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In this case, the four year rule will apply if there is evidence that a unit has been occupied as a self-contained dwellinghouse for the whole of the relevant period.

The flats are self contained with their own facilities and are individually let out. The plans submitted show 6 self contained flats with no shared facilities. As such it is accepted that the flats in question are self contained and therefore no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

The onus is on the applicant to show by way of evidence that the use to which the application relates has been carried out for 4 years or more making it immune from planning enforcement action, thus making the use lawful. The legal test for evidence is on the "balance of probabilities" which in practice means that unless the authority has in its possession evidence that is clearly contrary to that submitted it must grant a certificate. Evidence submitted does not need to be corroborated by third parties.

Evidence submitted by the applicant

The applicant has submitted the following evidence:

Rental agreements relating to each of the apartments date in excess of four years before date of this application. Invoice of the building works to convert part of the building into 6 flats dated 28th February 2017. Recent energy performance certificate (EPC) for all 6 flats.

The applicant for the application has also provided a Sworn Affidavit confirming that part of the building was converted into 6 self contained flats in excess of four years before the date of application whilst part of the building remained as a shop. When taking this statement into account with the rental agreements, building works invoice and EPCs submitted, the evidence shows that on the balance of probability the flats in question have been used as dwelling houses in excess of four years from the date of application and are therefore lawful.

Recommendation: LAWFUL

Conditions and Reasons:

- 1 The use described in the First Schedule is deemed to be established and not liable to enforcement action under Section 172 of the Town & Country Planning Act 1990 (as amended) by reason of it existing on site on a continuing basis for four years or more.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
SS	24/04/2023		