

Application Number	Date of Appln	Committee Date	Ward
112279/S106A/2016/ S1	4th May 2016	30th Jun 2016	Withington Ward

Proposal Application to discharge Section 106 obligation attached to planning permission 091212/FH/2009/S1 which restricts the occupancy of the house in multiple to no more than six unrelated people.

Location 36 Ladybarn Crescent, Withington, Manchester, M14 6UU

Applicant Ms Christine Byrne, 11 Wilbraham Road, Fallowfield, Manchester, M14 6JS

Agent Mr Simon Plowman, Plan 8 Town Planning Ltd, 14 St Augustines Road, Stockport, SK3 0JN

Description

This application relates to a modern three storey end terraced property. The property has a small front garden and a single parking space set behind a deep forecourt containing a drive giving vehicular access for all five of the properties in the terrace. There is a narrow passage at the side of the property giving access to a long irregular shaped rear garden. There is a large single storey extension at the rear and side of the property.



The development which the application site is part of is a modern infill built in the 1980's. The site is adjoined on three sides by residential properties. There is further residential accommodation across Ladybarn Crescent.

Originally built as a four bedroom house on three storeys, in March 2010 planning permission 091212/FH/2009/S1 reference was granted for the retention of a single storey side and rear extension in connection with the use of the premises as a single

family dwelling class C3. The approval was subject to an obligation under Section 106 of the act which precluded the use of the property as a House in Multiple Occupation for more than 6 persons. The full text of the obligation is set out below, however, it should be noted that at that time the use of a dwelling as a house in multiple occupation for up to six persons was a class C3 use and consequently planning permission was not required for a change in use. Following changes to legislation in April 2010 the old class C3 was split into 2 separate classes. Class C3 for dwelling houses and class C4 for small houses in multiple occupation for between 3 – 6 people.

The 2009 application also predated the adoption of the Core Strategy and the City Council's subsequent adoption of the Article 4 Direction which now precludes changes from class C3 dwellings to Class C4 small Houses in Multiple Occupation without express planning permission.

The planning obligation reads:

1. The owner covenants with the Council that from the first day of August 2010 it will not allow nor permit the dwelling to be occupied by more than six unrelated people or by more than a single family living as a single household at any one time and by way of clarification none of the people forming that single family if it is to qualify as being a single household shall fall within the definition of persons not forming a single household as defined in section 258 of the Housing Act 2004 or any amendment thereto or replacement thereof so as to keep the dwelling at all times within the restriction on individual residents living together as a single household contained in the definition of Use Class C3 of the town and County Planning (Use Classes) Order 1987 as amended or any replacement or further amendment thereof.
2. The owner further covenants with the Council not to transfer the dwelling on a First Sale without having included in the transfer a restrictive covenant drafted so as to be binding on any successors in the title to the Land to the effect that from the first day of August 2010 no more than six unrelated people or no more than a single family living as a single household may occupy the dwelling at any one time and by way of clarification if it is to qualify as being a single household none of the people forming that single family shall fall within the definition of persons not forming a single household as defined in the definition of persons not forming a single household as defined in section 258 of the Housing Act 2004 or amendment thereto or replacement thereof.

An earlier application reference 089900/FO/2009/S1 for the retrospective change of use from a single family dwelling to an 8 bedroom House in Multiple Occupation and the erection of a single storey side and rear extension was refused planning permission in June 2009. The reason for refusing planning permission was:

The use of the premises as an 8 bedroom House in Multiple Occupation results in the over intensive use of the property, by reason of the additional comings and goings and noise and general activity, to the detriment of the character of the area and the general residential amenity of the surrounding properties. The proposed development is therefore contrary to the provisions

of policies H2.2, DC3 and DC26 of the Unitary Development Plan for the City of Manchester.

This application seeks to discharge the Section 106 obligation attached to planning permission 091212/FH/2009/S1. The applicant claims that the obligation fails to meet the tests set down in paragraph 204 of the National Planning Policy Framework and that as it is more than 5 years since the obligation was signed he is entitled to seek to discharge it in accordance with s.106A(6)(b) of the Town and Country Planning Act as amended.

In this particular instance the applicant claims that the obligation no longer serves a useful purpose. It is claimed that the obligation was entered into at that time amid concerns raised by the Council that the extra two persons living in the property would harm the character of the area and the general amenity of surrounding properties. It is also claimed that the obligation is not fair or reasonable.

The applicant points out that Planning Practice Guidance considers that development plans should contain policies in respect of seeking an obligation and that Manchester has no such policy.

In respect of policy H11 the applicant suggests that this is an existing House in Multiple Occupation providing a high standard of accommodation and consequently the discharge of the obligation would not breach the policy.

The applicant also claims that the development is in accordance with policy DM1 for the following reasons

- No extensions are proposed
- The property is well maintained and does not detract from the surrounding area. There would be no physical changes to the property if the number of residents increases.
- There will be no increase in the impact on the amenity of residents from additional tenants.
- The two ground floor rooms currently mothballed could be used by people with mobility issues.
- The increase in the number of residents will not impact on crime or disorder.
- The property has sufficient space for 8 residents and includes space for cycles.
- The accommodation provided meets current standards.
- There is adequate space at the side of the property for the storage of refuse.
- There is space for three cars to park in front of the property. Given the close proximity to the facilities and the Universities students do not need cars.
- There is no impact on biodiversity
- There is no impact on green infrastructure.
- There of no flood or drainage risk.
- There are no existing or proposed hazardous installations.

Consultations

The application has been advertised both in the press and on site.

Local residents - No representations have been received.

Policy

Core Strategy

The relevant Core Strategy policies are SP1, H1, H11 and DM1.

Policy SP1 sets down the key spatial principles which will guide the strategic development of Manchester to 2027, these are:

Outside of the City Centre and airport the emphasis is on the creation of neighbourhoods of choice, providing high quality and diverse housing around district centres which meet local needs, all in a distinct environment.

Core Development Principles

Development in all parts of the City should:-

Make a positive contribution to neighbourhoods of choice including:-

Creating well designed places that enhance or create character.

Making a positive contribution to the health, safety and wellbeing of residents

Considering the needs of all members of the community regardless of age, gender, Disability, sexuality, religion, culture, ethnicity or income.

Protect and enhance the built and natural environment.

Policy H1 is a general housing policy and is therefore relevant to the consideration of this application. The policy refers to the need for the management of areas where Houses in Multiple Occupation predominate.

Policy H11 is relevant to this application as it addresses changes of use of properties to both small houses in multiple occupation Class C4 and large Houses in Multiple Occupation sui generis. It should be noted that to change from a small House in Multiple Occupation Class C4 to a large house in multiple occupation sui generis is a material change of use which requires planning permission.

The policy says that changes of use from a C3 dwelling house to a C4 HMO will not be permitted where there is a high concentration of residential properties within a short distance of the application site falling within one or more of the following categories:

- Exempt from paying Council tax because they are entirely occupied by full time students.
- Recorded on Private Sector Housing's database as a licensed HMO.
- Any other property which can be demonstrated to fall within the C4 or sui generis HMO use class.

In cases where the concentration of such properties is significant but less high, the Council will examine property type and resident mix in more detail when considering an application for a change of use.

In areas of high concentration, extensions to HMOs (as defined in the Housing Act 2004) would not be permitted where this could reasonably be expected to lead to an increase in the level of occupation.

In parts of Manchester which do not have a high concentration of HMO/student housing but where the lack of family housing has threatened the sustainability of the community to the extent that regeneration activity with the specific intention of increasing the amount of family housing has taken place, there will be a presumption against changes of use which would result in the loss of a dwelling which is suitable for a family. Changes to alternative uses, including C4 and HMOs with more than six occupants, will only be acceptable where it can be demonstrated that there is no reasonable demand for the existing use.

The approach above will also be used for change of use to a HMO which is classified as 'sui generis'.

Notwithstanding the policy requirements set out above, all proposals for change of use of existing properties into houses in multiple occupation, and all proposals for conversion of existing properties into flats (which might not necessarily fall within Class C4), would be permitted only where the accommodation to be provided is of a high standard and where it will not materially harm the character of the area, having particular regard to the criteria in policy DM1.

Policy DM1 is a general policy relating to most forms of development within the City the policy states that all development should have regard to the following specific issues, amongst others:-

-Impact on the surrounding areas in terms of the design, scale and appearance of the proposed development. Development should have regard to the character of the surrounding area.

Effects on amenity including privacy, light, noise, vibration, air quality, odours, litter, vermin, birds, road safety and traffic generation. This could also include proposals which would be sensitive to existing environmental conditions, such as noise.

Article 4 Direction

In response to the Governments decision in October 2010 that gave permitted development rights to make the change from a dwelling class C3 to a small House in Multiple Occupation class C4, in October 2011 the Council adopted an Article 4 Direction which had the benefit of removing this permitted change. The Article 4 Direction in conjunction with Core Strategy Policy H11 is seen as a significant step in controlling the spread of small Houses in Multiple Occupation.

National Planning Policy Framework

Paragraphs 203 through 205 address the use of obligations in making planning decisions.

Paragraph 203 states that Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

Paragraph 204 adds that planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

Finally paragraph 205 says that where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.

The implications for the proposed discharge of the Section 106 Obligation are discussed in the following sections.

Issues

Background

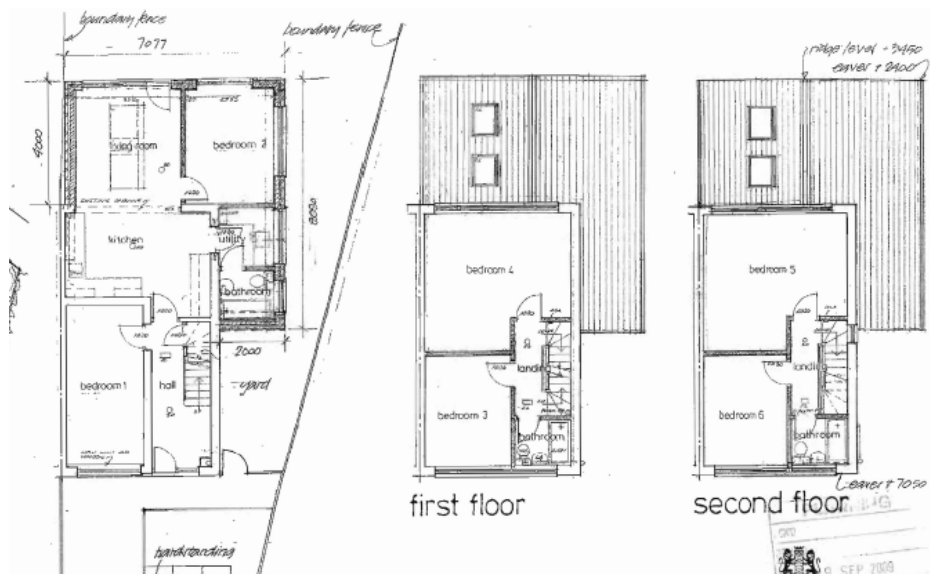
When Members considered the application reference 091212/FH/2009/S1 at their meeting in January 2010 they were presented with a retrospective application for an extension and an enlarged property that contained eight bedrooms.

The local planning authority had previously refused planning permission (089900/FO/2009/S1) for the extension and change of use to an eight bed House in Multiple Occupation. The applicant lodged an appeal against the refusal, which was subsequently withdrawn.

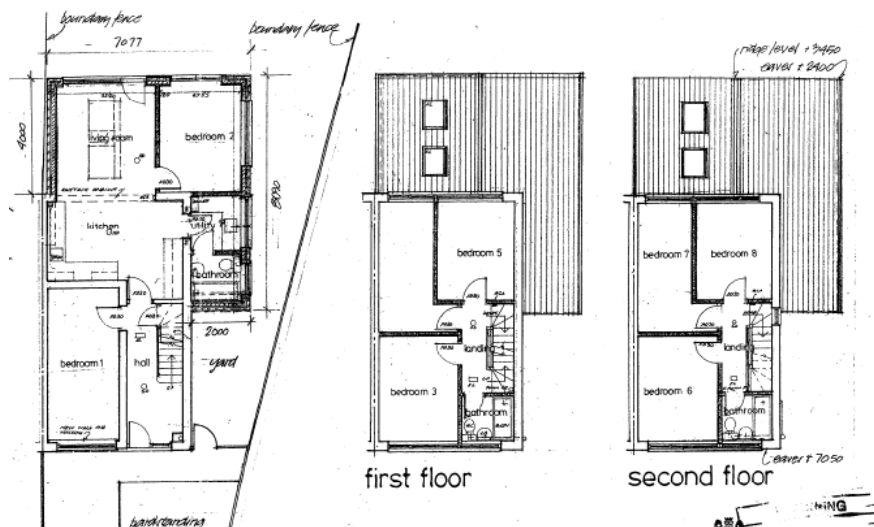
Members were presented with a situation where whilst the extension was in itself acceptable, the use as an eight bed House in Multiple Occupation was not. The applicant was receptive to the concept of a Section 106 agreement to limit the occupancy of the house to 6 unrelated persons, which at that time was a C3 use. Members accepted this approach and the agreement was subsequently signed and planning permission granted.

The approved drawing indicated that the number of bedrooms would be reduced by the removal of two internal walls.

Plans approved under reference 091212/FH/2009/S1



From the supporting statement supplied by the applicant in relation to the current application it would appear that the above layout has not been implemented and internally the property is configured as below with the two ground floor bedrooms not in use.



It is against this backdrop that the Section 106 agreement was seen as being the best means of controlling the number of residents and that it was necessary, relevant to the development and fair and reasonable.

Reappraisal of the Section 106 Agreement against the National Planning Policy Framework (NPPF) Tests

Paragraph 204 of the NPPF says that that planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;

The original application to which the Section 106 relates was retrospective and it would appear that the property has retained the eight original bedrooms rather than the six bedrooms shown on the approved drawings. Whilst it is accepted that the conversion of the property from a small House in Multiple Occupation class C4 to a large House in Multiple Occupation sui generis would be development requiring planning permission, the existence of the obligation ensures that there is no breach of planning legislation. This is of concern as the property could obtain, subject to meeting the relevant criteria, a license to accommodate 8 persons (Planning has already established that an 8 bed house in multiple occupation is unacceptable in this location) as licensing requirements differ to those of planning, there may therefore be a temptation as the rooms exist, to bring them into use irrespective of the need for planning permission. On balance it is considered that the Section 106 Agreement was necessary when the original planning permission was granted and remains so today.

- directly related to the development;

The obligation relates to the property the subject of the application and to its future use. On balance it is considered that the proposed meets this test.

- fairly and reasonably related in scale and kind to the development;

The applicant entered voluntarily into the agreement in order to obtain retrospective planning permission. The eventuality that the obligation seeks to prevent occurring has already been tested as a planning application and since that time the Councils' Unitary Development Plan has been replaced with the Core Strategy which contains more stringent policies in respect of the intensification of the use of Houses in Multiple Occupation and it is therefore unlikely that planning permission would be granted if a new application was to be submitted. On balance it is therefore considered that the Section 106 agreement remains fairly and reasonably related in scale and kind to the development.

Planning Practice Guidance

The applicant points out that Planning Practice Guidance considers that development plans should contain policies in respect of seeking an obligation and that Manchester has no such policy.

Whilst it is correct that there is no specific policy within the Core Strategy, this Guidance would appear to be aimed specifically at obligations that involve a financial contribution. That the obligation the subject of this application has no direct financial implications, indirectly the applicant has not benefitted from an increase in revenue from the property, it is unlikely that any policies in respect of Section 106 agreements would cover this particular eventuality. Further it is considered that there are policies within the Core Strategy that are relevant to the use of the property as an eight bed house in multiple occupation, and these are discussed in the following sections.

Development Plan Policies

In support of the application it is claimed that the proposed development accords with the Council's development plan policies.

Core Strategy Policy SP1

This policy requires developments to contribute to the creation of neighbourhoods of choice. The application site is in an area popular with students due to its close proximity to the Universities, however, the down side to this has been the conversion of large numbers of properties into Houses in Multiple Occupation. As these properties are vacant for large periods they are not considered to be sustainable and have an adverse impact on the various communities in the area in terms of the levels of activity and anti social behaviour. In order to address these issues the Council took the step of applying for and subsequently adopting an Article 4 Direction to remove the permitted change from a dwelling house class C3 to a small house in multiple occupation C4, thus all new Houses in Multiple Occupation now need planning permission.

On balance it is considered that the more intensive use of the property would detract from the creation of neighbourhoods of choice and therefore conflict with Core Strategy policy SP1.

Core Strategy Policy H1

Policy H1 refers to the need for the management of areas where Houses in Multiple Occupation predominate. It is considered that the Section 106 the subject of this application would be part of this process.

Core Strategy Policy H11

In respect of policy H11 the applicant suggests that this is an existing House in Multiple Occupation providing a high standard of accommodation and consequently the discharge of the obligation would not breach the policy. However, policy H11 pertains to concentrations of Houses in Multiple Occupation rather than the standard of the accommodation. This is an area popular with students and consequently it contains a high percentage of Houses in Multiple Occupation. Of the five properties that make up the terrace in which the application site is located, three are licensed Houses in Multiple Occupation. According to Figure 9.6 attached to policy H11 in the Core Strategy in excess of 20% of properties in the area are Houses in Multiple Occupation. Consequently applications that would support an increase in the size of a House in Multiple Occupation would not be supported. Indeed had application 091212/FH/2009/S1 been submitted since the adoption of the Core Strategy it would almost certainly have been considered to conflict with Core Strategy policy H11.

Core Strategy Policy DM1

The applicant has indicated that they consider that the use of the property as an eight bed House in Multiple Occupation would accord with Core Strategy Policy DM1 for the following reasons.

-no extensions are proposed

Whilst no further extensions may be proposed, the original application to which the obligation relates included a substantial extension.

-The property is well maintained and does not detract from the surrounding area. There would be no physical changes to the property if the number of residents increases. This is only the case as the property has already been extended.

-There will be not increase in the impact on the amenity of residents from additional tenants.

It is considered that the additional comings and goings and noise associated with the additional residents would impact on the amenity of the adjoining residents particularly those still in family occupation.

-The two ground floor rooms currently mothballed could be used by people with mobility issues.

Whilst this is true to an extent the existing bathroom on the ground floor is not accessible.

-The increase in the number of residents will not impact on crime or disorder. This statement is unsubstantiated.

-The property has sufficient space for 8 residents and includes space for cycles. It is not disputed that there are potentially eight bedrooms in the property, however, there is no indication as to where cycles could be stored securely.

-The accommodation provided meets current standards. This is a matter for the licensing authority.

-There is adequate space at the side of the property for the storage of refuse. There is space at the side of the property however Houses in Multiple Occupation have the same refuse/recycling provision as a dwelling house and the additional residents would put additional demands upon it.

-There is space for three cars to park in front of the property. Given the close proximity to the facilities and the Universities students do not need cars.

The Councils policies do not distinguish between Houses in Multiple Occupation occupied by students and those occupied by others, and thus whilst the Councils current practice would only require a single space if young professionals moved into the property there could be additional demands for parking. The applicant refers to the availability of three spaces but has not indicated where they are. It would appear that the property has a single in curtilage space and whilst additional spaces may be available on the drive that serves the terrace this would be available on a first come first served basis and additional demand to park there could adversely impact on the amenity of residents.

-There is no impact on biodiversity

-There is no impact on green infrastructure.

-There of no flood or drainage risk.

-There are no existing or proposed hazardous installations.

On balance it is considered that the proposed development would adversely impact on the amenity of local residents and that the use of the property as an eight bed House in Multiple Occupation would conflict with Core Strategy policy DM1

Conclusion

It is considered that the Section 106 agreement the subject of this application was appended to planning permission 091212/FH/2009/S1 for sound planning reasons and that the obligation remains relevant today and meets the three tests set down in Paragraph 204 of the National Planning Policy Framework. Further it is considered that the policies contained in the Core Strategy which is an up to date and relevant development plan support the retention of the obligation

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 the right to a fair hearing and to this end the Committee 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 Head 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 refusal of the application is proportionate to the wider benefits of refusal and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation REFUSE

Article 35 Declaration

The proposal to remove the Section 106 obligation would facilitate and enable a future change to a Sui Generis House in Multiple Occupation which would not improve the social and environmental conditions of the area or comply with the development plan.

Reason for recommendation

1) The discharge of the Section 106 obligation the subject of this application would facilitate the conversion of the property into a large House in Multiple Occupation (Sui Generis) in an area where there is a high concentration of Houses in Multiple Occupation contrary to the provisions of Core Strategy policy H11.

Local Government (Access to Information) Act 1985

The documents referred to in the course of this report are either contained in the file(s) relating to application ref: 112279/S106A/2016/S1 held by planning or are City Council planning policies, the Unitary Development Plan for the City of Manchester, national planning guidance documents, or relevant decisions on other applications or appeals, copies of which are held by the Planning Division.

Notification of the application was by Site Notice.

No representations were received from third parties.

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