

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
23/00739/CPE	Bob Melling	14 th September 2023

Address: 304A-304B Oldham Road, Middleton, M24 2DP

Proposal: Application for a certificate of lawfulness for the existing use of 304 Oldham Road as two self-contained flats.

PUBLICITY	Weekly list expired?	N/A	Site notice expired?	N/A
	Neighbour letters expired?	N/A	Press Notice expired?	N/A

DELEGATION	Significant departure from local plan?	N/A	Contrary to national policy?	N/A
	Applicant a Council Member or officer?	N	Contrary to previous decision?	N
	Major with 10 or more objections and recommending approval?	N	Called in or Planning Panel objection?	N

COMMENTS	Planning Panel comments received?	N
	Neighbour comments received?	N

EIA	Screening opinion completed and saved to Onbase?	N/A
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CONDITIONS	Pre-commencement conditions proposed?	N/A
	Pre-commencement conditions agreed (or notification period expired)?	N/A

RECOMMENDATION	GRANT
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CHECKED AND SIGNED OFF BY: RC

DATE: 14.09.23

SITE

The application relates to no. 304 Oldham Road, a two storey end-terraced property located in Middleton.

PROPOSAL

The application is for a certificate of lawfulness for an existing use of the property as two self-contained flats.

Information submitted with the application states that the use began more than 10 years before the date of the application

The application form states that no. 304 Oldham Road was converted into two one-bedroom, self-contained flats with individual entrances in the 1970s. The applicant has owned the property for 15 years and has rented the flats to various tenants.

RELEVANT PLANNING POLICY

Legislation

Town and Country Planning Act 1990: Section 191 as amended by section 10 of the Planning and Compensation Act 1991.

Town and Country Planning (General Development Procedure) Order (England) 2015

RELEVANT SITE HISTORY

Not applicable.

CONSULTATION RESPONSES

Planning Solicitor

In the case of regularising the use of a house as multiple self-contained flats, the applicant should be able to prove the site's continued, uninterrupted use as flats for a minimum of four years. In the case of an HMO, this extends to 10 years. In this case, the 4 year rule will apply.

On the evidence at hand, if you are satisfied that the council tax shows continuous use for the past 4 years then this can be accepted.

REPRESENTATIONS

Not applicable.

ANALYSIS

The application seeks to demonstrate that there is an existing lawful use of the house as two self-contained flats.

Section 10 of the Planning and Compensation Act 1991 sets out the requirements for a Certificate of lawfulness of existing use or development. The requirements of the act which substituted section 191 of the principal Act (Town and Country Planning Act 1990) are summarised below:

191 Certificate of lawfulness of existing use or development.

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—

(a) section 3(3) of the M1 Caravan Sites and Control of Development Act 1960;

(b) section 5(2) of the M2 Control of Pollution Act 1974; and

(c) section 36(2)(a) of the M3 Environmental Protection Act 1990.

Section 171 of the Town and Country Planning Act 1990 establishes the time limits for enforcement as referenced above:

171B Time limits

(1) 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 four years beginning with the date on which the operations were substantially completed.

(2) 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.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

Submitted Evidence

Information to support the application has been submitted in the form of the following evidence:

- Tenancy agreements for 304A Oldham Road from 2012, 2013, 2018 and 2022
- Tenancy agreements for 304B Oldham Road from 2010 and 2021
- Landlord Accreditation Scheme letters for 304A and 304B Oldham Road dated September 2008

The Council's Council Tax Office has also confirmed that both flats have been used as domestic flats for council tax purposes and charged for council tax since at least 2010.

Assessment of evidence

Evidence in the form of dated letters has been provided to show that the property had two addresses in September 2008. In addition, tenancy agreements provided by the applicant show that the two flats have been rented throughout the past 10 years. However, there are gaps in the timeline and it is unclear when the tenants have left or whether they have rented on continued agreements. Additional information received from the Council's Council Tax Office confirms that both flats have been used as domestic flats for council tax purposes and charged for council tax since at least 2010.

Based on this information it is considered that the Council have sufficient evidence to demonstrate that, on the balance of probabilities, the house has been under continuous use as two self-contained residential flats for a period of four years or more.

In accordance with section 171B of the Town and Country Planning Act 1990, 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.

For the reasons above it is considered that sole use of the property as two self-contained flats is lawful and the lawful development certificate should be issued.

RECOMMENDATION

GRANT

The use of the building as two self-contained flats is considered lawful by virtue of the provisions of Section 171B of the Town and Country Planning Act 1990, where it is reasonably assumed that the building has been used as two self-contained flats in a continuous period in excess of 4 years.

Notes for Applicant:

For the avoidance of doubt, this decision relates to the following list of plans:

- Location Plan
- Block Plan

