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EP ref: 21-338

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Dear Sir or Madam

Re: Planning Portal reference: PP-10021090
Certificate of Lawfulness of Proposed Use or Development 459 Altrincham
Road, Wythenshawe, Manchester, M23 1AA

This letter has been prepared to accompany an application for a Certificate of Lawfulness of Proposed Development (CLOPUD) submitted under Section 192 of the Town and Country Planning Act 1990.

Submitted with this application are:

- Application form and certificates
- Location Plan
- Proposed Site Plan

This application seeks confirmation that the creation of a new access off Spinney Road in connection with a part new, part replacement area of hardstanding at 459 Altrincham Road (referred to herein as the property) would be lawful if constructed and would not require express planning permission.

It will be demonstrated that the proposals would constitute permitted development under Schedule 2, Part 1, Class F hard surfaces incidental to the enjoyment of a dwellinghouse and Part 2, Minor Operations, Class B of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

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As such, in accordance with Section 192 of the Town and Country Planning Act 1990 a positive Certificate of Lawful Proposed Development should be granted.

The site is free from the restrictions / designations referred to in schedule 1 of the GPDO.

We have been unable to find any evidence that permitted development rights are restricted by any planning condition on the property, or by any Article 4 Direction.

Legislative context – Town and Country Planning Act 1990

Section 192 refers to Certificates of Lawfulness of Proposed Use or Development. Sub-section (1) states:

"If any person wishes to ascertain whether –

- any proposed use of building or other land; or*
- any operations proposed to be carried out in, on, over or under land, would be lawful,*

he may make an application for the purpose to the local planning authority specifying the land and describing the use or operation in question."

Section 192 (2) states:

"If, on an application under this section, the local planning authority are provided 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".

National Planning Policy Guidance

The NPPG states that:

"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process. In determining an application for a prospective development under section 192 a local planning authority needs to ask, "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

Paragraph: 009 Reference ID: 17c-009-20140306

Revision date: 06 03 2014"

The Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 (as amended)

Schedule 2 to the GPDO sets out classes of development that benefit from deemed planning permission, subject to the conditions and limitations set out in the Order. Part 2 of Schedule 2 refers to minor operations including the ability to construct a means of access to a highway.

Class B of Part 2 allows *“the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part)”*.

The development proposes the formation, laying out and construction of a means of access onto Spinney Road as shown on the accompanying plan. Spinney Road is not a trunk road or classified road.

The development proposed is in connection with creation of part new, part replacement hardstanding at the property as indicated on the accompanying plan.

Class F of Part 1 allows *“hard surfaces incidental to the enjoyment of a dwellinghouse”* with development consisting of:

- (a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or*
- (b) the replacement in whole or in part of such a surface*

Class F.1 sets out the limitations of permitted development. In accordance with these we can confirm the following:

- (a) permission to use the dwellinghouse as a dwellinghouse has not been granted only by virtue of Class M, MA, N, P, PA, or Q of Part 3 of this Schedule (changes of use);*
- (b) the dwelling house is not built under Part 20 of this Schedule (construction of new dwellinghouses)*

Conditions:

The conditional requirements of paragraph F.2 are addressed below:

F.2 (a) the hard surface will be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway, and

F.2 (b) the area of ground covered by the hard surface, and the area of hard surface replaced will exceed 5 square metres,

Therefore the hard surface will be made of porous material.

Summary and Conclusions:

This application seeks a positive Certificate of Lawful Proposed Development for the creation of a new access of Spinney Road in connection with a part new, part replacement area of hardstanding at the existing dwellinghouse known as 459 Altrincham Road, Wythenshawe, Manchester.

We have been unable to find any evidence that permitted development rights are restricted for any reason on the property.

It has been demonstrated that the new access and part new, part replacement area of hardstanding would constitute permitted development under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 1, Class F and Part 2, Class B.

The NPPG advises that the determination of a Certificate application should be made solely on the facts and relevant planning law. It also advises that planning merits are not relevant at any stage of the application process. The development would clearly be lawful.

As such, in accordance with Section 192 of the Town and Country Planning Act 1990, a positive Certificate of Lawfulness of Proposed Use or Development should be granted.

Yours sincerely
Emery Planning

Aaron Marrs

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Consultant**