

Planning

Growth & Development

Delegated officer report for planning application

Application no. 128006/FO/2020

Date registered valid: 18 September 2020

Proposal: Retrospective application for the retention of a canopy with associated brick pillars to the side of the property

Address: 1 Meldon Road, Manchester, M13 0TZ

Ward(s): Rusholme Ward

Applicant: The Company Secretary Aspington Ltd 651A Mauldeth Road West , Manchester , M21 7SA

Agent (if any): Mr Nick Howard, 29 Riverside Avenue, M44 6DR

Case officer: Dave Morris
Tel: 0161 600 7924
Email: dave.morris@manchester.gov.uk

Recommendation: Decline to Determine

Date of recommendation: 3 November 2020

Application details

Type of application: Full Application Consent

Development type: Minor Other

Standard consultations:

Printed: 24 September 2020

Expired: 15 October 2020

Neighbour notifications

Printed: 24 September 2020

Expired: 15 October 2020

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

This application relates to a two storey semi-detached property at the junction of Meldon Road and Birchfields Road. The property comprises a vacant commercial ground floor with residential above. The property has been extensively extended to the rear and there is an external stair on the rear elevation giving access to the living accommodation above, the stair is accessed from Birchfields Road. There remains a small yard at the rear and an open forecourt to Meldon Road which has been used for parking. There was also a forecourt fronting Birchfields Road which is occupied by an unauthorised single storey extension and the canopy the subject of this application. There is a low wall separating the Birch fields Road forecourt from the public footpath.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The application property is part of a small local centre containing 12 Units, based on either side of Meldon Road between Birchfields Road and Copthorne Crescent otherwise the area is predominantly residential in character. The adjoining property on Meldon Road is a similar commercial unit with what appears to be residential above. There is also a commercial unit facing the site across Meldon Road. To the rear of the property is the side elevation and front garden of a residential property fronting Birchfields Road, whilst across Birchfields Road are the front elevations of residential properties. There is a single street tree alongside the site on Birchfields Road.

Description of development

Consent is sought to retain the existing canopy attached to the side of the single storey extension at the side of the property. The canopy has a flat roof that is contiguous with the flat roof of the single storey side extension and is supported by five columns. The canopy extends the full depth of the original building and its outrigger. The canopy has a render finish and artificial plants have been added to some of the columns. There remains a narrow path between the canopy and the boundary wall to Birchfields Road. The submitted plans show a bin store in the rear yard and parking on the Meldon Road forecourt.

Planning History

In addition to this current application there have been five other applications for planning permission. These are:-

033368, Two storey rear extension to form kitchen and bedroom, approved March 1989.

087870/FO/2008/N2, Erection of two storey rear extension to existing outrigger, new staircase to the first floor rear extension and access ramps to doorways to front and side elevations in connection with use existing ground floor shop as office (Class A2) and first floor living accommodation, approved December 2008.

117552/FO/2017, Part retrospective application for erection of single-storey side extension to create 2no. office units and 1 no. shop unit (Class A1/2), withdrawn November 2017.

118825/FO/2018, Erection of a single storey side extension to provide additional retail and ancillary office floorspace, class A1, approved June 2018.

123187/FO/2019, Erection of single storey side extension to provide additional retail space (Class A1) with associated ancillary office floorspace, refused June 2019.

Enforcement Action

On 29 May 2019 the Council served an Enforcement Notice requiring the demolition of the unauthorised single storey side extension or its modification to comply with the side extension approved under reference 118825/FO/2018.

The applicant appealed against the notice under grounds (a) and (g). However, because the notice was issued before Planning Permission was refused for the development (123187/FO/2019), their ground (a) appeal was barred. The remaining ground (g) appeal was subsequently withdrawn after the Council agreed to extend the compliance period. The appeal was lodged on 29 June 2019 and withdrawn on 19 August 2019. By the time the Inspectorate had come to validate the enforcement appeal, the deadline to appeal the refusal of planning permission had expired (28 days right of appeal when an EN has already been issued).

The notice has not been complied with.

Consultations & Notification Responses

Local residents

One document has been received in support of the development. The following points being made.

- before the extension was built people used to park in the space which involved driving over the footpath which gave rise to safety issues.
- Youth gathered in the area resulting in anti social behaviour issues.

- It is understood the area will be landscaped which will soften its impact.
- The structure does not interfere with the outlook from the writers property.
- The structure block light from the retail unit.

Environmental Health

No comment in respect of the development.

Policy

Core Strategy

The relevant Core Strategy policy is DM1 which says:-

All development should have regard to the following specific issues amongst others, for which more detailed guidance may be given within a supplementary planning document:-

- Appropriate siting, layout, scale, form, massing, materials and detail.
- 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.
- Community safety and crime prevention.
- Refuse storage and collection.
- Vehicular access and car parking.
- Green Infrastructure including open space, both public and private.

NPPF

Paragraph 2 states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

Paragraph 7 tells us that the objective of the planning system is to achieve sustainable development.

Paragraph 11 Plans and decisions should apply a presumption in favour of sustainable Development and that for decision making this means approving development proposals that accord with an up to date development plan without delay.

Issues

Consideration of Planning Application 128006/FO/2020 with regards to Section 70C of the Town and Country Planning Act 1990

Legislation

Section 70C(1) of the Town and Country Planning Act 1990 states that a local planning authority may decline to determine an application if granting planning permission for the development *"would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control."*

Does Section 70 C apply

In this instance on 29 May 2019 the Council issued an enforcement notice in relation to the following specified breach of planning control, namely "Without planning permission, the erection of a single storey side extension". The notice came into effect on 30 June 2019, and required the following steps to be taken.

"Remove the single storey side extension, outlined in blue in the attached photograph ENF/01, and reinstate the side elevation and land to its condition before the breach took place, as shown in the attached photograph ENF/02.

Or;

Construct a single storey side extension in full accordance with planning permission 118825/FO/2018 and as shown in the attached drawing no. 18-585 (02)001 PL1 - EXISTING & PROPOSED GA ELEVATIONS"

The applicant claims that the current single storey side extension is that approved under reference 118825/FO/2018, and that this application is solely for the retention of the canopy attached to the extension. The approved extension projected approximately 2.5 metres from the side of the property and was approximately 3 metres high and included a parapet detail. The extension as built according to the submitted drawings projects approximately 2.8 metres and is 2.4 metres high and has a shallow mono pitch roof without the parapet. The side elevation on the approved scheme contained two large display windows and two smaller windows. As built there are two large display windows, one smaller window and one window that sits in between in terms of size. It is therefore considered that the single storey extension to which the canopy is attached is not the same as the extension approved under reference 118825/FO/2018 as claimed by the applicant and is therefore unauthorised.

The overall dimensions of the existing single storey side extension and the canopy are the same as for the single storey side extension refused permission under reference 123187/FO/2019. That this is the same basic structure as that refused planning permission and the subject of the Enforcement Notice is reinforced by the contiguous nature of the pitch of the roof which covers both the extension and the canopy in a single span. It would appear that the applicant to create the new side extension and canopy has constructed a new side wall fronting Birchfields Road and removed the original windows to that elevation, in all other respects the canopy is part of the structure that was the subject of the Enforcement Notice.

As this application *"would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control."* The use of Section 70C of the Act is available to the Council.

Should Section 70C be used?

The Council has a discretion as to whether or not to use the power in Section 70C. The following matters appear relevant to the exercise of that discretion

The aim of Section 70C is to prevent a developer from having *'two bites of the cherry'* in respect of unauthorised development. The applicant here has had a determination of the planning merits of an extension of the scale of the structure the subject of this application, when application reference 123187/FO/2019 was refused consent. The application was refused and the applicant despite professional representation ran out of time to appeal the refusal. The applicant appealed against the enforcement notice under grounds (a) and (g). However, as the notice was issued before planning permission was refused for the development (123187/FO/2019), their ground (a) appeal was barred. The remaining ground (g) appeal was subsequently withdrawn after we agreed to extend the compliance period. The appeal was lodged on 29 June 2019 and withdrawn on 19 August 2019. By the time the Inspectorate validated the appeal, the deadline to appeal the refusal of planning permission had expired (28 days right of appeal when an enforcement notice has already been issued).

Despite having professional representation the applicant failed to appeal either the refusal of planning permission or the enforcement action. The courts have said that there is a 'legislative steer' in favour of using the powers in Section 70C when it is engaged, and that applies here.

The Council has been extremely reasonable by extending the compliance period for the Enforcement Notice on two occasions. This application is another attempt to play for time. The original date for compliance was 30 October 2019. By 31 July, the applicant had had an additional nine months beyond the original compliance date (13 months in total to comply with the notice). At that point they also had 11 1/2 months to comply since the Council first varied the notice in August 2019.

Whilst the current application seeks only the approval of the canopy this is clearly part of the original structure of the extension the subject of planning application reference 123187/FO/2019 and Enforcement Notice reference ENF/13737/17. The original refusal related to the impact of the scale and massing of the extension and that this remains unchanged and there has been no change to the planning policy framework. The enforcement notice has not been complied with, together with the modest nature of the changes carried out, suggests that this attempt at a planning application is yet a further play for time. This is supportive of the use of Section 70C, which was introduced to prevent the making of such tactical applications.

Conclusion

As the Council have already deemed a development of the scale proposed to be unacceptable and have taken formal action to require the removal of the unauthorised development, any approval of the matters presently before the Council will be in direct contradiction to those decisions previously made. Therefore, pursuant to Section 70C of the Town and Country Planning Act 1990, the Council as Local Planning Authority, hereby declines to determine the application and the appropriate entry will be made in the planning register to reflect this decision.

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: Decline to Determine

Article 35 Declaration

Reasons for recommendation

1) On 29 May 2019 the Council issued an enforcement notice reference ENF/13737/17 in relation to the following specified breach of planning control:

Without planning permission, the erection of a single storey side extension

The notice came into effect on 30 June 2019, and required the following steps to be taken.

Remove the single storey side extension, outlined in blue in the attached photograph ENF/01, and reinstate the side elevation and land to its condition before the breach took place, as shown in the attached photograph ENF/02.

Or;

Construct a single storey side extension in full accordance with planning permission 118825/FO/2018 and as shown in the attached drawing no. 18-585 (02)001 PL1 - EXISTING & PROPOSED GA ELEVATIONS

Under Section 70C of the Town and Country Planning Act 1990, a Local Planning Authority may decline to determine an application for planning permission, if granting that permission would involve granting, wholly or partly a permission for any matters specified in a pre-existing enforcement notice. A notice is "pre-existing" if it had been issued before the receipt of the planning application being determined as specified by Section 70C(2).

In the opinion of the Local Planning Authority, the proposal of this planning application (ref:128006/FO/2020) as set out in the documents and associated plans, relates to matters pertaining to a "pre-existing" enforcement notice, i.e. one issued prior to the receipt of the application on 15 September 2020 and are matters for which planning permission is deemed to be required.

As the Council have already deemed the development to be unacceptable and have taken formal action, any approval of the matters presently before me will be in direct contradiction to those decisions previously made. Therefore, pursuant to Section 70C of the Town and Country Planning Act 1990, the Council as Local Planning Authority, hereby declines to determine the application and the appropriate entry will be made in the planning register to reflect this decision.

Appendix 1 – List of consultees & neighbours notified

Environmental Health

4 Birchfields Road, Manchester, M13 0XR
10 Birchfields Road, Manchester, M13 0XR
3 Meldon Road, Manchester, M13 0TZ
77 Birchfields Road, Manchester, M13 0XX
12 Birchfields Road, Manchester, M13 0XR
1A Meldon Road, Manchester, M13 0TZ
2 Meldon Road, Manchester, M13 0TZ
2A Meldon Road, Manchester, M13 0TZ
4 Meldon Road, Manchester, M13 0TZ
8 Birchfields Road, Manchester, M13 0XR
6 Birchfields Road, Manchester, M13 0XR

Appendix 2 – Planning constraints

Article 4 Direction - Removal of PD Rights Change of Use from Class C3 to Class C4
Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: SOUTH