MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	142687/LP/2025
Date registered valid:	20 May 2025
Proposal:	Proposed single storey outbuilding to the end of the rear garden follow demolition of the existing garage to provide additional living space to the dwelling
Address:	58 Wyverne Road, Manchester, M21 0ZN
Ward(s):	Chorlton Park Ward
Applicant:	Hamed Siddiqi
Agent (if any):	Mr Hatami Orya Architectural Studios
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Refuse

Date of recommendation: 8 July 2025

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: Not Required

Standard consultations:
No consultations have been printed and sent.

Neighbour notifications
No neighbour notifications have been printed and sent.

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

The site/building relates to a two-storey semi-detached property in the Chorlton Park ward area of Manchester. The property has been extended as per approved planning application 139902/FH/2024 with a part single and part two storey side and rear extension and extension of existing front porch.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

Residential in nature.

Description of development

The applicant is seeking a certificate of proposed lawful development for an outbuilding in the rear garden.

Consultations & Notification Responses

None Required - There is no statutory requirement to consult third parties including neighbours; views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

Legislative Issues

Sections 191 and 192 of the Town and Country Planning Act 1990 provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

(2) in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

The onus of proof in regard to (1) is firmly on the applicant and the issue of a certificate will depend on the on factual evidence provided about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The relevant test of the evidence in this matter is “the balance of probability” and the applicants own evidence does not need to be corroborated by independent evidence. If the LPA have no evidence to contradict the applicants version of events or make them less then probable, there is no good reason to refuse the issue of a certificate.

In regard to (2), this provides that, if the LPA are supplied 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.

In short, the purpose section 192 is to enable any person who wishes to find out whether any proposed use or operations would be lawful to apply to the LPA for that purpose

The application needs to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission that are to be relied upon in order to satisfy the LPA that a certificate should be granted for the proposal.

In making their decision on an application under section 192, the LPA ask themselves the hypothetical question - *"If this proposed change of use had already occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"* In doing so, the LPA will not only consider whether the proposal would involve "development" requiring an application for planning permission, but whether it would involve a breach of any existing condition or limitation imposed on a grant of planning permission which has been acted upon, and which therefore constrains what can be done on the land. The LPA will not make a proposal fit a scenario; the only question is whether the proposal made by the applicant is lawful at the time of submission.

The Application

This application is pursued under subsection (1) of section 192, which provides for an application to determine whether any proposed use or operations would be lawful for planning purposes.

The applicant is seeking a certificate of proposed lawful development for an outbuilding in the rear garden.

Part 1, Schedule 2, Class E of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) is the relevant when considering proposals for buildings etc incidental to the enjoyment of a dwellinghouse.

Class E grants permission for:

The provision within the curtilage of the dwellinghouse of—

> (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure

Where the proposed new building it to be used *"…for a purpose incidental to the enjoyment of the dwellinghouse…"* it is required to comply with the limitations of Class E; sub-paragraphs (a) through to (k) make it clear where such development would not be permitted. For the purposes of the Order, a building is defined as including any structure or erection and includes any part of the building.

The proposed outbuilding as shown on drawings referenced 0160-PA-102 Revision A would appear to satisfy the requirements of sub paragraphs (a) through to (k) of Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Notwithstanding these findings the attention of this assessment now turns to whether the use of the proposed outbuilding is intended to and would remain incidental and subordinate to the main use of the dwellinghouse, and secondly, whether it is "reasonably required" in order to accommodate those uses.

The Government produced guidance "Permitted Development rights for householders Technical Guidance (September 2019)" advises that the term "incidental" does not "…*cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen*."

Relevant case law has established that in Class E, "required" should be interpreted as "reasonably required" rather than the "unrestrained whim" of the occupier.

The size of an outbuilding, in comparison to the dwellinghouse, may be an important consideration but it is not conclusive by itself. However, the physical size of buildings could be a relevant consideration in that they might represent some indicia as to the nature and scale of the activities to be carried on in the proposed building.

In this case, the outbuilding would have a floorspace of just over 32 square metres (measured externally), which would be half that of the ground floor of the original dwellinghouse including the attached garage.

The floor plan shown on drawing referenced 0160-PA-102 Revision A "Proposed Flood Plans and Elevations" indicates the creation of a "Secondary Living Room". The existing and proposed site plan, which confusingly share the same drawing number clearly show that the property has been extended in accordance with planning permission 139902/FH/2024. Although the submitted site plan drawings are not annotated to reflect this, a comparison with the approved plans under 139902/FH/2024 confirms that the extension resulted in the creation of a large, open-plan kitchen and living area for the occupiers at the rear.

The terms ‘ancillary’ and ‘incidental’ are often used interchangeably, but they are distinctly different. An incidental use is functionally related to the primary use; by definition, an incidental use cannot be integral to or part and parcel of the primary use. An ancillary building, on the other hand, is typically used as an extension of the primary use; for example, an outbuilding within the same planning unit as the dwellinghouse used for the provision of additional living space.

While it is not necessary for the applicants to demonstrate a requirement for the outbuilding, it must be shown to be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such. In this case, it is not clear why the proposed outbuilding with a “secondary living room” is reasonably required, as the guidance clearly states that this is part of primary living accommodation.

Conclusion

Therefore, the application not only fails to comply with sub paragraphs E.1(e)(i) and E.1(f), it has also failed to demonstrate that, on the balance of probability, all the proposed uses are uses which are reasonably required, in particular on the scale proposed, for a purpose or purposes incidental to the enjoyment of the dwellinghouse as such and, accordingly, the certificate should be refused.

Other Legislative Requirements
Equality Act 2010

Section 149 (Public Sector Equality Duty) of the Equality Act 2010 requires due regard to the need to: Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act and; Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. The Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment. Compliance with the Equality Duty involves consciously thinking about the aims of the Equality Duty as part of the process of decision-making.

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 polices 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: Refuse

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

1) On the evidence accompanying the application, it has not been shown that, on the balance of probabilities, the outbuilding is genuinely and reasonably required for purposes incidental to the enjoyment of the dwellinghouse. Accordingly, it would not be permitted development falling within Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Appendix 1 – List of consultees & neighbours notified

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Area Team Boundary - Name: SOUTH AREA