MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	143078/LP/2025
Date registered valid:	30 May 2025
Proposal:	Anthracite shiplap cladding to existing dormer to be removed and replaced by slate grey Bitmet Tiles.
Address:	206 Moseley Road, Manchester, M14 6PB
Ward(s):	Fallowfield Ward
Applicant:	A Kelso
Agent (if any):	Stephen Lamb Steve Lamb
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Refused
Date of recommendation:	18 July 2025

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit:

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 application site relates to a two storey mid-terraced property which has been painted red and has slate roof tiles. The property has no front garden and a small rear yard.

Currently in use as a House in Multiple Occupation (use class C4).

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The site is located roughly between Fallowfield District Centre and Levenshulme District Centre and comprises mostly residential, University of Manchester's sport facilities and a small retail park on Birchfield Road.

Description of development

The applicant is seeking a certificate of lawfulness of proposed use or development (CLOPUD) to remove Anthracite shiplap cladding to existing dormer and be replaced by slate grey Bitmet Tiles.

Consultations & Notification Responses

No Consultation Required - There is no statutory requirement to consult third parties, including neighbours. Any views expressed by third parties regarding the planning merits of the case or concerning the applicant's private rights to carry out the proposed operation, use, or activity, 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 lawfulness of proposed use or development (CLOPUD) to remove Anthracite shiplap cladding to existing dormer and be replaced by slate grey Bitmet Tiles.

For context there have been two previous applications, and an appeal related to this address. A CLOPUD was submitted under planning reference 136834/LP/2023 for Part A - Enlargement of dwellinghouse with a rear dormer roof extension; Part B - Installation of a soil and vent pipe; and Part C- Erection of a single storey rear extension, the application received a split decision with parts B and C approved and part a refused.

The decision was appealed and dismissed by the Secretary by the Secretary of State under appeal reference: APP/B4215/X/23/33327825.

A second application for a certificate of lawfulness of existing use or development (CLEUD) for Part A - Single-storey rear extension and Part B - the installation of a rear dormer under planning reference 141811/LE/2024. This application also received a split decision with part A approved and part B refused.

This application concerns the same dormer as in previous submissions. As the most recent application for a CLEUD was not appealed, a reasonable conclusion can therefore be drawn that the applicant accepts the dormer is unauthorised and requires planning permission. This is particularly relevant given that the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO) does not grant retrospective planning permission.

To illustrate this principle, consider the example of a fence erected adjacent to a highway. Such a structure is only considered permitted development if, at the time of its construction, it complied with the height restrictions set out in Paragraph A.1 of Part 2, Schedule 2 of the GPDO. If the fence exceeded those limits when it was built, it would not benefit from permitted development rights, even if it is later altered.

This position is supported by case law, notably ***Garland v Minister for Housing and Local Government [1968]***, where the Court of Appeal held that if a development exceeds any of the limitations, conditions, exceptions, or provisos set out in the relevant legislation, it is unlawful in its entirety and cannot benefit from permitted development rights.

Accordingly, a certificate cannot be issued to change the external materials as proposed, as the dormer was not built in full compliance with the conditions and limitations of the GPDO and therefore remains unauthorised. The application should therefore 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

The existing dormer as shown in drawings number 1 – 8, is unauthorised as it was not built in full compliance with the conditions and limitations of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) when it was erected or constructed, specifically Part 1, Schedule 2, Class B.

The Town and Country (General Permitted Development) (England) Order 2015 (as amended) does not grant retrospective planning permission, therefore the proposed replacement materials could not be undertaken lawfully, as planning permission is required for the entirety of the development.

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
Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Moseley Road/Ladybarn Lane)
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Middle) -
Susceptible to Surf Water Flood (Middle) -
Area Team Boundary - Name: SOUTH AREA