

Planning

Growth & Development

Delegated officer report for planning application

Application no. 142226/LP/2025
Date registered valid: 28 February 2025
Proposal: Erection of a single storey rear extension.
Address: 165A Burton Road, Manchester, M20 2LN
Ward(s): Didsbury West Ward

Applicant: Mr M Kowalski-Hicks
Agent (if any): Mr Paul Dean Studio Ark (Architect)
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 22 April 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 and area

165A Burton Road relates to a two-storey mid terraced building comprising of a ground floor bakery shop/café (Use Class E) with the first floor in residential use (identified as 165C Burton Road) (Use Class C3).

The applicant is seeking to extend the property with a ground floor extension that will infill of the remains of what was once a rear yard.

The application site is located within the West Didsbury ward of Manchester and within the Albert Park Conservation Area. Approximately four miles south of Manchester city centre, this area is primarily residential but also includes a district shopping centre on Burton Road, a smaller group of shops on Barlow Moor Road, schools, public houses, and several churches.

Listed building: Not applicable

Conservation area: Albert Park Conservation Area 1988

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a certificate of proposed lawful development for a single storey rear extension.

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 than 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 a single storey rear extension.

Planning History

There have been four previous planning applications at this property:

1. **Planning Application Reference: F10344:**
 - **Approved:** 16.05.1979
 - **Description:** Installation of a fire escape at the rear of the bakery and shop.
 2. **Planning Application Reference: F10458:**
 - **Approved:** 16.05.1979
 - **Description:** Erection of a single-storey extension at the rear of the existing baker's shop.
 3. **Planning Application Reference: F08326:**
 - **Withdrawn:** 24.04.1979
 - **Description:** Proposed erection of a two-storey extension at the rear of the bakery to form a staff changing room.
 4. **Planning Application Reference: 035874:**
 - **Approved:** 06.03.1990
 - **Description:** Erection of a fixed canopy to the shop
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Rear Extension Assessment

The proposed side extension will be considered under Schedule 2, Part 7, Class A of the Town and Country (General Permitted Development) Order 2015 (as amended), which is the relevant legislation for determining the extension or alteration of a commercial, business or service establishment (Class E).

Paragraph	Complies	Development not permitted by Class A if:
A.1(a)	Yes	The gross floor space of the original building would be exceeded by more than: (i) 25% or 50 square metres (whichever is the lesser) for article 2(3) land or a site of special scientific interest; (ii) 50% or 100 square metres (whichever is the lesser) in any other case.
A.1(b)	No – Fails to comply with A.1(b)	The height of the building as extended would exceed 4 metres.
A.1(c)	No – fails to comply with A.1(c) (i)(aa), (i)bb) and (ii)	Any part of the development (other than an alteration): (i) is on land which: (aa) adjoins other premises used for residential purposes or institutions; (bb) is article 2(3) land;

Paragraph	Complies	Development not permitted by Class A if:
		(cc) is a site of special scientific interest; (ii) is within 2 metres of any boundary of the curtilage of the premises.
A.1(d)	Yes	The development would be within the curtilage of a listed building.
A.1(e)	No, fails to comply with A.1(e)	Any alteration would be on article 2(3) land.
A.1(f)	Yes	The development would consist of or include the construction or provision of a verandah, balcony, or raised platform.
A.1(g)	Yes	Any part of the development would extend beyond an existing shop front.
A.1(h)	Yes	The development would involve the insertion or creation of a new shop front or the alteration or replacement of an existing shop front.
A.1(i)	Yes	The development would involve the installation or replacement of a security grill or shutter on a shop front.

Conditions

A.2 Development is permitted by Class A subject to the following conditions—

(a) any alteration is at ground floor level only; **Compliance Status:** [**Complies**/~~Does Not Comply~~]

(b) any extension is, in the case of article 2(3) land, constructed using materials which have a similar external appearance to those used for the building being extended; and

Compliance Status: [~~Complies~~/**Does Not Comply**]

(c) any extension or alteration is only to be used as part of, or for a purpose incidental to, the use of the commercial, business or service establishment.

Compliance Status: [**Complies**/~~Does Not Comply~~]

Detailed Assessment

The proposal fails to comply with paragraphs A.1(b), A.1(c)(i)(aa), A.1(c)(i)(bb), A.1(c)(ii), A.1(e) and condition A.2 (b). Below is a detailed assessment and explanation for each subparagraph:

A.1(b) - Development not permitted by Class A if:

The height of the building as extended would exceed 4 metres.

The proposed extension includes railings or a balustrade at the top identified as a new fire escape handrail. When measured in total, the height of the building is 4.595 meters, as shown in Image 1 below.

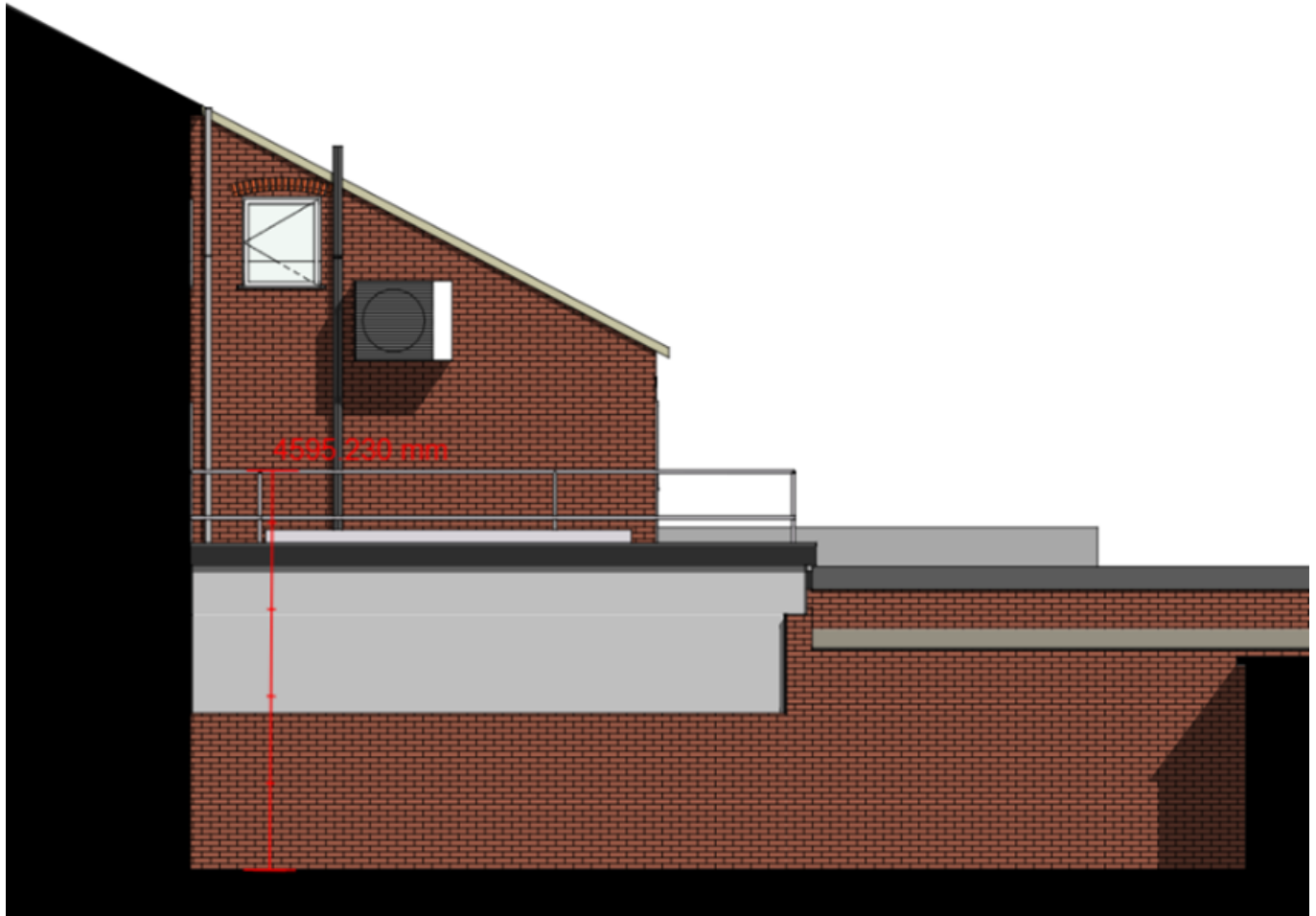


Image 1 Height of proposed extension, taken from West Elevation (Proposed) drawing number 24-MKH-TOBD-SD-011

A.1(c) - Development not permitted by Class A if:

Any part of the development (other than an alteration):

- (i) is on land which:
 - (aa) adjoins other premises used for residential purposes or institutions;
 - (bb) is article 2(3) land;
- (ii) is within 2 metres of any boundary of the curtilage of the premises.

A.1(c) (i) (aa)

165A Burton Road is a two-storey mid-terraced building with a ground floor bakery shop/café and a first floor in residential use (identified as 165C Burton Road). The neighbouring terrace at 163 Burton Road also has commercial units on the ground floor with residential units above.

Paragraph A1(c)(i)(aa) clearly restricts development if it is on land adjoining premises used for any purpose within the classes in Part C of the Schedule to the Use Class Order. Since 163 Burton Road (Flats 1, 2, and 3) all fall within class C3, the proposal fails to comply with A1(c)(i)(aa).

A.1(c) (i) (bb)

Schedule 1, Part 1, Article 2(3) 1 (a) as land within an area designated as a conservation area under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (designation of conservation areas). The application site is located within the curtilage of Albert Park Conservation Area and therefore would fail to comply with paragraph A.1(c) (i) (bb).

A1 (c) (ii)

Paragraph A1 (c) (ii) of GPDO is also relevant, which restricts any part of the development which is within 2 metres of any boundary of the curtilage of the premises. It is clear from the submitted drawings that the rear extension, would if approved be built along the boundary with 167 Burton Road, this would mean that the proposal also fails to meet the limitation at paragraph A1(c) (ii) of GPDO.

A.1(e) - Development not permitted by Class A if:

Any alteration would be on article 2(3) land.

As described earlier in the report, the property is located within a designated conservation area, the proposal includes alterations such as removed a window to create door opening into the proposed extension and the insertion of 4 lift panels that can be removed to provide access to the cellar steps when required. An existing door will also be closed off and an enclosure will be created to hide the rainwater and soil pipes.

Condition A.2 (b) - Development is permitted by Class A subject to the following conditions—

(b) any extension is, in the case of article 2(3) land, constructed using materials which have a similar external appearance to those used for the building being extended.

A.2 (b) requires that any extension is, in the case of article 2(3) land, constructed using materials which have a similar external appearance to those used for the building being extended. In this case no materials have been specified on the drawings and the external elevations reveal what appears to be a grey wall and this distinct different to the red brick. The proposal therefore fails to comply with condition A.2(b).

Conclusion

As demonstrated above, the single-storey rear extension does not meet the requirements under Schedule 2, Part 7, Class A of the Town and Country (General Permitted Development) Order 2015 (as amended), specifically paragraphs A.1(b), A.1(c)(i)(aa), A.1(c)(i)(bb), A.1(c)(ii) and condition A.2 (b). Therefore, the certificate should be refused based on this assessment.

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 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: Refuse

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

The proposed single-storey rear extension as shown on drawings 24-MKH-TOBD-SD-005, 006, 007 and 011, does not constitute permitted development and is not in accordance with Schedule 2, Part 7, Class A of the Town and Country (General Permitted Development) Order 2015 (as amended), specifically paragraphs A.1(b), A.1(c)(i)(aa), A.1(c)(i)(bb), A.1(c)(ii), A.1(e) and condition A.2 (b).

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

Conservation Area - Albert Park Conservation Area 1988

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Less) -

Area Team Boundary - Name: SOUTH AREA