

Planning

Growth & Development

Delegated officer report for planning application

Application no. 141904/LP/2025
Date registered valid: 15 January 2025
Proposal: Enlargement of dwellinghouse comprising of the erection of a single storey rear and side extension and rear dormer
Address: 7 Bankfield Avenue, Manchester, M13 0YQ
Ward(s): Rusholme Ward

Applicant: Mr Mohammed Solaiman
Agent (if any): Mr John Albutt PZvi Architects & Designers Ltd.
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 6 March 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 application site relates to mid terraced two storey brick built dwellinghouse with blue slate roofs. The property is located at the back of the pavement and therefore has no front garden and a small rear yard typical of the property type in the area.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

Located within the Victoria Park area located between Rusholme and Longsight the area is characterised by rows of terraced properties organised in an iron grid street.

Description of development

The applicant is seeking a certificate of proposed lawful development for a single storey rear and side extension and rear dormer

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.

Issues

Planning History - There have been two planning applications at this address;

Application Reference: 137082/LP/2023

Proposal: Enlargement of dwellinghouse with rear dormer.

Decision: Refused 15.01.2024

Application Reference: 137240/PDE/2023

Proposal: Prior notification of proposed larger home extension projecting 3.2m to the rear, with a maximum height of 2.9m and a height at eaves of 2.65m

Decision: Turned Away (Legislative)

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 a single storey rear and side extension and rear dormer

Each part of the proposal will be evaluated in accordance with the relevant sections of the Town and Country (General Permitted Development) Order 2015 (as amended) and discussed below.

Single Storey Side and Rear Extension

The proposed single storey side and rear extension will be considered under Class A of the Town and Country (General Permitted Development) Order 2015 (as amended) - the relevant legislation when determining the enlargement, improvement or other alterations to dwellinghouses.

Under Class A for *"the enlargement, improvement or other alterations of a dwellinghouse"* the status of the original house needs to be taken into account, as this state the base from which all measurements should be taken. Under the Order, the term "original" means:

in relation to a building existing on 1st July 1948, as existing on that date and, in relation to a building built on or after 1st July 1948, as so built

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

Class A – enlargement, improvement or other alteration of a dwellinghouse

A. The enlargement, improvement or other alteration of a dwellinghouse.

Development not permitted

Paragraph	Complies
A.1 (a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G,M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);	N/A
A.1 (b) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);	Yes
Explanation Extensions (including any extensions to the original house under Class A or under a separate planning permission) and other buildings must not exceed 50% of the curtilage.	

The Permitted development rights for householders Technical Guidance (September 2019) advises that:

“The 50% limit covers all buildings so will include existing and proposed outbuildings as well as any existing or proposed new extensions to a house. It will exclude the area covered by the original house but will include any later extensions or any separate detached buildings, even where they were built prior to 1948, or if the house was built after that date, built when the house itself was built (for example a detached garage or garden shed).”

In this case, total area (excluding the original dwellinghouse) is as follows:

Total Area = 75.181m²

Area of Dwellinghouse = 53.619m²

Area of Proposed Extension = 8.896m²

50% excluding dwellinghouse = (75.181m² – 53.619m²)/2

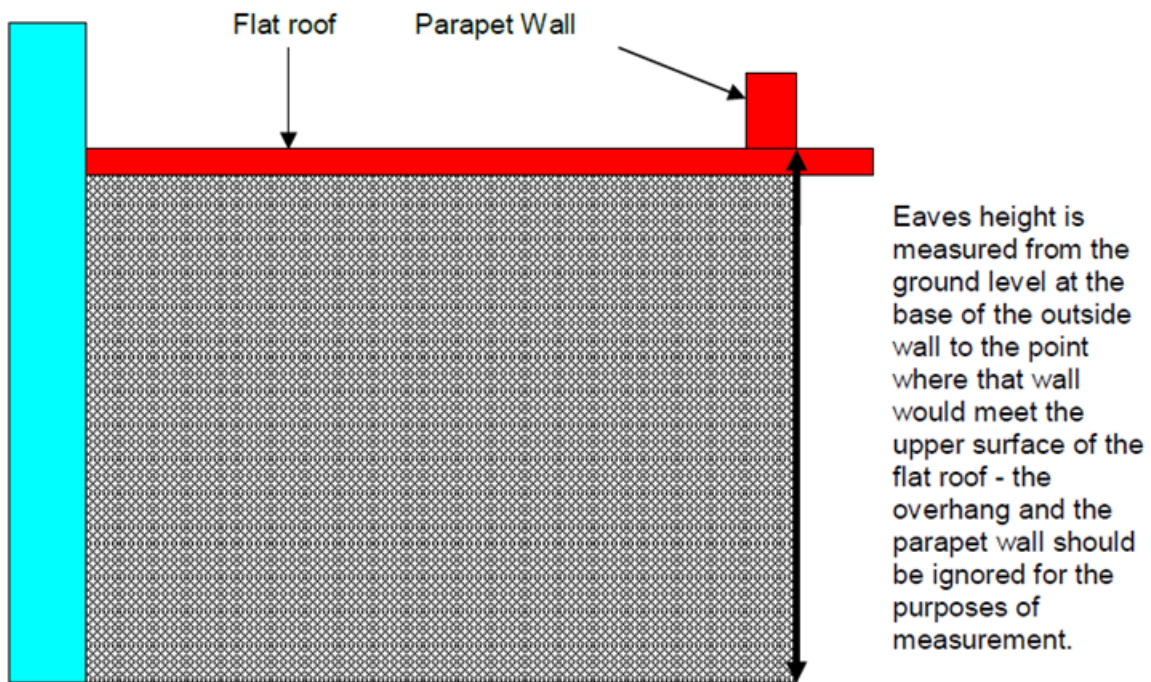
= **10.781m²**

Therefore, the proposed extension complies with A.1(b)

A.1 (c) the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;	Yes
A.1 (d) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse;	Yes
A.1 (e) the enlarged part of the dwellinghouse would extend beyond a wall which—	
(i) forms the principal elevation of the original dwellinghouse; or	Yes
(ii) fronts a highway and forms a side elevation of the original dwellinghouse;	Yes
A.1 (f) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and—	No
(i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or	
Explanation	
The proposed drawings show that the rear and side extension would project from the rear wall of the dwellinghouse by a maximum of 4.089 metres. Thus, the proposal fails to accord with A.1(f).	
(ii) exceed 4 metres in height;	Yes
A.1 (g) for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and—	N/A
(i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or	

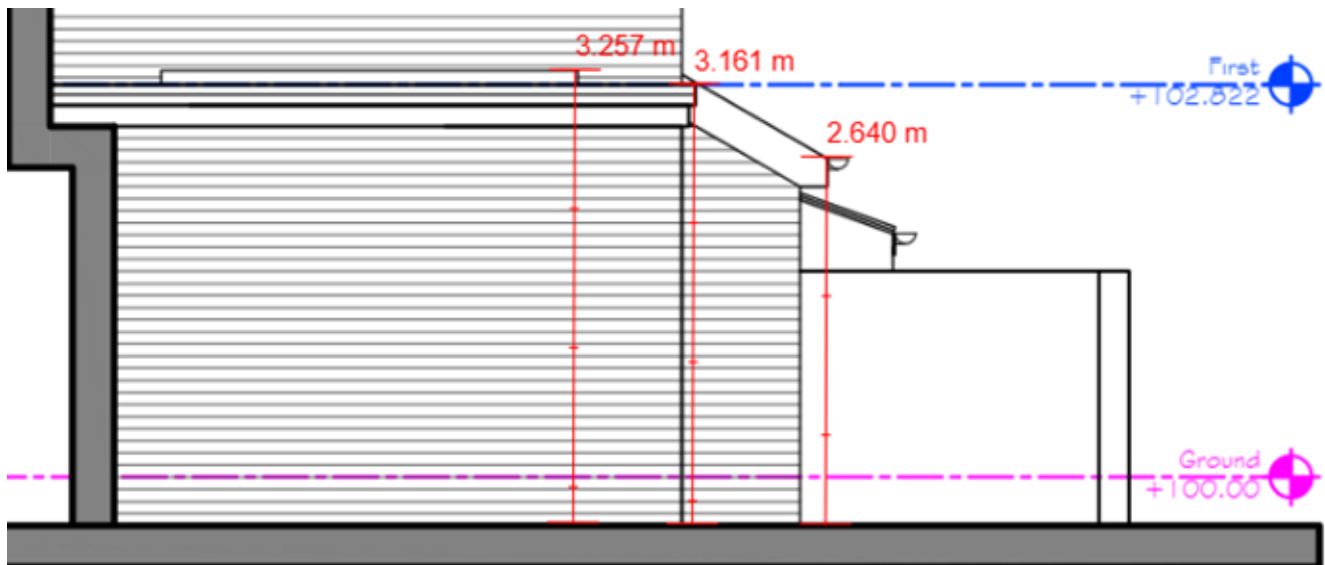
(ii) exceed 4 metres in height;	N/A
A.1 (h) the enlarged part of the dwellinghouse would have more than a single storey and— (i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or	N/A
(ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse;	N/A
A.1 (i) the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres;	No
Explanation The Permitted development rights for householders Technical Guidance (September 2019) advises that: “For the purpose of measuring height, the eaves of a house are the point where the lowest point of a roof slope, or a flat roof, meets the outside wall. The height of the eaves will be measured from the ground level at the base of the external wall of the extension to the point where the external wall would meet (if projected upwards) the upper surface of the roof slope. Parapet walls and overhanging parts of eaves should not be included in any calculation of eaves height.” The guidance also provides an illustrative example.	

Where there is a flat roof, a similar approach should be taken for measuring eaves:



The same measurement is then taken on the proposed drawing and reveals that the eaves height would exceed 3 metres on the flat roof section of the proposal at a height of 3.161 metres.

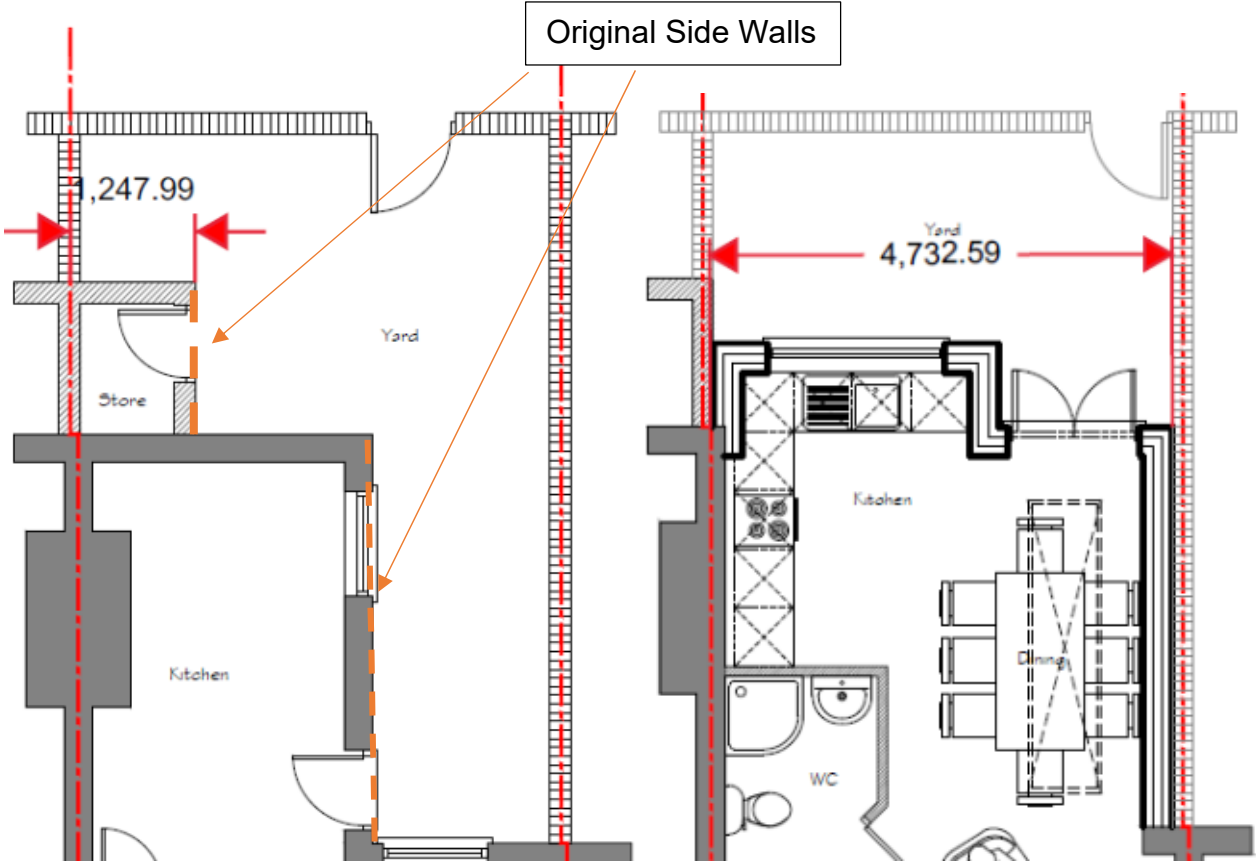
The proposed single storey side and rear extension therefore does not comply with A.1 (i).



A.1 (j) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would—

(i) exceed 4 metres in height,

Yes

(ii) have more than a single storey, or	Yes
(iii) have a width greater than half the width of the original dwellinghouse; or	No
Explanation The existing outrigger (store) would be demolished and subsumed into the rear extension, however the proposed extension would still extend beyond a wall forming a side elevation of the original dwellinghouse. Therefore, with a width of 3.485 metres for the extension and a house width of 4.732 metres, the proposed extension if built would have a greater width than half the width of the original dwellinghouse and would not comply with A.1 (j)(iii) of the GPDO.	
	
A.1 (ja) any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j);	Yes
A.1 (k) it would consist of or include—	
(i) the construction or provision of a verandah, balcony or raised platform,	Yes
(ii) the installation, alteration or replacement of a microwave antenna,	Yes
(iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or	Yes
(iv) an alteration to any part of the roof of the dwellinghouse; or	Yes
A.1 (l) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)	N/A

A.2 In the case of a dwellinghouse on article 2(3) land, development is not permitted by Class A if—	
(a) it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles;	Yes
(b) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse; or	Yes
(c) the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwellinghouse.	Yes

A.3 Development is permitted by Class A subject to the following conditions—	
(a) the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;	No
Explanation No materials have been specified on the drawings nor is there any annotation that states that materials used will be of a similar appearance to those used in the construction of the existing dwellinghouse. Therefore the proposal does not comply with A.3(a) as it is unclear if the materials will be similar in appearance to the existing dwellinghouse.	
(b) any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse must be—	
(i) obscure-glazed, and	
(ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed; and	Yes
(c) where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.	Yes

Rear Dormer

The proposed dormer will be considered under Part 1, Schedule 2, Class B of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) - the relevant legislation when considering the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.

Permitted development

B. The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.

Development not permitted

Paragraph	Complies
B.1 (a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G,M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);	N/A
B.1 (b) any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof;	Yes
B.1 (c) any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway;	Yes
B.1 (d) the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than—	
(i) 40 cubic metres in the case of a terrace house, or	Yes
(ii) 50 cubic metres in any other case;	N/A
Cubic Content = (Proposed Main Roof Dormer – Intersection of existing main roof with outrigger roof) + Proposed Outrigger Dormer $= ((\frac{1}{2} \times (\text{width} \times \text{length} \times \text{height})) - ((\text{height} \times \text{length}/2) \times \text{width})/3) + (\frac{1}{2} \times (\text{width} \times \text{length} \times \text{height}))$ $= ((\frac{1}{2} \times (4.865\text{metre} \times 3.377\text{metre} \times 2.098\text{metre})) - ((1.22\text{metre} \times 3.377\text{metre}/2) \times 2.474 \text{ metre})/3) + (\frac{1}{2} \times (4.532\text{metre} \times 2.80\text{metre} \times 2.590\text{metre}))$ $= (17.234\text{metre}^3 - 1.698\text{metre}^3) + 16.433\text{metre}^3$ $= \underline{\underline{31.968 \text{ metre}^3}}$	
include— B.1 (e) it would consist of or	
(i) the construction or provision of a veranda, balcony or raised platform, or	Yes
(ii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe	Yes
B.1 (f) the dwellinghouse is on article 2(3) land.; or	N/A
B.1 (g) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).; or	N/A
B.1 (h) the existing dwellinghouse has been enlarged in reliance on the permission granted by Class AA (enlargement of a dwellinghouse by construction of additional storeys).	N/A

B.2 (a) the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;	No
Explanation No materials have been specified on the drawings nor is there any annotation that states that materials used will be of a similar appearance to those used in the construction of the existing dwellinghouse. Therefore, the proposal does not comply with B.2(a) as it is unclear if the materials will be similar in appearance to the existing dwellinghouse.	
B.2 (b) the enlargement must be constructed so that—	
(i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension—	Yes
(aa) the eaves of the original roof are maintained or reinstated; and	Yes
(bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves; and	Yes
(ii) other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse; and	Yes
B.2 (c) any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be— (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.	No

Explanation

The drawings clearly show clear glazing for the proposed side windows in the dormer. Therefore, the proposal does not comply with B.2(c) as it cannot be confidently stated that the side windows would be obscure glazed.

Interpretation of Class B

B.3 For the purposes of Class B, “resulting roof space” means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not.

B.4. For the purposes of paragraph B.2(b)(ii)—

- (a) roof tiles, guttering, fascias, barge boards and other minor roof details overhanging the external wall of the original dwellinghouse are not to be considered part of the enlargement; and
- (b) “rear or side extension” includes an original part of, or a subsequent extension of, the dwellinghouse that extends from the rear or side of the principal part of the original dwellinghouse.

Any other classes?

The Technical Guidance which states which state that:

In order to be permitted development, a proposal must meet all the limitations and conditions under each Class relevant to the proposal. It is therefore essential that any proposed household development is considered in the context of the permitted development rules as a whole in order to determine whether it benefits from permitted development rights and therefore does not require an application for planning permission.

For example, where a proposed two storey extension at the rear of a house has a roof that joins onto the main roof of the original house, the works will need to meet the requirements of both Class A (which covers the enlargement of the house) and Class C (which covers any alterations to the roof) in order to be permitted development. If the works also include the creation of a dormer window to enlarge the roof space, either in the extension or the original roof space, then they would also need to meet the requirements of Class B.

In other words an extension or alteration to a dwellinghouse can fall within more than one Class.

In this case the height of the roof of the outrigger is below the roof of the main dwelling. The eaves line is just above the top of the first-floor bedroom (no.2) window and importantly set below the level of the main roof.

The enlargement, which would be “L” shaped, takes the form of a dormer extending across a sizable part of the width of the existing rear roof slope and then outwards across the roof slope of the outrigger. Whilst appearing to retain the outrigger eaves together with a small strip of roof, much of the existing outrigger roof would be lost.

The enlargement, essentially, adds a third storey above the outrigger and, at this part, is enclosed mainly by new walls and a flat roof at a higher level than the original outrigger roof. Also, a small section of new wall (that below the eaves of the main dwelling), extends outwards directly from the rear facing wall of the main part of the dwelling.

Therefore, the works go beyond what could be described only as an “addition or alteration” to a roof. The works would, as a matter of fact and degree, also amount to an enlargement of the dwellinghouse. They would, thus, fall to be considered under Class A as well as Class B.

Therefore the works would fail to comply with Part 1, Schedule 2, Class A.1 (f)(i), A.1(i) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as the in the case the enlargement part of the dwellinghouse would have a single storey and extend beyond the rear wall of the original dwellinghouse by more than 3 metres and therefore fail A.1(f).

In terms of A.1(i) the proposal the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres.

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

1) The proposed single-storey rear and side extension, as shown on the submitted drawings NN878-PL-202, NN878-PL-203, NN878-PL-204, NN878-PL-205, NN878-PL-206, and NN878-PL-207, does not constitute permitted development. It fails to meet the requirements of Part 1, Schedule 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the following reasons:

1. The development would have a rearward projection greater than 3 metres (A.1(f)).
2. The development would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves would exceed 3 metres (A.1(i)).
3. The development would extend beyond a wall forming a side elevation of the original dwellinghouse and have a width greater than half the width of the original dwellinghouse (A.1(j)(iii)).
4. No materials have been specified to ensure compliance with A.3(a).

2) The proposed rear dormer, as shown on drawings titled NN878-PL-202, NN878-PL-204, NN878-PL-205, NN878-PL-206, and NN878-PL-207, does not constitute permitted development. It fails to meet the requirements of Part 1, Schedule 2, Class A.1(f)(i), A.1(i), and Class B.2(a) and B.2(c) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the following reasons:

1. No materials have been specified to ensure compliance with B.2(a).
2. The windows in the side of the dormer would not be obscurely glazed (B.2(c)).
3. A section of the new wall (below the eaves of the main dwelling) would extend outwards directly from the rear-facing wall of the main part of the dwelling, and:
 - a) The development would have a rearward projection greater than 3 metres (A.1(f)).
 - b) The development would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres (A.1(i)).

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
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Area Team Boundary - Name: NORTH AREA