

## Planning

## Growth & Development

### Delegated officer report for planning application

**Application no.** 141895/LP/2025

**Date registered valid:** 14 January 2025

**Proposal:** Erection of outbuilding to form garden room/office following demolition of existing garage.

**Address:** 862 Kingsway, Manchester, M20 5WG

**Ward(s):** Didsbury East Ward

**Applicant:** Muhammad Khan

**Agent (if any):** Chris Mulholland Mulholland Architecture Ltd

**Case officer:** Robert Tyrer  
Tel: 0161 234 4068  
Email: [robert.tyrer@manchester.gov.uk](mailto:robert.tyrer@manchester.gov.uk)

**Recommendation:** Refuse

**Date of recommendation:** 27 February 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

862 Kingsway is located in the East Didsbury ward of Manchester, at the junction with Gawsworth Avenue. This property is a two-storey, semi-detached house, which is a common type of housing in this neighbourhood. The area is primarily residential, featuring a mix of semi-detached and detached houses.

The property has front, side, and rear gardens, with a driveway and garage accessed from the side on Gawsworth Avenue. The area is well-connected by public transport, with regular bus services and a nearby train station (within a 10-minute walk) providing easy access to Manchester city centre and other parts of Greater Manchester.

**Listed building:** Not applicable

**Conservation area:** Not applicable

**Tree Preservation Order:** Not applicable

## Description of development

The applicant is seeking a certificate of proposed lawful development for to erect an outbuilding to form garden room/office following demolition of existing garage.

## 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

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 to erect an outbuilding to form garden room/office following demolition of existing garage.

## The Assessment

The proposal will be considered under Part 1, Schedule 2, Class E of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) - the relevant legislation when considering buildings etc incidental to the enjoyment of a dwellinghouse.

While the proposed outbuilding meets the requirements of E.1, specifically E.1(b), (c), (d), (e)(ii), and (f), as well as E.2 and E.3, the proposal fails to meet the requirements of Part 1, Schedule 2, Class E.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The applicant has not demonstrated, on the balance of probability, that all the proposed uses, particularly at the proposed scale, are incidental to the enjoyment of the dwellinghouse.

Permitted development rights for householders technical guidance advises that “the rules also allow, subject to the conditions and limitations..., a large range of other buildings on land surrounding a house.” Examples given by the guidance include buildings such as garden sheds, other storage buildings, garages, and garden decking, provided that “they can properly be described as having a purpose incidental to the enjoyment of the house.”

The case of **Emin v SSE and Mid-Sussex District Council [1989]** is often cited in appeal cases relating to outbuildings. This case established that the term “incidental” implies an element of subordination in land-use terms in relation to the enjoyment of the dwellinghouse. For the purposes of applying Class E, the term “required” should be interpreted as “reasonably required” rather than the “unrestrained whim” of the occupier. Additionally, with regard to the nature and scale of the activities to be carried on, the size of a proposed building can be an important consideration, although not conclusive by itself.

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 22 square metres (measured externally), which would not be dissimilar to that of the original dwellinghouse.

Therefore, the tests are, firstly, 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.

While the terms ‘ancillary’ and ‘incidental’ are often used interchangeably, 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.

The technical guidance warns that *“a purpose incidental to a house would not, however, 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.”*

Bearing this in mind, the proposed single-storey outbuilding floor plan shows in image 1 that, if built, it would have a single door entrance facing Gawsworth Avenue and would include additional living space such as a kitchenette, lounge area, and a shower room with a w.c.

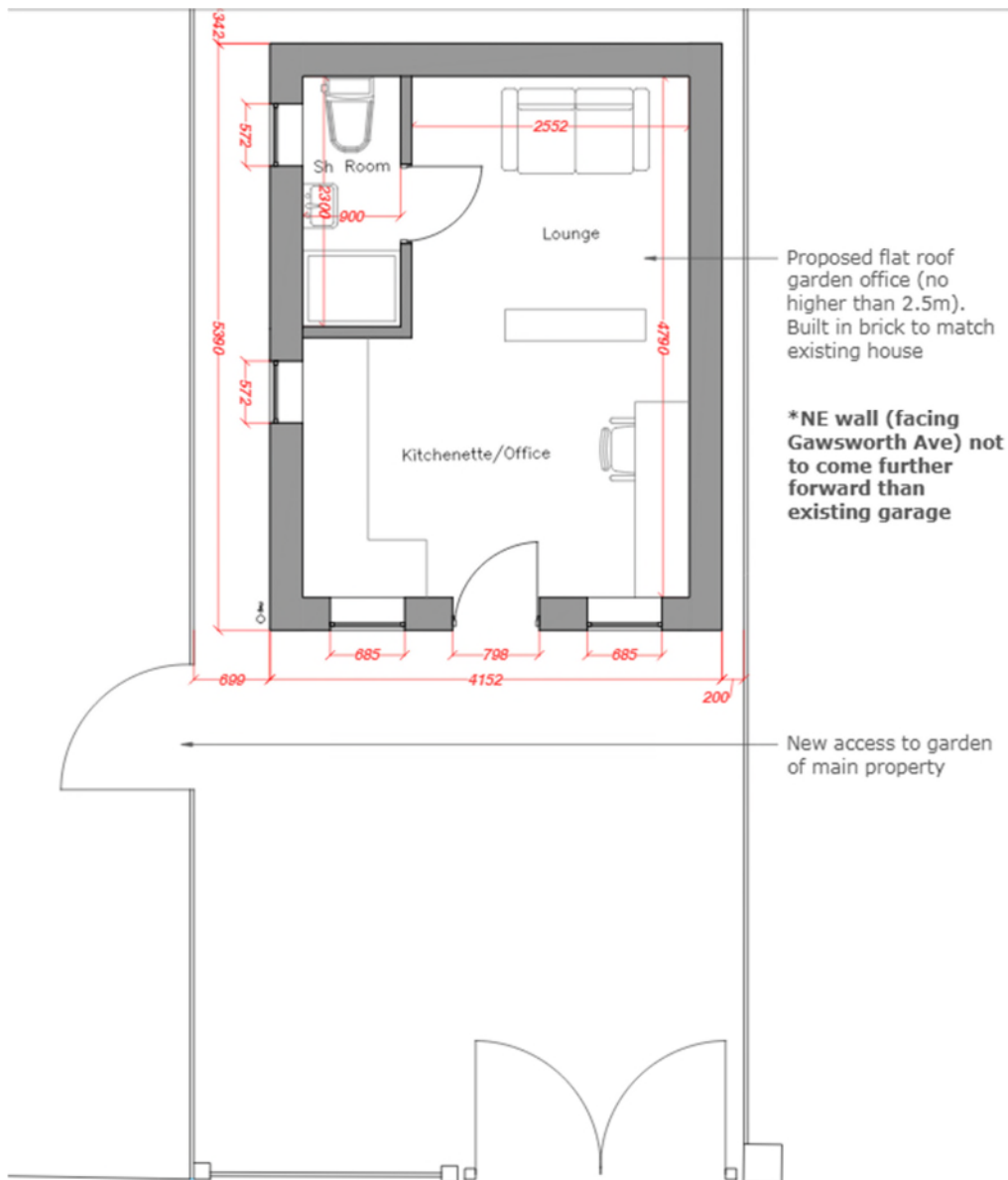


Image 1 Proposed Ground Floor Plan as submitted (part).

While it is not necessary for the applicants to demonstrate a requirement for the outbuilding, it must be shown to be required for a purpose incidental to the enjoyment of the dwellinghouse as such. In this case, the floor plan shows rooms that contain ancillary uses rather than incidental. Whilst the other provisos in Class E would be met, the GPDO does not grant planning permission for the provision of an outbuilding for use for purposes ancillary to the house, or to provide facilities ancillary to the house.

Therefore, the application has 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 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 outbuilding as shown on the submitted drawings PR-059-100, PR-059-103 and PR-059-200 does not constitute permitted development as it would fail to meet the requirements of Part 1, Schedule 2, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), in that the applicant has failed to demonstrate that, on the balance of probability, all the proposed uses, and in particular on the scale proposed, are uses which are incidental to the enjoyment of the dwellinghouse.

## **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

Flood Zones Type 2 (low to medium risk) -

Susceptible to Surf Water Flood (Less) -

Area Team Boundary - Name: SOUTH AREA