Planning

Growth & Development

Delegated officer report for planning application

Application no.	141424/LP/2024
Date registered valid:	26 November 2024
Proposal:	Use of a detached rear outbuilding as a granny annexe.
Address:	9 Howard Road, Manchester, M22 4EG
Ward(s):	Northenden Ward
Applicant:	Mr Po Chu Lee
Agent (if any):	
Case officer:	Adam Neil Tel: 0161 234 4531 Email: adam.neil@manchester.gov.uk
Recommendation:	Refuse

Date of recommendation: 20 March 2025

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: N/A

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

Listed building: Not applicable

Conservation area:

Tree Preservation Order: N/A

Description of area

The semi-detached property is located on a residential street, and forms one part of two semi-detached pairs of the same style; there are other semi-detached properties on the street, but of differing styles. The existing garage building sits at the eastern most part of the garden, with the vehicular access made via a rear service road that also provides access to properties on St Hilda's Close.

Description of development

The applicant is seeking a certificate of proposed lawful development for the conversion of the existing garage to additional living accommodation, specifically a "granny annex" with the associated elevation changes required to do so.

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 Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO); Article 3 and Schedule 2, Part 1, Class E grants planning permission for buildings etc incidental to the enjoyment of a dwellinghouse. This ‘permitted development right’ is subject to limitations and conditions.

Conversion of Garage to living accommodation with elevational alterations

Class E grants permission for:

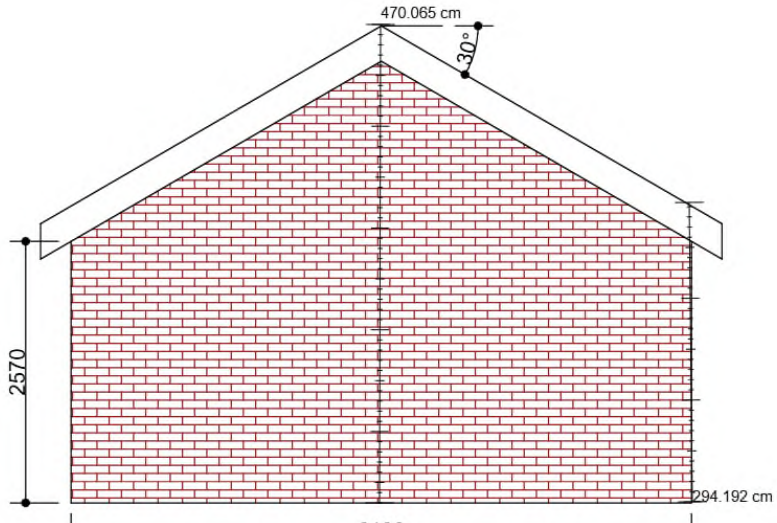
The provision within the curtilage of the dwellinghouse of –

(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; [my emphasis]

In the application form, the applicant has stated "No" to the question whether the proposal includes *"the carrying our of building or other operations"*, yet the accompanying "Existing" and "Proposed" plans clearly show that there will be external alterations to the existing garage structure, namely the loss of the vehicular access and the addition of windows to each side elevation.

Where the building is an existing one, its *"…maintenance, improvement or other alteration…"* must still 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 a building.

E.1.(e)(i) excludes development where the height of the building would have a dual pitched roof more than 4 m. E.1.(f), also excludes development where the eaves of the building would exceed 2.5m. The existing garage has a dual pitched roof, and its height is 4.7m, and the eaves when measured from the ground level at the base of the outside wall to the point where it would meet the upper surface of the roof slope is more than 2.9m. Therefore, the height of the building which is proposed to be improved or altered is over 4m in height and the eaves exceed 2.5m, as such the proposed alterations would require planning permission, as by themselves they would fail to comply with limitations E.1.(e)(i) and (f).



PROPOSED REAR(ROAD SIDE) ELEVATION

Notwithstanding the findings as to whether the proposed external alterations could be undertaken, the GPDO at Article 3, Schedule 2, Part 1, Class E, grants planning approval for the use of an outbuilding within the curtilage of a dwelling where it is *"...required for a purpose incidental to the enjoyment of the dwellinghouse as such".* In the context of a dwelling, an incidental purpose is generally regarded as being a subordinate activity connected with the running of the dwelling or with the domestic or leisure activities of the persons living in it.

The Government has produced a document entitled Permitted development rights for house holders Technical Guidance (September 2019) and this 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"* for an incidental purpose should be interpreted as "reasonably required" and does not rest on the unrestrained whim of a householder. The physical size of an outbuilding, alone or in relation to a dwelling, is not conclusive; it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and evaluate whether the outbuilding is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose [Emin v SSE & Mid Sussex DC [1989] JPL 909]. In other words, if the use of a space was fundamental to the ordinary day to day functioning of the dwelling it would not be incidental, but form part of the primary accommodation.

Taking the examples given in the guide, if a fully equipped kitchen was provided, where daily meals were prepared for the household living in the outbuilding, that would likely constitute primary living accommodation. The same would be true of a bedroom that was used daily by a member of the household. Furthermore, the Technical Guidance refers to a bathroom as forming primary accommodation.

The proposed layout drawing accompanying the application shows the interior of the outbuilding as containing a Living Area, Kitchen, Main Bedroom, Study Room/Bedroom and Bathroom, therefore consisting of all the example elements provided in the Government Guidance document. There would be a clear distinction between a fully equipped, self-contained "Granny Annex", to something that was intended to provide only incidental or ancillary accommodation, where those staying would rely heavily on the facilities provided by the main house; that does not appear to be the case here.

Indeed, the application form describes the proposed use as "C3 Dwellinghouse" and there is a fully equipped bathroom, which is clearly intended or required to provide for the day-to-day needs of the household; this is significantly different to the provision of only a toilet and hand basin that may be used in an occasional manner, and where bathing would be reliant on the main house. In that sense, the presence of a fully equipped bathroom, kitchen and other primary living accommodation, in addition to a proposed second bedroom, leave little to the imagination that the use would be anything other than a self-contained dwellinghouse.

Drawing all this together, the proposed alterations to the existing garage would require planning permission, as when *improved or altered* they would fail to comply the limitations of E.1.(e)(i) and (f). Furthermore, the proposed use as a "Granny Annex" would amount to a self-contained dwelling and would therefore not be a purpose incidental to the enjoyment of the dwellinghouse as such.

The certificate of lawfulness should therefore be refused in its entirety.

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

On the evidence contained in the application, the proposed development would fail to comply with the limitations set out in paragraph E.1.(e)(i) and (f) to Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Furthermore, the proposed use as a "Granny Annex" would amount to a self-contained dwelling and would therefore not be a purpose incidental to the enjoyment of the dwellinghouse as such. Planning permission would therefore be required.

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) -
Area Team Boundary - Name: SOUTH AREA