

Planning

Growth & Development

Delegated officer report for planning application

Application no. 142136/LP/2025

Date registered valid: 11 February 2025

Proposal: Extension of front driveway following removal of existing boundary wall and gate.

Address: 50 Fog Lane, Manchester, M20 6AL

Ward(s): Didsbury East Ward

Applicant: Mr Chi Hin Hong

Agent (if any): Ms Un Kei Wu Archikei Ltd

Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Grant

Date of recommendation: 8 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

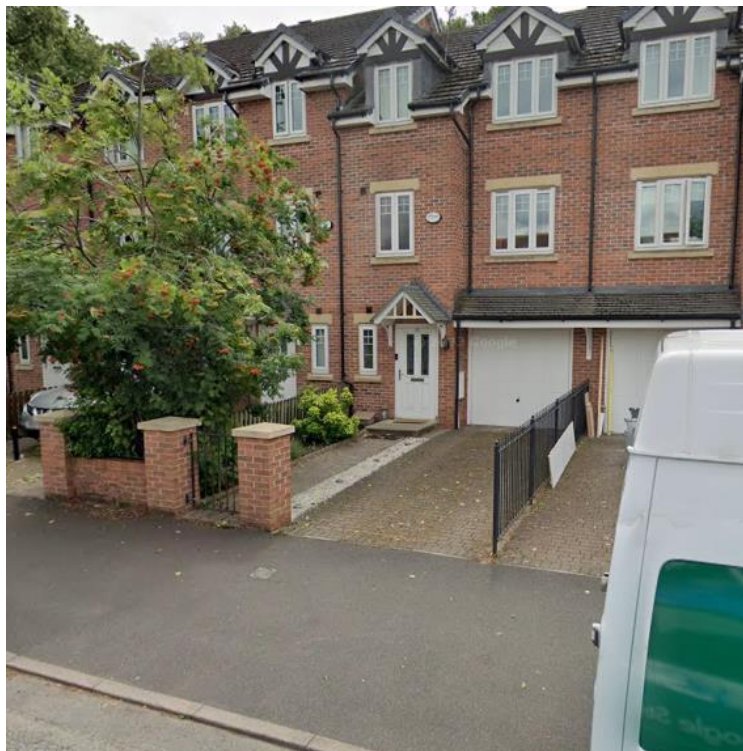
Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building and area

50 Fog Lane relates to a modern three storey terraced townhouse, with integral garage located within the Didsbury East Ward of Manchester.

Located approximately 5 miles south of Manchester City Centre, East Didsbury is a predominantly residential part of Manchester and contains the Didsbury district centre for local amenities and facilities.



Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a certificate of lawful development to extend the front driveway following removal of existing boundary wall and gate.

Consultations & Notification Responses

None 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 whether the applicant has 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 applicant's 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 lawful development to extend the front driveway following removal of existing boundary wall and gate.

Extension of Front Driveway

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

Permitted development

F. Development consisting of—

(a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or

(b) the replacement in whole or in part of such a surface.

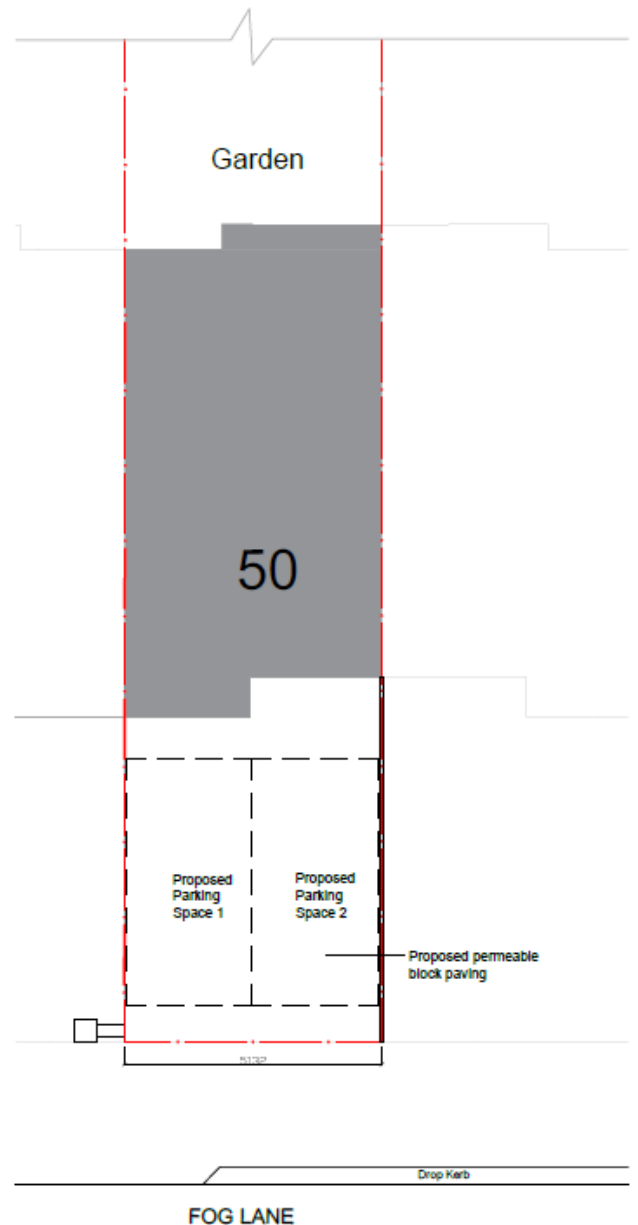
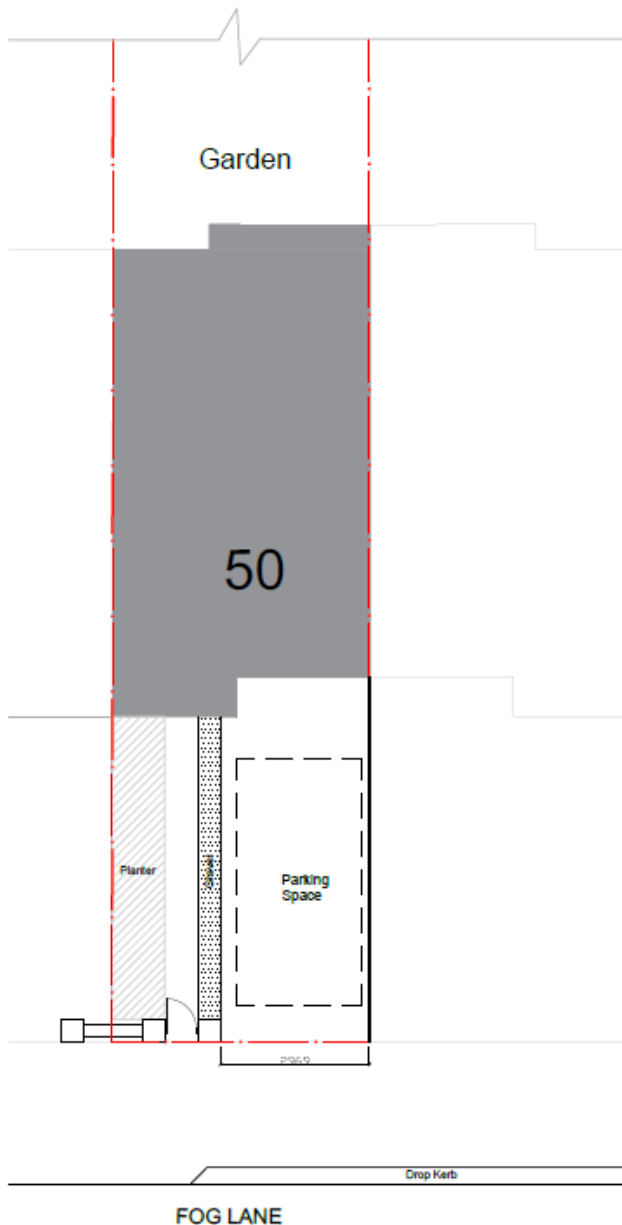
F.2 Development is permitted by Class F subject to the condition that where—

(a) the hard surface would be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway, and

(b) the area of ground covered by the hard surface, or the area of hard surface replaced, would exceed 5 square metres, either the hard surface is made of porous materials, or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.

Conclusion

The proposed drawings indicate that the area will be covered with permeable material, totalling just over 14 sqm. According to section F.2(b) of the GPDO, if the area of ground covered by the hard surface exceeds 5 square metres, either the hard surface must be made of porous materials, or provision must be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse. In this case, the applicant has indicated that they will use permeable paving, which complies with Part 1, Class F of the GPDO.



Removal of Boundary Wall, Railing and Gate

The proposal will be considered under Schedule 2, Part 11, Class C of the Town and Country (General Permitted Development) Order 2015 (as amended) - the relevant legislation when considering proposals for the demolition of gates, fences, walls etc.

Permitted development

C. Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure.

Development not permitted

C.1 Development is not permitted by Class C if the demolition is “relevant demolition” for the purposes of section 196D of the Act (demolition of an unlisted etc building in a conservation area).

The proposed drawings indicate that the wall, railing and gate will be removed in their entirety; the property does not lie in a conservation area, as such it is not caught by initiation set out in C.1; accordingly, the proposal will comply with Schedule 2, Part 11, Class C.



EXISTING FRONT ELEVATION



PROPOSED FRONT ELEVATION

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: Grant

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

- 1) The proposed extension of front driveway following removal of existing boundary wall and gate as shown on drawing PL-LA003 constitutes permitted development in accordance with Schedule 2, Part 1, Class F and Part 11, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

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
Area Team Boundary - Name: SOUTH AREA