Planning

Growth & Development

Delegated officer report for planning application

Application no.	139896/LP/2024
Date registered valid:	11 May 2024
Proposal:	Installation of rear dormer
Address:	1110 Stockport Road, Manchester, M19 2SU
Ward(s):	Levenshulme Ward
Applicant:	Mr Muhammad Nadeem
Agent (if any):	Mr Shahzadah Syed SIS Design Limited
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Refuse

Date of recommendation: 9 December 2024

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

This application relates to a three-storey mid terraced residential property, which lies on the edge of Levenshulme District Centre. Planning permission was granted to change of use of part of the ground floor of the dwellinghouse to an office (formerly class A2, now class E) in 2010.

The property has a two-storey rear outrigger which appears to have been rendered in an off white



Image 1 Google Earth Image of the rear of 1110 Stockport Road with the site outlined in red.

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 a 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.

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.

Planning History

Application No: 094201/FU/2010/N2
Description: Change of use of part of ground floor of dwellinghouse to office (Class A2)
Status: Approved 02.11.2010

Application No: 093190/FU/2010/N2
Description: Change of use of part of ground floor of dwellinghouse to office (Class A2)
Status: Refused 17.07.2010

Application No: 095347/AO/2011/N2
Description: Installation of wall-mounted non-illuminated fascia sign
Status: Approved 24.03.2011

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 rear dormer.

Proposal relating to the roofs of dwellinghouses are considered under Class B of the Town and Country (General Permitted Development) Order 2015 (as amended) - the relevant legislation when determining additions etc to the roof of a dwellinghouse.

As described earlier planning permission was granted in 2010 under application reference 094201/FU/2010/N2 which allowed a change of use of part of ground floor of dwellinghouse to office (formerly Class A2, now Class E).

The approved drawing (image 2) show that this was the proposed office would occupy a room at the front of the dwellinghouse accessed from the hallway of the main entrance from Stockport Road.

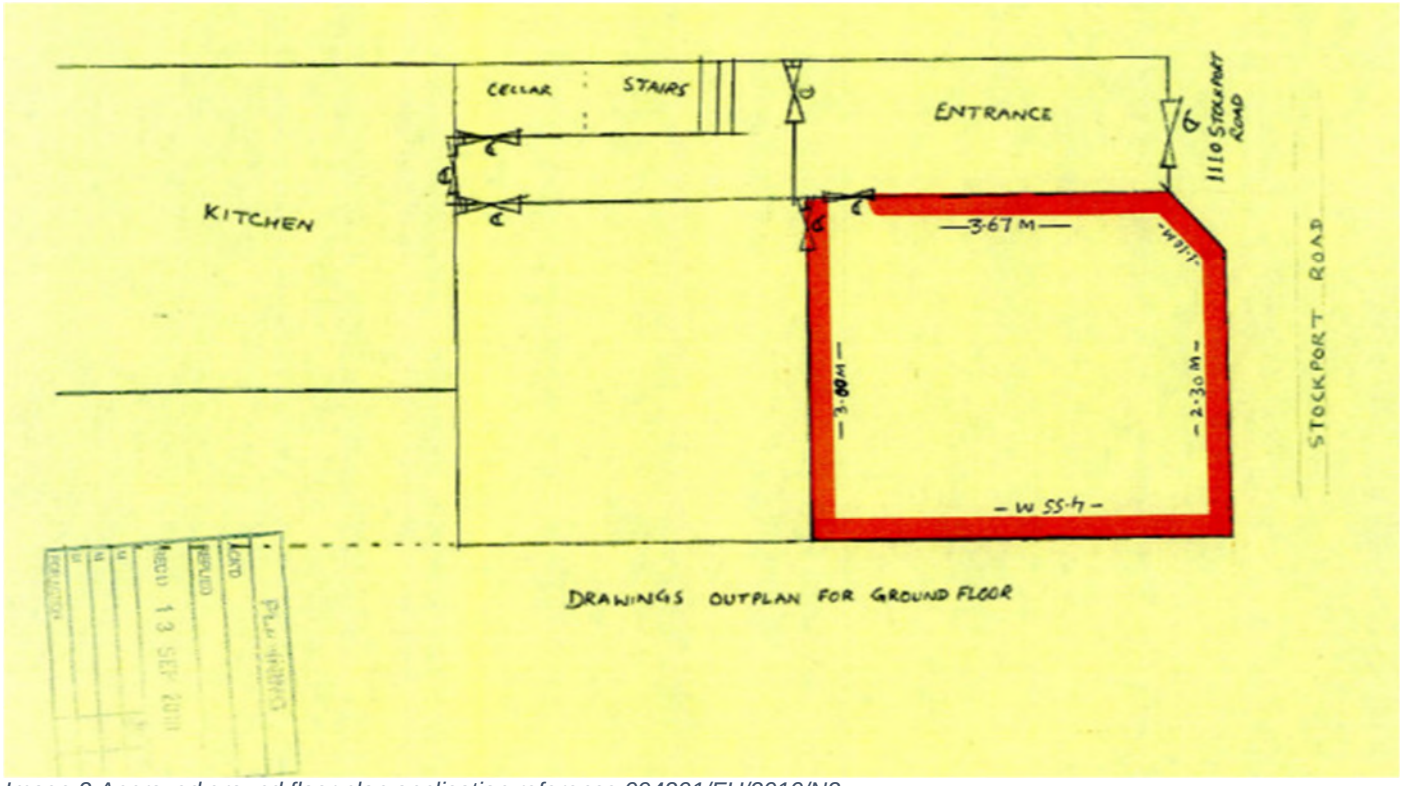


Image 2 Approved ground floor plan application reference 094201/FU/2010/N2.

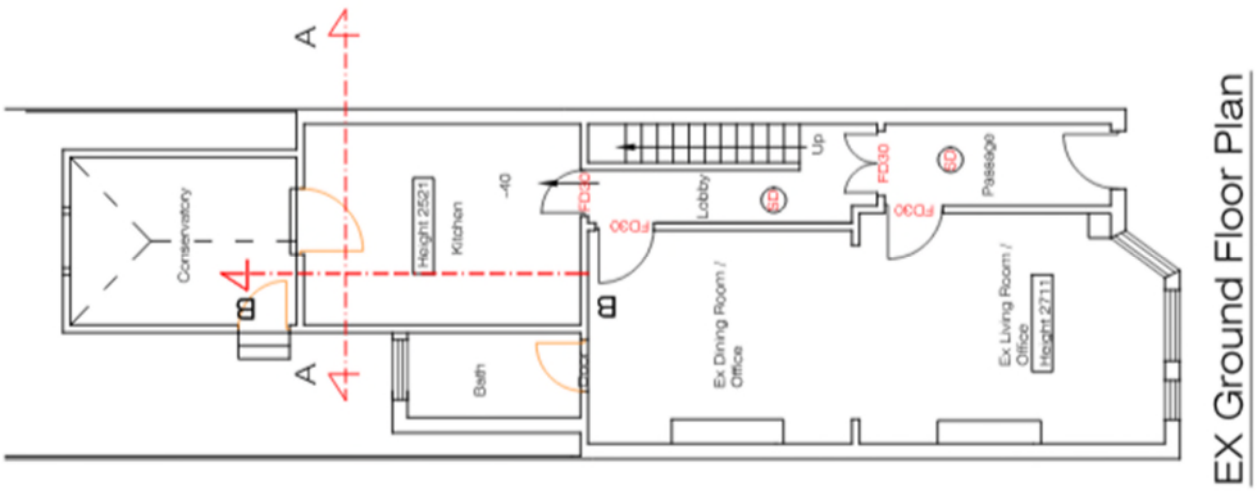


Image 3 Existing Ground Floor Plan submitted as part of the current application shows that the front room is still used as an office.

The existing (image 3) and proposed drawings submitted with the current certificate application shows that not only is the room identified in image 2 still in use as an office but the room to the rear has also been converted to form a larger office space than originally granted.

Therefore, as the premises contains a mixture of commercial (on part of ground floor) and residential (part of the ground, all of the first and second floors), the property does not benefit from the same level of permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"), as would apply to a householder.

This view is supported in the authority of Scurlock v S of S for Wales [1976] JPL 431. In that case it was held that permitted development rights to make alterations to windows in the upper part of a building did not apply as it was in mixed use (estate agent's offices on the ground floor with residential above) and not in use solely as a dwellinghouse. There are obvious similarities between the two cases and how the properties are used.

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

1) The property contains a mixture of commercial (Use Class E) and residential (Use Class C3), accordingly, the property does not benefit from those permitted development rights attributable to a dwellinghouse under Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), and planning permission will therefore be required for a rear dormer.

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
Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: NORTH AREA