MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	140453/FH/2024
Date registered valid:	17 October 2024
Proposal:	Installation of rear dormer
Address:	180 Moseley Road, Manchester, M14 6PB
Ward(s):	Fallowfield Ward
Applicant:	MapProperty Holdings Ltd
Agent (if any):	Mr Marcus Whyte ArcPlan.co.uk
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Decline to Determine Application
Date of recommendation:	**26 November 2024**

Application details

Type of application: Full Householder Application

Development type: Householder

Date of site visit: 29 October 2024

Standard consultations:
No consultations have been printed and sent.

Neighbour notifications
Printed: 17 October 2024 Expired: 7 November 2024

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: Not applicable

Tree Preservation Order: Not applicable

Description of area

The property is a 2-storey end-terrace house comprising red-brick elevations and a grey slate roof. The house is located in a predominantly residential area, with a number of the surrounding properties in use as HMOs, being constructed to the back of pavement and incorporates a walled rear yard.

Description of development

The applicant is seeking retrospective planning permission for the erection of a third storey extension to the rear, although the submitted planning application forms describe the development as a “loft conversion and dormer extension”.

Consultations & Notification Responses

Publicity – Notification letters were sent to nearby residential properties (see appendix 1 for the list of properties). No representations have been received.

Issues

Policy

Policy SP1 of the Core Strategy

Development in all parts of the City should:-

Spatial Principles
The key spatial principles which will guide the strategic development of Manchester to 2027 are:

- The Regional Centre will be the focus for economic and commercial development, retail, leisure and cultural activity, alongside high quality city living.
- The growth of Manchester Airport will act as a catalyst for the regional economy, and will also provide the impetus for a second hub of economic activity in this part of the City.
- Beyond these areas, the emphasis is on the creation of neighbourhoods of choice, providing high quality and diverse housing around district centres which meet local needs, all in a distinct environment. The majority of new residential development in these neighbourhoods will be in the Inner Areas, defined by the North Manchester, East Manchester and Central Manchester Regeneration Areas.
- The City is covered by regeneration areas including the City Centre. All development should have regard to the character, issues and strategy for each regeneration area as described in the North, East, Central and South Manchester and Wythenshawe Strategic Regeneration Frameworks and the Manchester City Centre Strategic Plan.
- The City's network of open spaces will provide all residents with good access to recreation opportunities. The River Valleys (the Irk, Medlock and Mersey) and City Parks are particularly important, and access to these resources will be improved.
- New development will maximise the potential of the City's transport infrastructure, in particular promoting walking, cycling and use of the public transport. The extension to the Metrolink network through the Oldham and Ashton lines will create key corridors for new development.

Core Development Principles

Development in all parts of the City should:-

- Make a positive contribution to neighbourhoods of choice including:-

    - creating well designed places that enhance or create character.
    - making a positive contribution to the health, safety and wellbeing of residents
    - considering the needs of all members of the community regardless of age, gender, disability, sexuality, religion, culture, ethnicity or income.
    - protect and enhance the built and natural environment.

- ~~Minimise emissions, ensure efficient use of natural resources and reuse previously developed land wherever possible.~~

    (Deletions replaced by Policy JP-S1: Sustainable Development of the PfeJDP)

- Improve access to jobs, services, education and open space by being located to reduce the need to travel and provide good access to sustainable transport provision.

Policy DM1 of the Core Strategy

All development should have regard to the following specific issues amongst others:-

- Appropriate siting, layout, scale, form, massing, materials and detail.
- Impact on the surrounding areas in terms of the design, scale and appearance of the proposed development. Development should have regard to the character of the surrounding area.
- Effects on amenity, including privacy, light, noise, vibration, air quality, odours, litter, vermin, birds, road safety and traffic generation. This could also include proposals which would be sensitive to existing environmental conditions, such as noise.

Saved Policy DC1 of the Unitary Development Plan for the City of Manchester relates to residential extensions.

DC1.1 In determining planning applications for extensions to residential properties, the Council will have regard to:

a. the general character of the property;
b. the effect upon the amenity of neighbouring occupiers;
c. the desirability of enabling people to adapt their houses in appropriate ways to meet changing household needs;
d. the overall appearance of the proposal in the street-scene;

DC1.2 Extensions to residential properties will be allowed subject to compliance with other relevant policies of the Plan and the following criteria:

a. they are not excessively large or bulky (for example, resulting in structures which are not subservient to original houses or project out too far in front of the original buildings);
b. they do not create an undue loss of sunlight, daylight or privacy;
c. they are not out of character with the style of development in the area or the surrounding street scene by virtue of design, use of materials or constructional details;
d. they would not result in the loss of off-street car-parking, in a situation where there is so severe an existing on-street parking problem that unacceptable additional pressures would be created.

Policy JP-S1 of the Places for People Joint Development Plan

To help tackle climate change, development should aim to maximise its economic, social and environmental benefits simultaneously, minimise its adverse impacts, utilise sustainable construction techniques and actively seek opportunities to secure net gains across each of the different objectives.

In preparing plans, authorities should make as much use as possible of suitable previously-developed (brownfield) land and vacant buildings to meet development needs.

In bringing forward previously developed sites for development, particular attention will be paid to tackling land contamination and stability issues, ensuring that appropriate mitigation and remediation is implemented to enable sites to be brought back into use effectively.

<u>Legislation</u>

Section 70C(1) of the Town and Country Planning Act 1990 states that a local planning authority may decline to determine an application if granting planning permission for the development "would involve granting, whether in relation to the whole or any part of the land to which a pre- existing enforcement notice relates, planning permission in respect of the whole or

any part of the matters specified in the enforcement notice as constituting a breach of planning control."

Does Section 70C apply?

In this instance, on 12 May 2023, the Council issued an enforcement notice ("the notice") in relation to the following specified breach of planning control:

> *Without planning permission, the erection of a third storey extension to the rear.*

The notice took effect on 18 January 2024, after an appeal against it was dismissed by the Secretary of State, and required the following steps to be taken.

1. *Demolish the third storey rear extension, as shown edged in yellow in the attached photograph ENF/01.*

2. *Reinstate the roof of the property to its condition before the breach took place, as shown edged in green on the attached photograph ENF/02.*

3. *Remove from the land all building materials, rubble and waste from carrying out the above.*

The reasons for issuing the notice were as follows:

It appears to the Council that the above breach of planning control has occurred within the last four years.

> *The Council considers that it is expedient to issue this notice because the unauthorised development, by virtue of being built-up off the rear and side walls of the main house and the two storey rear outrigger, appears overly dominant and is considered to have an adverse impact on neighbouring amenity, outlook and privacy. From the rear the scale and massing of the development appears incongruous and out of keeping with the character and appearance of the surrounding area. In addition, the development also appears as an incongruous and overly dominant feature at the rear of the property that fails to be subservient to the original dwelling house.*
>
> *The development is considered to be contrary to policies SP1 and DM1 of the core strategy, saved UDP policy DC1 and contrary to guidance contained in the National Planning Policy Framework.*

Should Section 70C be used?

The Council has a discretion as to whether or not to use the power in Section 70C. The following matters appear relevant to the exercise of that discretion.

The aim of Section 70C is to prevent a developer from having 'two bites of the cherry' in respect of unauthorised development. In this instance the Council issued a notice against the unauthorised development and an appeal was lodged against that notice. The appeal proceeded under Ground (c) only, i.e. that the unauthorised development was permitted development and did not require planning permission.

The Secretary of State's appointed planning inspector dismissed the appeal on 18 January 2024 and upheld the notice in full.

In support of this planning application, a design and access statement has been submitted to argue why, in the applicant's view, the unauthorised development is acceptable on its planning merits. However, the applicant had the opportunity to seek planning permission for the unauthorised development by way of a Ground (a) appeal but chose not to do so. The notice clearly sets out the Council's objections to the unauthorised development, and the determination and refusal of this planning application will give the applicant another 'bite of the cherry' by way of an appeal under Section 78 of the Act. The applicants could have had the planning merits of the unauthorised development assessed by the Secretary of State, but chose not to.

The enforcement notice has still not been complied with, which suggests that this latest planning application is yet a further play for time. This is supportive of the use of Section 70C, which was introduced to prevent the making of such tactical applications.

Comparison of the Enforcement notice and application reference 140453/FH/2024

Whilst the description of the development in the application forms is for a loft conversion and dormer extension, the plans submitted in support of the application show that the applicant is seeking retrospective permission for the development that is subject of the notice, namely a third storey rear extension. Section 4 of the notice sets out the reasons as to why the Council considered it expedient to issue the notice, based on the planning objections to the unauthorised development. This planning application does not propose any changes to the unauthorised development or any attempt to overcome those objections.

Conclusion

As the Council have already deemed the development to be unacceptable and have taken formal action to require a resolution of the breach of planning control, any approval of the matters presently before the Council will be in direct contradiction to those decisions previously made. Therefore, pursuant to Section 70C of the Town and Country Planning Act 1990, the Council as Local Planning Authority, hereby declines to determine the application and the appropriate entry will be made in the planning register to reflect this decision.

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: Decline to Determine Application

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

1) On 12 May 2023 the Council issued an enforcement notice, reference ENF/15548/23, in relation to the following specified breach of planning control:

Without planning permission, the erection of a third storey extension to the rear.

After an appeal was dismissed by the Secretary of State, the notice came into effect on 18 January 2024, and required the following steps to be taken.

1. Demolish the third storey rear extension, as shown edged in yellow in the attached photograph ENF/01.

2. Reinstate the roof of the property to its condition before the breach took place, as shown edged in green on the attached photograph ENF/02.

3. Remove from the land all building materials, rubble and waste from carrying out the above.

Under Section 70C of the Town and Country Planning Act 1990, a Local Planning Authority may decline to determine an application for planning permission, if granting that permission would involve granting, wholly or partly, a permission for any matters specified in a pre-existing enforcement notice. A notice is "pre-existing" if it had been issued before the receipt of the planning application being determined as specified by Section 70C(2).

In the opinion of the Local Planning Authority, the proposal of this planning application (ref: 140453/FH/2024) as set out in the documents and associated plans, relates to matters pertaining to a "pre-existing" enforcement notice, i.e. one issued prior to the submission and subsequent validation of the application on the 17 October 2024 and are matters for which planning permission is deemed to be required.

As the Council have already deemed the development to be unacceptable and have taken formal action, any approval of the matters presently before me will be in direct contradiction to those decisions previously made. Therefore, pursuant to Section 70C of the Town and Country Planning Act 1990, the Council as Local Planning Authority, hereby declines to determine the application and the appropriate entry will be made in the planning register to reflect this decision.

Appendix 1 – List of consultees & neighbours notified

182 Moseley Road, Manchester, M14 6PB
93 Braemar Road, Manchester, M14 6PQ
178 Moseley Road, Manchester, M14 6PB
91 Braemar Road, Manchester, M14 6PQ
89 Braemar Road, Manchester, M14 6PQ
87 Braemar Road, Manchester, M14 6PQ

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Moseley Road/Ladybarn Lane)
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: SOUTH AREA