

Planning

Growth & Development

Delegated officer report for planning application

Application no. 140772/LP/2024
Date registered valid: 14 August 2024
Proposal: Enlargement of dwellinghouse with a rear dormer
Address: 32 Mabfield Road, Manchester, M14 6LW
Ward(s): Fallowfield Ward

Applicant: Mr M Larsen
Agent (if any): Mr T Prideaux RBA Town Planning
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 28 November 2024

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: 07 October 2024

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

Application site relates to a mid-terraced dwellinghouse which is currently in use as a House in Multiple Occupation (132813/LE/2022).

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The site is located within Fallowfield District Centre and comprises mostly residential collectively known as the Fallowfield Brow, which is an area popular with HMO properties. Platts Field Park and University of Manchester's Halls of Residence and sport facilities are also located within this area.

Description of development

The applicant is seeking a certificate of proposed lawful development to enlarge the dwellinghouse with 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.

Planning History

There have been two previous planning applications and one appeal at this address, details are provided below;

Application Reference: 132813/LE/2022

Description: Certificate of Existing Lawful Development for House in Multiple Occupation (Class C4)

Decision: Approved 29.03.2022

Application Reference: 136027/FO/2023

Description: Retrospective application for the use of the property as an 8 bedroom House in Multiple Occupation (sui generis use) together with retention of single storey rear extension and rear roof dormer.

Decision: Refused 22.05.2023

Appeal Reference: 23/02737/REF

Appeal Type: Appeal against decision for application reference 136027/FO/2023

Appeal Decision: Part Allowed Part Dismissed 04.06.2024

Appeal Summary: Appeal allowed for ground floor extension and Dismissed, in respect of dormer extension and change of use.

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 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 to enlarge the dwellinghouse with a rear dormer, and the local planning authority are content that the proposed dormer would satisfy the requirements of Class B of the Town and Country (General Permitted Development) (England) Order 2015 (as amended).

However, planning history for the site reveals that a certificate of lawful development was granted for the use of the site as house in multiple occupation (Use Class C4) in March 2022 and that there was a second retrospective application which was refused for the use of the property as an 8-bedroom House in Multiple Occupation (sui generis use) together with retention of single storey rear extension and rear roof dormer in May 2023. This was subsequently appealed and was partially allowed for ground floor extension and dismissed, in respect of dormer extension and change of use to an 8 Bed HMO.

Clarification was sought with the applicant as the aerial images revealed and later confirmed by a site visit that the proposed dormer was already in situ, the applicant that the dormer was in fact in situ but that the materials that have been used were not lawful and therefore a new application had been submitted with details of new materials to be used.

The submitted existing floor plans show 6 "study/bedrooms", whereas the proposed floor plans show that following construction of the proposed dormer, this will increase to 8 "study/bedrooms"; the applicant is therefore making it clear that the proposed works are to facilitate the further enlargement of the HMO by the addition of two bedrooms within the property. Therefore, it is appropriate for the Council to consider whether such an enlargement would also amount to a material change of use (MCU). A comparison between the floor plans is shown in image 1, with the bedrooms highlighted in yellow.

Section 55 of the Town and Country Planning Act 1990, defines development as including "...*the making of a material change of use...*". As previously noted, the applicant has already applied (ref: 136027/FO/2023) for a change of use to an 8 bedroom HMO which was refused and subsequently dismissed (ref: 23/02737/REF).



Photograph 1 White Clad Dormer as built at the application site. Source: Case Officer Site Visit Photographs



Image 1 Comparison between existing and proposed floor plan to show an increase in the number of "study/bedrooms" from 6 to 8

In sub-paragraph (2)(f), it states:

"in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or,

subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.” meaning that the use of any building within the same use Class would not amount to development.

In this case it is clear that the proposal would increase the number of bedrooms within the property to eight which would amount to a material change of use requiring planning permission as it would be development as set out in Section 55(1) of the Town and Country Planning Act 1990; there would be a change of use from a house in multiple occupation (Class C4) to an 8-bedroom house in multiple occupation (*sui generis*), for which planning permission would be required and 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 dormer would increase the occupancy within the property to 8 bedrooms and as such it would facilitate a material change of use, as defined by Section 55(1) of the Town and Country Planning Act 1990; planning permission would therefore be required for the totality of the development.

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
Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Fallowfield Central)
Area Team Boundary - Name: SOUTH AREA