MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	141008/LP/2024
Date registered valid:	8 October 2024
Proposal:	Application of insulated render to all external walls, together with the addition of a new front door, replacement windows and conversion of existing garage to form additional living accommodation (bathroom and study) with associated elevational alterations.
Address:	33 New Forest Road, Manchester, M23 9JT
Ward(s):	Brooklands Ward
Applicant:	Mr James Davey
Agent (if any):	Mr Fergal McDonnell AK/A3 Architects
Case officer:	Adam Neil Tel: 0161 234 4531 Email: adam.neil@manchester.gov.uk
Recommendation:	Refused

Date of recommendation: 2 December 2024

Application details

Type of application: Certificate Lawful Develpmnt Proposed

Development type: Certificates of lawfulness

Date of site visit: Not applicable

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: Not applicable

Tree Preservation Order: Not applicable

Description of area

The detached property is located on a residential street tree lined street, with properties that are of a similar style; Maple Wood is to the east and within a few meters walking distance.

Description of development

The applicant is seeking a certificate of proposed lawful development to apply an insulated render to all the external walls of the property, together with a new front door and replacement windows, and conversion of the existing garage to additional living accommodation 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 A grant planning permission for the enlargement, improvement, or other alteration of a dwellinghouse. This ‘permitted development right’ is subject to limitations and conditions.

Insulated render

Paragraph A.3(a) of the GPDO states that *"the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse*"

Clarification as to the interpretation of the GPDO is also provided by the Government's Technical Guidance issued in September 2019, where it states "*The condition… is intended to ensure that any works to enlarge, alter or improve a house result in an appearance that minimises visual impact and is sympathetic to existing development. This means that the materials used should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same materials."*

In this case, as the dwellinghouse is constructed of red brick, with no external render to the property; the proposed cladding of the entire exterior of the dwellinghouse with an insulated render would not comply with the matching materials condition under paragraph A.3(a), and the proposal would not be permitted development because it would conflict with this limitation.

The application of the insulated render to the extension of the dwellinghouse should therefore be refused.

Replacement Front Door and Windows

As noted above, *"the materials used in any exterior work… must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse*" and the replacement of windows and doors is also expressed as an example in the 2019 Technical Guidance. The guidance makes it clear that *"it may be appropriate to replace existing windows with new uPVC double-glazed windows or include them in an extension even if there are no such windows in the existing house. What is important is that they give a similar visual appearance to those in the existing house, for example in terms of their overall shape, and the colour and size of the frames."*

As specific Government advice on how the GPDO should be interpreted, the Technical Guidance attracts significant weight.

In this instance, the proposal is the removal of all existing windows, with the rear ground floor windows openings being slightly enlarged. The existing windows and front doors are white uPVC, but the proposed replacements are stated as uPVC Anthracite (RAL 7016); this will not provide for "*a similar visual appearance… in terms of their overall shape, and the colour and size of the frames"*.

Accordingly, the replacement of the front door and windows should therefore be refused as this would not be permitted development because it would conflict with the limitations under paragraph A.3(a).

Conversion of Garage to living accommodation with elevational alterations

The conversion of an integral garage into additional living accommodation is, in normal circumstances permitted by the GPDO, this because Part 1, Class A would allow for the removal of the door and the insertion of a wall and window, provided that the works conforms to the full restrictions of that class, in particular the use of the external materials.

As has already been noted, the proposed window would not be of similar appearance and the removal of the garage door is shown to include the building of a wall in its place, but that this

would then be externally clad with insulated render. It has already been concluded that this would conflict with paragraph A.3(a), as such this would not amount to permitted development and permission would be required.

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: Refused

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

1) On the evidence contained in the application and the balance of probabilities, the proposed development would breach the limitations set out in paragraph A.3(a) to Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), and would require planning permission.

Appendix 1 – List of consultees & neighbours notified

No neighbour notifications have been printed and sent

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: SOUTH AREA