MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	137853/LP/2023
Date registered valid:	15 August 2023
Proposal:	Enlargement of dwellinghouse with installation of a timber frame dormer to the roof on rear elevation w/ brick gable end creating a new second floor.
Address:	13 College Drive, Manchester, M16 0AD
Ward(s):	Whalley Range Ward
Applicant:	Ms Ben Hall Studio Reform Ltd
Agent (if any):	Mr Ben Hall Studio Reform
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Refuse
Date of recommendation:	23 October 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

Application site relates to a two-storey semi-detached dwellinghouse with a projecting front bay windows at both ground and first floor. The property is brick built with a slate tiled gable ended roof.

Listed building: Not applicable

Conservation area: No, rear garden forms a boundary with the Whalley Range Conservation Area 1992

Tree Preservation Order: Not applicable

Description of area

The area is residential in nature comprising of large detached and semi-detached dwellinghouses located on the fringes of the Whalley Range Conservation Area 1992

Description of development

Certificates of lawfulness to enlarge dwellinghouse with installation of a timber frame dormer to the roof on rear elevation w/ brick gable end creating a new second floor.

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 applicant is seeking a certificate of proposed lawful development for a rear dormer. The plans submitted in support of the application show the proposal be built up of the side flank gable wall. The *“Permitted development rights for householders: Technical Guidance”*, published in September 2019, make it clear that *“In order to be permitted development, a proposal must meet all the limitations and conditions under each Class relevant to the proposal.”*

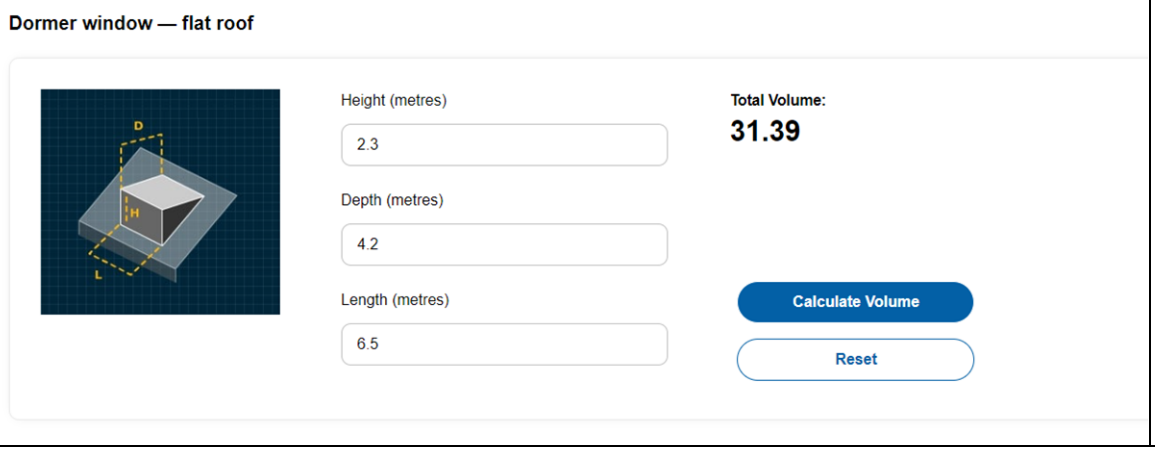
The determining factor is whether the development as a whole is permitted by Article 3(1) and Schedule 2, Part 1, of the Order.

- The dormer will be considered under Class B in the first instance, as this relates to extensions and alterations to the roof of a dwellinghouse.

Permitted development

B. The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.

Development not permitted

Paragraph	Complies
B.1 (a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G,M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);	N/A
B.1 (b) any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof;	Yes
B.1 (c) any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway;	Yes
B.1 (d) the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than—	
(i) 40 cubic metres in the case of a terrace house, or	N/A
(ii) 50 cubic metres in any other case;	Yes
	
include— B.1 (e) it would consist of or	
(i) the construction or provision of a veranda, balcony or raised platform, or	Yes
(ii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe	Yes

B.1 (f) the dwellinghouse is on article 2(3) land.; or	Yes
B.1 (g) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).; or	N/A
B.1 (h) the existing dwellinghouse has been enlarged in reliance on the permission granted by Class AA (enlargement of a dwellinghouse by construction of additional storeys).	N/A
B.2 (a) 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;	No

Explanation

Page 35 of the Permitted development rights for householders' technical guidance (September 2019) advises that:

the face and sides of a dormer window should be finished using materials that give a similar visual appearance to existing house. So, the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level.

This is intended to ensure that any addition to a roof for a loft conversion result in an appearance that minimises visual impact and is sympathetic to the existing house. This means that the materials used should be of similar visual appearance to those in the existing house, but it is accepted that this does not mean that they need to be the same materials or match exactly.

The roof of the existing dwellinghouse is covered with blue slates and the proposed dormer features seam metal cladding on the main face and that the existing gable end brick wall will be built up to form cheek of dormer. The proposed cladding is not of a similar profile and visual appearance to slate nor is the brick, in terms of size, shape and texture. It is therefore considered that the proposed materials would not be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse and therefore fails to comply with B.2(a).

B.2 (b) the enlargement must be constructed so that—	
(i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension—	Yes
(aa) the eaves of the original roof are maintained or reinstated; and	Yes

(bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves; and	No

Explanation

To meet the condition in Class B paragraph B.2(b), the proposed dormer would have to be set back a minimum of 0.2 m from the eaves of the original roof, measured along the roof slope from the outside edge of the eaves. The side elevation drawing accompanying the application does not clearly show that the proposed dormer would be set back from the side of the main roof eaves by the required distance.

(ii) other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse; and	Yes
B.2 (c) any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be— (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.	No

Explanation

The two proposed side windows are shown as being obscurely glazed; however, the proposed windows are also capable of being opened from the bottom. To comply with B.2(c) the windows must but be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. This is not clear for the proposed windows and therefore fail B.2(c) (ii).

Interpretation of Class B

B.3 For the purposes of Class B, “resulting roof space” means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not.

B.4. For the purposes of paragraph B.2(b)(ii)—
(a) roof tiles, guttering, fascias, barge boards and other minor roof details overhanging the external wall of the original dwellinghouse are not to be considered part of the enlargement; and
(b) “rear or side extension” includes an original part of, or a subsequent extension of, the dwellinghouse that extends from the rear or side of the principal part of the original dwellinghouse.

Any other classes?

The Technical Guidance provides an example in the scenario where two classes are to be considered, specifically it states:

"For example, where a proposed two storey extension at the rear of a house has a roof that joins onto the main roof of the original house, the works will need to meet the requirements of both Class A (which covers the enlargement of the house) and Class C (which covers any alterations to the roof) in order to be permitted development. If the works also include the creation of a dormer window to enlarge the roof space, either in the extension or the original roof space, then they would also need to meet the requirements of Class B."

In other words an extension or alteration to a dwellinghouse can fall within more than one Class; where that is the case, the proposal must comply with all of the conditions and limitations of the classes that apply to amount to permitted development.

Class A permits "The enlargement, improvement or other alteration of a dwellinghouse", but this is not permitted if any of the provisions of paragraph A.1 of the Class would not be met.

The proposed enlargement essentially adds a third storey element to the roof of the original dwellinghouse, the dormer is to be constructed to include a side elevation wall containing two windows and the wall extending upward from the existing flank gable; the eaves height of the dormer as a result of this side elevation would exceed 3 metres in height and be within 2 metres of the boundary, so it does not comply with sub-paragraph (i). In addition, when measured from ground level in accordance with Article 2(2) of the Order, it would not comply with sub-paragraph (f)(ii), since it exceeds 4m in height.

Therefore, the proposed works go beyond what could be described only as an "addition or alteration" to a roof. The works would, as a matter of fact and degree, also amount to an enlargement of the dwellinghouse. They would, thus, fall to be considered under Class A as well as Class B.

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 proposed development as shown on drawings PRP_3 Revision A, PRP_4 Revision A, PRP_5 Revision A and PRP_6 Revision A, does not constitute permitted development as it would fail to meet the requirements of Part 1, Schedule 2, Class A.1(f)(ii) and A.1(i), and Class B.2 (a), B.2(b)(i)(bb) and B.2(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
Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M
Conservation Area - Whalley Range Conservation Area 1992
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: SOUTH AREA