MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	141262/LP/2024
Date registered valid:	17 October 2024
Proposal:	Part A: Installation of 2 x (inline) PV panels within the front roof slope Part B: Installation of 4 x (inline) PV panels within the side facing roof slopes of the unbuilt side extensions
Address:	38 Holwood Drive, Manchester, M16 8WS
Ward(s):	Whalley Range Ward
Applicant:	Jay + Stephen Swali
Agent (if any):	Mr Kieran Hibbs kieranhibbsarchitecture
Case officer:	Adam Roche Tel: 0161 234 4688 Email: adam.roche@manchester.gov.uk
Recommendation:	Part A: Approve Part B: Refuse
Date of recommendation:	3 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

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

Installation of (inline) PV panels within roof (front and side).

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 installation of (inline) PV panels within roof (front and side).

Each part of the proposal will be evaluated in accordance with the relevant sections of the Town and Country (General Permitted Development) Order 2015 (as amended).

Schedule 2, Part 14, Class A of the General Permitted Development Order 2015 (as amended) sets out that it is permitted development to install solar equipment on a dwellinghouse not sited in a conservation area or a World Heritage Site and is not a listed building, unless;

- It protrudes more that 0.2 metres beyond the plane of the wall or roof slope.
- It would result in the highest part of the equipment being higher that the highest part of the roof.
- It would result in the highest part of the equipment being more than 0.6 metres higher than the highest part of a flat roof.

Condition A.2 sets out that the solar equipment is, so far as practicable, sited so as to minimise its effect on the external appearance of the building and to minimise its effect on the amenity of the area.

In this case, the submitted plans in support of the application show that it's proposed to install two inline panels to the roof slope of the principal elevation. The proposed inline roof panels will not protrude by more than 0.2 metres of the roof slopes and will not be higher than the highest part of the existing roof. In relation to any effect on amenity, the Council is satisfied that the panels are sited, so far as practicable, to minimise effect on the host building and the amenity of the local area. As such, the panels in the front roof slope are Permitted Development.

However, four inline panels are shown to the roof slope of the side elevation, namely, the two-storey side extension. Whilst permission has been granted for this extension (138335/FH/2023), it was noted on 28 November 2024, during a visit to the property that the development was not substantially completed, and the permission has therefore not been fully implemented.

As such, the proposed equipment on the roof slopes to the proposed extensions cannot be permitted development because the extended part of the dwellinghouse would only acquire permitted development rights once it is substantially completed; in this case, the roof as approved would need to be fully constructed, with permitted development alterations subsequently being made. To construct the approved extension and install the proposed solar panels in a single building operation, will require planning permission.

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: Part A: Approve and Part B: Refuse

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

Part A: Approve

The proposed installation of two inline PV panels within the front roof slope, as shown in drawing no. KH440-102, is considered permitted development as it would meet the limits and conditions set out in Class A of Schedule 2, Part 14 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Part B: Refuse

The proposed installation of four inline PV panels within the side roof slopes are to be installed in the roofs of extensions granted planning permission (ref. 138335/FH/2023). However, those extensions are yet to be built, and as such have not acquired permitted development rights, and nor would be until the development is substantially completed. Therefore, the installation of PV panels in these roof slopes would require planning permission.

Appendix 1 – List of consultees & neighbours notified

Not applicable

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 (Middle) -
Area Team Boundary - Name: SOUTH AREA