

Planning

Growth & Development

Delegated officer report for planning application

Application no. 140795/LP/2024
Date registered valid: 16 August 2024
Proposal: Erection of boundary wall, gate and fence with a maximum height of 1710mm and a minimum height of 1370mm
Address: 41 St James Road, Manchester, M7 4XP
Ward(s): Cheetham Ward

Applicant: Mrs Rashida Akhtar
Agent (if any): Mr M Ahmed M1 Architecture Ltd
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 11 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

The application site relates to the boundary of a two storey end terraced dwellinghouse located on the corner of St James Road and Hacking Street.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

Residential in nature.

Description of development

The applicant is seeking a Certificate Lawful Development Proposed to erect boundary wall, gate and fence with a maximum height of 1710mm and a minimum height of 1370mm

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.

Issues

Planning History

Application Reference: 067028/FH/NORTH1/03

Proposal: Single storey rear extension

Decision/Status: Approved - 28.07.2016

Application Reference: 140160/FH/2024

Proposal: Erection of two storey side and rear extension with installation of rear dormer, creating new gates and boundary treatment to a height of 1.8m

Decision/Status: Withdrawn

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.

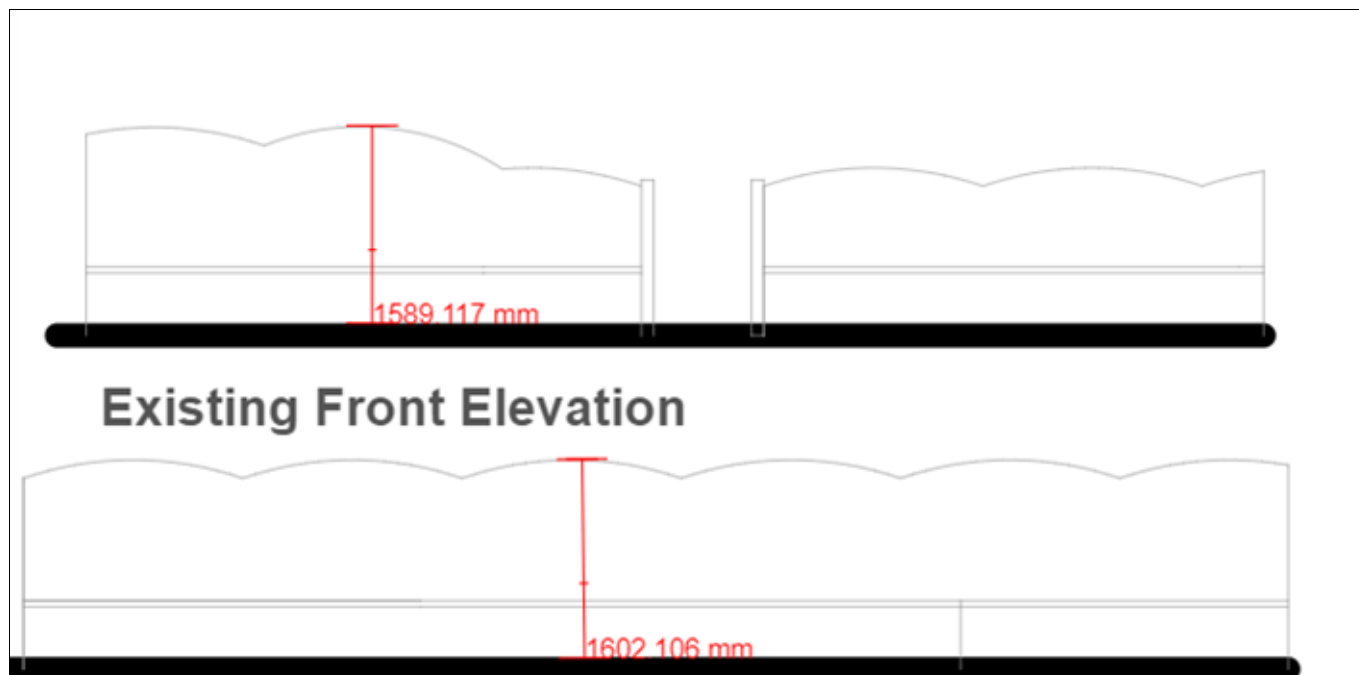
The erection of a gate, fence, wall or other enclosure can be permitted development under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). The proposal will therefore be considered against Class A.

Part 2, Minor Operations Class A –gates, fences, walls etc

Permitted development

A. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

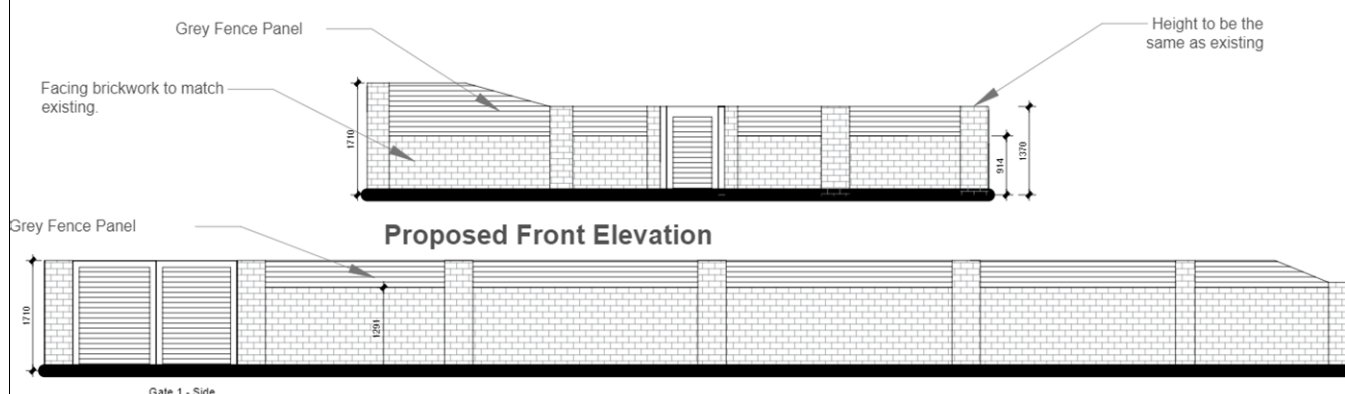
A.1 Development is not permitted by Class A if—	Complies
A.1 (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—	
(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;	N/A
(ii) in any other case, 1 metre above ground level;	No
<p>Explanation</p> <p>It would be necessary to remove the existing fence, wall and gates before the new fence, wall and gates could be erected in addition the height, design and appearance of the new boundary treatment would also differ (see images 1 and 2 for a comparison). Therefore, the proposal would have to be considered a new structure rather than works of maintenance, improvement or alterations.</p> <p>As such the new boundary fence, wall and gates would not be permitted under Class A by virtue of A.1(a) (ii) in that its height would exceed 1 metre above ground level adjacent to a highway used by vehicular traffic</p>	



Existing Front Elevation

Existing Side Elevation

Image 1 Existing boundary fence and wall (height measurements added by case officer)



Proposed Front Elevation

Proposed Side Elevation

Image 2 Proposed boundary wall and fence elevation (measurements were already annotated as when submitted).

A.1 (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;	Yes
A.1 (c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or	N/A
A.1 d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.	N/A

Development not permitted

Interpretation of Class A

A.2 For the purposes of Class A, “school” includes—

(a) premises which have changed use under Class S or T of Part 3 of this Schedule (changes of use) to become a state-funded school or registered nursery as defined in paragraph X of Part 3; and

(b) a building permitted by Class C of Part 4 of this Schedule (temporary buildings and uses) to be used temporarily as a school, from the date the local planning authority is notified as provided in paragraph C.2(b) of Part 4.

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 boundary wall, gate and fence with a maximum height of 1710mm and a minimum height of 1370mm as shown on drawing 2422 01 does not constitute permitted development, as it fails to accord with Part 2, Schedule 2, Class A.1(a)(ii) of the Town and Country (General Permitted Development) (England) Order 2015 (as amended).

It would be necessary to remove the existing fence, wall and gates before the new fence, wall and gates could be erected in addition the height, design and appearance of the new boundary treatment would also differ. Therefore, the proposal would have to be considered a new structure rather than works of maintenance, improvement or alterations.

As such the new boundary fence, wall and gates would not be permitted under Class A by of virtue of A.1(a) (ii) in that is height would exceed 1 metre above ground level adjacent to a highway used by vehicular traffic.

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

Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA

Historic Landfill Site 250m Buffer -

Area Team Boundary - Name: NORTH AREA