MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	140454/LP/2024
Date registered valid:	8 July 2024
Proposal:	Amalgamation of two dwellinghouse into a single dwellinghouse
Address:	4 & 6 Redwing Avenue, Manchester, M21 7JS
Ward(s):	Chorlton Park Ward
Applicant:	Miriam Bennett & Michael Chu
Agent (if any):	Mr Kieran Hibbs kieranhibbsarchitecture
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Grant
Date of recommendation:	9 September 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 an adjoining pair of modern two storey semi-detached properties both with attached single storey garages.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area is predominantly residential in nature located close to both Chorlton Water Park and Chorlton Golf Club.

Description of development

The applicant is seeking a certificate of proposed lawful development to amalgamate two dwellinghouse into a single dwellinghouse.

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

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 to amalgamate two C3 uses into one planning unit,

Section 55(3)(a) of the Town and Country Planning Act 1990 as amended (1990 Act) provides that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which

is so used. The 1990 Act does not state whether the reverse change of use would be material – and so that is a question which must be considered on the facts in any given case.

A change of use is considered material if there is some significant change in the character of the activities taking place as a matter of fact and degree.

Section 55(1) of the 1990 Act defines the term 'development' which includes the change of use of a building. Section 55(2)(f) explains that in the case of buildings used for a purpose of any class specified in an order made by the Secretary of State, the use of that building for any purpose within the same class shall not be taken, for the purpose of the Act, as amounting to 'development'.

The site forms part of an estate of 97 two-storey, two, three and four-bed houses, other than the proposed amalgamation of the houses to form a seven-bedroom house, very little detail has been provided regarding the proposal, other than that this would allow the family to remain in the area and more cost effective than buying a similar sized bedroom property elsewhere. Manchester Core Strategy Development Plan Document (2012) policy H6 “South Manchester” states that

“South Manchester will accommodate around 5% of new residential development over the lifetime of the Core Strategy. High density development in South Manchester will generally only be appropriate within the district centres of Chorlton, Didsbury, Fallowfield, Levenshulme, and Withington, as part of mixed-use schemes. Outside the district centres priorities will be for housing which meets identified shortfalls, including family housing and provision that meets the needs of elderly people, with schemes adding to the stock of affordable housing.”

Overall housing policy H1 advises that *the proportionate distribution of new housing, and the mix within each area, will depend on amongst others the need to diversify housing stock in mono-tenure areas by increasing the availability of family housing, including for larger families; and the availability of other tenures to meet the identified needs of people wishing to move to or within Manchester; and preserving and improving the quality of the existing housing stock.*

No definition is provided as to what is meant by a family house by the development plan. Therefore, bearing in mind that whilst the proposal would result in the loss of a smaller family house, the proposal would appear to be complaint with policies H1 and H6 of the Core Strategy and the Places for Everyone Joint Development Plan – 2022 to 2039 as these policies do not discourage or prevent the loss of a smaller house to create a larger house. The change would not cause any significant change in the appearance of the site or the nature or scale of the activities taking place.

For these reasons it is considered that the proposed amalgamation of 4 and 6 Redwing Avenue to a single dwellinghouse does not amount to either a material change of use or operational development as defined by section 55 of the Town and Country Planning Act 1990. However, a future reversion to two separate dwellinghouses may require planning permission at that time.

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: Grant

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

1. The proposed amalgamation of 4 and 6 Redwing Avenue, Manchester, M21 7JS to a single dwellinghouse does not amount to either a material change of use or operational development as defined by section 55 of the Town and Country Planning Act 1990.

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
Area Team Boundary - Name: SOUTH AREA