MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	140255/LE/2024
Date registered valid:	2 July 2024
Proposal:	Erection of outbuilding
Address:	15 Hardon Grove, Manchester, M13 0TX
Ward(s):	Rusholme Ward
Applicant:	Wai Yin Wong
Agent (if any):	Mrs Cora Younger Studio Charrette
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Grant
Date of recommendation:	27 August 2024

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: Not Required

Standard consultations:
Printed: 15 July 2024 Expired: 5 August 2024

Neighbour notifications
Printed: 15 July 2024 Expired: 5 August 2024

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 a two storey semi-detached dwellinghouse located at the end of a cul-de-sac. The red brick building has previously been extended with a two storey side extension, front porch and a single side extension..

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 of lawfulness to confirm that the outbuilding was substantially complete more than four years before the date of this application.

Consultations & Notification Responses

Local residents/public opinion – One representation was received objecting to the application, raising concerns about how the unit will be rented, that Hardon Grove has a pre-existing car parking problems.

HS2 Ltd – No objection

Planning History

077317/FH/2005/N2
Erection of a single storey building in rear garden comprising games room
Application Refused - 14.12.2005

074276/FH/2004/N2
Erection of detached single storey building with central raised roof to be used as gym/games room/ sauna area in rear garden
Application Refused - 14.03.2005

068786/FH/2003/N2
Single storey side extension to form a kitchen and covered area.
Application Approved - 04.09.2003

064906/FH/NORTH2/02
Erection of a two storey side extension to form lounge with two bedrooms above and a single storey rear extension to form kitchen, disabled toilet and sitting room
Application Approved - 19.06.2002

064133/FH/NORTH2/02
Three storey side and single storey extension at rear to form additional accommodation
Application Refused - 15.03.2002

042974
Two storey extension at side and rear of house to form a kitchen, living room with two bedrooms over
Application Refused - 18.02.1993

030901
Two storey extension at side of dwellinghouse to form dining room, kitchen and study on the ground floor with 4 bedrooms over, and erection of a boat house in garden
Application Approved - 07.04.1988

020772
Two-storey side extension to form an enlarged kitchen, a utility room and a garage with a new bedroom and bathroom over
Application Approved - 15.02.1984

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 191 which provides for an application to determine whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land is lawful for planning purposes

The application form indicates that the building works for the outbuilding were substantially complete on the 1st June 2008.

Aerial images taken from Google Earth show the existence of an outbuilding in the rear garden of 15 Hardon Grove from 2009. The evidence goes on to show that the same structure was visible in 2016, 2017and 2023.

In addition, a number of other photographs and drawings showing the exterior and interior of the outbuilding have been submitted to confirm that this is the same outbuilding.

A letter from a neighbour has been provided to confirm that they witnessed the late husband of the applicant overseeing the construction of the building.

The objection to the proposal suggests that the use of the outbuilding has gone unnoticed which may rise doubts over the existence of the outbuilding. However, the evidence provided clearly shows that the outbuilding has been in situ for the required four years.

Conclusion - On balance of probability and without any evidence to the contrary that the outbuilding was substantially complete more than four years before the date of this application and the certificate should be granted.

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

From the evidence available, and with reference to the relevant planning legislation, Manchester City Council is satisfied that the outbuilding within the rear garden of 15 Hardon Grove, is lawful by reason of the said use having been in existence for a period of 4 years up to the date of this application.

Appendix 1 – List of consultees & neighbours notified

High Speed Two (HS2) Limited

16 Hardon Grove, Manchester, M13 0TX
12 Hardon Grove, Manchester, M13 0TX
11 Hardon Grove, Manchester, M13 0TX
9 Hardon Grove, Manchester, M13 0TX
7 Hardon Grove, Manchester, M13 0TX
14 Hardon Grove, Manchester, M13 0TX
13 Hardon Grove, Manchester, M13 0TX

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Coal Authority - Surface Coal Resources - Name: Coal bearing strata at surface
HS2 Phase 2b Safeguarding Zones - HS2 Safeguarding Zones (October 2020)
HS2 Phase 2b Safeguarding Zones - HS2 Safeguarding Zones (June 2022)
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: SOUTH AREA