MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	140336/LP/2024
Date registered valid:	21 June 2024
Proposal:	Erection of a single storey outbuilding (garden room) following demolition of existing
Address:	20 Edinburgh Square, Manchester, M40 8DN
Ward(s):	Miles Platting & Newton Heath Ward
Applicant:	Mr David Dadzie
Agent (if any):	Mr Dave Trudgeon Conway Architectural Design
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Refuse
Date of recommendation:	15 August 2024

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: 15 August 2024

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 side garden of a two storey end terraced property located On Edinburgh Square. The property has access to Bednal Avenue at the rear of the site and property.

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 proposed lawful development for an outbuilding in the side garden.

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 a certificate of proposed lawful development for an outbuilding in the side garden.

Permitted development

Class E – buildings etc incidental to the enjoyment of a dwellinghouse

Permitted development

E. The provision within the curtilage of the dwellinghouse of—

(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or
(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

Paragraph	Complies
E.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
E.1 (b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);	Yes
E.1 (c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;	Yes
E.1 (d) the building would have more than a single storey;	Yes
E.1 (e) the height of the building, enclosure or container would exceed—	
(i) 4 metres in the case of a building with a dual-pitched roof	N/A
(ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or	Yes
(iii) 3 metres in any other case;	N/A
E.1 (f) the height of the eaves of the building would exceed 2.5 metres;	Yes
E.1 (g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;	Yes
E.1 (h) it would include the construction or provision of a verandah, balcony or raised platform	Yes
E.1 (i) it relates to a dwelling or a microwave antenna;	Yes
E.1 (j) the capacity of the container would exceed 3,500 litres.; or	N/A
E.1 (k) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).	N/A

E.2 In the case of any land within the curtilage of the dwellinghouse which is within— (a)an area of outstanding natural beauty; (b)the Broads; (c)a NationalPark; or (d)a World Heritage Site, development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres	N/A
E.3 In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.	N/A

Interpretation of Class E

E.4 For the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.

Permitted development rights for householders technical guidance advises that "*the rules also allow, subject to the conditions and limitation…, a large range of other buildings on land surrounding a house*". Examples given by the guidance include buildings such as garden sheds, other storage buildings, garages, and garden decking provide that…. "*they can properly be described as having a purpose incidental to the enjoyment of the house.*"

The guidance warns that "*A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen…*"

The Emin v SSE and Mid-Sussex District Council [1989] is often cited in appeal cases relating to outbuildings, this case established that the term "incidental" implied an element of subordination in land-use terms in relation to the enjoyment of the dwellinghouse and that for the purposes of applying Class E the term "required" should be interpreted as "reasonably required" rather than the "unrestrained whim" of the occupier. Also, with regard to the nature and scale of the activities to be carried on, the size of a proposed building can be an important consideration, although not conclusive by itself.

Therefore, the tests are firstly, as to whether use of the proposed outbuilding is intended to and would remain incidental and subordinate to the main use of the dwellinghouse and secondly, whether the "reasonably required" in order to accommodate those uses.

The applicant is seeking a certificate of proposed lawful development for an outbuilding at the within the rear garden along the rear boundary fence. The proposed single storey outbuilding would have a floor space of just over 27.5 square metres (measured externally) and containing a shower room, kitchenette, office and lounge.

The size of an outbuilding, in comparison to the dwellinghouse, may be an important consideration but it is not by itself conclusive. However, the physical size of buildings could be a

relevant consideration in that they might represent some indicia as to the nature and scale of the activities to be carried on in the proposed building.

In this case the outbuilding would have a floorspace that would not be dissimilar to that of the original dwellinghouse and the labels given to the rooms within the outbuilding could allow for separate self-contained living accommodation.

While it is not necessary for the applicants to demonstrate a requirement for the outbuilding, it must be shown to be required for a purpose incidental to the enjoyment of the dwellinghouse as such. In this case the floor plan shows rooms that contain ancillary uses rather than incidental.

Whilst the other provisos in Class E would be met, the GPDO does not grant planning permission for the provision of an outbuilding for use for purposes ancillary to the house, or to provide facilities ancillary to the house.

Therefore, the application has failed to demonstrate that, on the balance of probability, all the proposed uses are uses which are reasonably required, in particular on the scale proposed, for a purpose or purposes incidental to the enjoyment of the dwellinghouse as such and, accordingly, the certificate should be refused.

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 single storey outbuilding as shown on the submitted drawings 861-04, 861-05 and 861-06 do not constitute permitted development as it would fail to meet the requirements of Part 1, Schedule 2, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), in that the applicant has failed to demonstrate that, on the balance of probability, all the proposed uses, and in particular on the scale proposed, are uses which are incidental to the enjoyment of the dwellinghouse..

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 High Risk - Name: DEVELOPMENT_HIGH_RISK_AREA
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Coal Authority - Surface Coal Resources - Name: Coal bearing strata at surface
Area Team Boundary - Name: NORTH AREA