MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	140301/LP/2024
Date registered valid:	28 June 2024
Proposal:	Insertion of window added to North East elevation
Address:	Unity Community Primary School, 41 Allesley Drive, Manchester, M7 4YE
Ward(s):	Cheetham Ward
Applicant:	Mr Keith Smith Big Life Schools
Agent (if any):	Sean Monaghan MOJO Architects
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Grant
Date of recommendation:	16 August 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

Relates to part single, part two storey primary school.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

Residential

Description of development

The applicant is seeking a certificate of proposed lawful development to allow the insertion of window added to North East elevation

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 to allow the insertion of window added to North East elevation

Permitted development

Class M –extensions etc for schools, colleges, universities, prisons and hospitals

Development not permitted

Paragraph	Complies
M.1 (a) if the cumulative footprint of any erection, extension or alteration under Class M on or after 21st April 2021 would exceed the greater of—	Yes
(i)25% of the cumulative footprint of the school, college, university, prison or hospital buildings as it was on 21st April 2021; or	Yes
(ii)250 square metres;	Yes
M.1 (b) in the case of a college, university, prison or hospital building, if any part of the development would be within 5 metres of a boundary of the curtilage of the premises;	Yes
M.1 (ba)in the case of a school, where any land adjacent to the site is used for a purpose within Part C of the Schedule to the Use Classes Order (residential purposes), if any part of the proposed development is within 5 metres of the boundary of the curtilage ofthat residential land;	Yes
M.1 (c) if, as a result of the development, any land used as a playing field at any time in the 5 years before the development commenced and remaining in this use could no longer be so used;	Yes
M.1 (d) if the height of any new building erected would	
(i)if within 10 metres of a boundary of the curtilage of the premises, 5 metres; or	Yes
(ii)in all other cases, 6 metres;	Yes
M.1 (da)if the height of any rooftop structure would exceed 1.5 metres;	Yes
M.1 (e) if the height of the building as extended or altered would exceed—	
(i) if within 10 metres of a boundary of the curtilage of the premises, the lesser of the height of the building being extended or altered or5 metres; or	Yes
(ii) in all other cases, the height of the building being extended or altered;	Yes
M1. (f) if the development would be within the curtilage of a listed building; or	Yes
M.1 (g) unless -	
(i) in the case of school, college or university buildings, the predominant use of the existing buildings on the premises is for the provision of education;	Yes
(ii)in the case of hospital buildings, the predominant use of the existing buildings on the premises is for the provision of any medical or health services;	Yes
(iii)in the case of prison buildings—	

(aa)the predominant use of the existing buildings on the premises is for the confinement of prisoners in closed conditions;	Yes
(bb)the buildings are located on a site with a closed perimeter; and	Yes
(cc)the development does not involve the erection, extension or alteration of any building beyond the perimeter as it stood on 21st April 2021.	Yes

Conditions

M.2 Development is permitted by Class M subject to the following conditions —

(a) the development is within the curtilage of an existing school, college, university, prison or hospital;

(b)the development is only used as part of, or for a purpose incidental to, the use of that school, college, university, prison or hospital;

(c) any new building erected is, in the case of article 2(3) land, constructed using materials which have a similar external appearance to those used for the original school, college, university, prison or hospital buildings;

(d)any extension or alteration is, in the case of article 2(3) land, constructed using materials which have a similar external appearance to those used for the building being extended or altered;

(e)where proposed development under Class M relates to the erection, extension or alteration of a school building that results in an increase in the school's published admission number, the developer must, within a period of six months starting with the date the development is completed, submit to the local planning authority a travel plan for the site;

(f)where proposed development under Class M relates to the erection, extension or alteration of a university building, development is permitted subject to the condition that before beginning the development the developer applies to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

(i)transport and highways impacts of the proposed development;

(ii)the design and external appearance of the erection, extension or alteration; or

(iii)the impact of the development on heritage and archaeology;

(g)an application required under paragraph (f) is to be made and determined in accordance with paragraph M.2A (procedure for applications for prior approval under Class M);

(h)development approved pursuant to an application under paragraph (f) is permitted subject to the condition that it is completed within a period of three years starting with the prior approval date.

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 insertion of window added to North East elevation as shown on drawings Rev. P01 and Rev. P02 constitutes permitted development in accordance with Part 7, Schedule 2, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

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 -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: NORTH AREA