

Planning

Growth & Development

Delegated officer report for planning application

Application no. 139151/LP/2024
Date registered valid: 1 February 2024
Proposal: Erection of single storey rear extension.
Address: 8 Abbeydale Road, Manchester, M40 0AJ
Ward(s): Moston Ward

Applicant: Ms Magdalena Lipkowska
Agent (if any): Mr Darren Trippier Your Choice Home Improvements
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: REFUSE
Date of recommendation: 20 March 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

Application site relates to a semi-detached two storey dwellinghouse, built at the turn of the 21st Century designed in 1990s modern housing incorporating typical features such as mock timber framing, contrasting brick walls and cottage elements.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The application forms part of an early 2000s new build estates which were often laid out at angles or staggered back to resemble villages.

Description of development

The applicant is seeking a certificate of proposed lawful development for a single storey rear extension.

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.

Environmental Health – Environmental Health have advised that in the event that ground and/or groundwater contamination and/or ground gas are encountered on the site before the development is occupied, the developer is advised to cease works and contact the Council for advice on how to proceed.

An informative has been attached with the contact information.

Issues

Planning History

The following applications are of relevance to this application site:

Application Reference: 103699/FO/2013/N1

Proposal: Substitution of house types and layout on plots 36-42, 107-112, 115-127, 130-131 and 135-140 (33 plots in total) approved under reserved matters application 064313/MO/NORTH1/02 and subsequent amendments.

Decision: Approved 10.02.2013

Application Reference: 079533/FO/2006/N1

Proposal: Plots
/5/35/38/38a/39/42/43/46/47/50/55/58/59/62/63/66/67/70/73/76/80/85/88/89/92/109/112/120/12
1/124/125a/127 And 130 Broadhurst Manor Off St Marys Road Moston

Decision: Approved 10.08.2006

Application Reference: 064313/MO/NORTH1/02

Proposal: RESERVED MATTERS Erection of 278 dwellings

Decision: Approved 31.05.2002

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 applicant is seeking a certificate of lawfulness to convert the integral garage to study and utility room, modification of front elevation to include replacing garage door with window and brickwork.

The proposal would be considered under Class A of the Town and Country (General Permitted Development) Order 2015 (as amended) - the relevant legislation when determining the enlargement, improvement or other alterations to dwellinghouses.

Under Class A for *"the enlargement, improvement or other alterations of a dwellinghouse"* the status of the original house needs to be taken into account, as this state the base from which all measurements should be taken. Under the Order, the term "original" means:

in relation to a building existing on 1st July 1948, as existing on that date and, in relation to a building built on or after 1st July 1948, as so built

However, a condition of the reserved matters application reference: 103699/FO/2013/N1 states the following:

"Notwithstanding the provisions of Part one of Article 3, or as subsequently amended, of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013, no garages, outbuildings or extensions shall be erected without Planning Permission.

Reason - In the interests of residential amenity and the visual amenity of the area within which the site is located, pursuant to policy DM1 of Manchester's Core Strategy."

Therefore, as application property was originally built in accordance with the drawings and documents approved as part approved planning application reference: 103699/FO/2013/N1 this condition would therefore apply and the certificate should be refused as the proposed works require planning permission.

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

Refuse on the basis that the proposed erection of a single storey rear extension requires planning permission as condition 10 of planning permission reference 103699/FO/2013/N1 states the following, "Notwithstanding the provisions of Part one of Article 3, or as subsequently amended, of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013, no garages, outbuildings or extensions shall be erected without Planning Permission".

Informative

1) In the event that ground and/or groundwater contamination and/or ground gas are encountered on the site before the development is occupied, the developer is advised to cease works and call Contact Manchester on 0161 234 5004 or email contact@manchester.gov.uk for advice on how to proceed.

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

Aircraft Safeguarding Zone - Aircraft Safeguarding - Not Affected

Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA

Coal Authority - Surface Coal Resources - Name: Coal bearing strata at surface

Historic Landfill Site 250m Buffer -

Susceptible to Surf Water Flood (Less) -

Area Team Boundary - Name: NORTH AREA