MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	138771/LP/2023
Date registered valid:	6 December 2023
Proposal:	Installation of a replacement transformer
Address:	Existing Sub Station Site On Northern Side Of Silchester Drive, Manchester
Ward(s):	Harpurhey Ward
Applicant:	Mr Mark Sinfield Electricity North West
Agent (if any):	Mrs Paula Fitzgerald Fitzgerald Planning & Design
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Grant
Date of recommendation:	26 January 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 and area

The application site is located on Silchester Drive located between Essington Drive and Tadcaster Drive which form two residential streets located to the south of the site. The building on site has a smooth concrete finish to the front elevation which obscures the main transformer bays and associated equipment to the rear. Directly to the rear of the substation is an area of mature trees and forms part of Moston Brook.

Image 1 Google Earth Image of the application site source: https://earth.google.com/web/search/Silchester+Drive,+Manchester/@53.5020373,-2.214873,56.58478336a,597.89798135d,35y,0h,45t,0r/data=CocBGl0SVwolMHg0ODdiYjA1NTc3M2IxODg3OjB4MzY3YzRjMTAzZDZkZjcyYRmibxzCQsBKQCHmWN5VD7gBwCocU2lsY2hlc3RlciBEcml2ZSwgTWFuY2hlc3RlchgCIAEiJgokCXrYJ_Sew0pAEY7SGTQxw0pAGXCI8fflrQHAIep-P_HBvwHAKAI accessed 25.01.2024

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a Lawful Development Certificate for a proposed replacement transformer to an existing sub station at Queens Park Primary sub station off Silchester Drive, Manchester.

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 proposed installation of a transformer have been considered against the provision of the Schedule 2, Part 15, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

- Installations of the Transformer is considered would fall under part 15 B) a) transforming or switching stations

Class B – electricity undertakings

Development by statutory undertakers for the generation, transmission, distribution or supply of electricity for the purposes of their undertaking consisting of—

(a) the installation or replacement in, on, over or under land of an electric line and the construction of shafts and tunnels and the installation or replacement of feeder or service pillars or transforming or switching stations or chambers reasonably necessary in connection with an electric line;

(b) the installation or replacement of any electronic communications line which connects any part of an electric line to any electrical plant or building, and the installation or replacement of any support for any such line;

(c) the sinking of boreholes to ascertain the nature of the subsoil and the installation of any plant or machinery reasonably necessary in connection with such boreholes;

(d) the extension or alteration of buildings on operational land;

(e) the erection on operational land of the undertaking of a building solely for the protection of plant or machinery;

(f) any other development carried out in, on, over or under the operational land of the undertaking

The proposals involves the installation of a replacement transformer, therefore parts **a** and **f** would apply.

B.1 Development is not permitted by Class B if—

Paragraph	Complies

B.1(a) in the case of any Class B(a) development—	
(i) it would consist of or include the installation or replacement of an electric line to which section 37(1) of the Electricity Act 1989 (consent required for overhead lines)150 applies; or	N/A
(ii) it would consist of or include the installation or replacement at or above ground level or under a highway used by vehicular traffic, of a chamber for housing apparatus and the chamber would exceed 29 cubic metres in capacity;	N/A
(b) in the case of any Class B(b) development—	
(i) the development would take place in a National Park, an area of outstanding natural beauty, or a site of special scientific interest;	N/A
(ii) the height of any support would exceed 15 metres; or	N/A
(iii) the electronic communications line would exceed 1,000 metres in length;	N/A
(c) in the case of any Class B(d) development—	
(i) the height of the original building would be exceeded;	N/A
(ii) the cubic content of the original building would be exceeded by more than 25% or, in the case of any building on article 2(3) land, by more than 10%, or	N/A
(iii) the floor space of the original building would be exceeded by more than 1,000 square metres or, in the case of any building on article 2(3) land, by more than 500 square metres;	N/A
(d) in the case of any Class B(e) development, the building would exceed 15 metres in height, or	N/A
(e) in the case of any Class B(f) development, it would consist of or include—	
(i) the erection of a building, or the reconstruction or alteration of a building where its design or external appearance would be materially affected, or	Yes
(ii) the installation or erection by way of addition or replacement of any plant or machinery exceeding 15 metres in height or the height of any plant or machinery replaced, whichever is the greater.	Yes

Conditions

B.2 Development is permitted by Class B subject to the following conditions—	
(a) in the case of any Class B(a) development consisting of or including the replacement of an existing electric line, compliance with any conditions contained in a planning permission relating to the height, design or position of the existing electric line which are capable of being applied to the replacement line;	

	Yes
(b) in the case of any Class B(a) development consisting of or including the installation of a temporary electric line providing a diversion for an existing electric line, on the ending of the diversion or at the end of a period of 6 months from the completion of the installation (whichever is the sooner) the temporary electric line is removed and the land on which any operations have been carried out to install that line is restored as soon as reasonably practicable to its condition before the installation took place;	N/A
(c) in the case of any Class B(c) development, on the completion of that development, or at the end of a period of 6 months from the beginning of that development (whichever is the sooner) any plant or machinery installed is removed and the land is restored as soon as reasonably practicable to its condition before the development took place; and	N/A
(d) in the case of any Class B(e) development, approval of details of the design and external appearance of the buildings must be obtained, before development is begun, from—	
(i) in Greater London or a metropolitan county, the local planning authority,	
(i) in Greater London or a metropolitan county, the local planning authority, appearance of the buildings must be obtained, before development is begun, from— (i) in Greater London or a metropolitan county, the local planning authority,	N/A
(iii) in any other case, the district planning authority.	N/A

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) Grant on the basis that the replacement transformer does constitute permitted development as it would meet the requirements of Part 15, Schedule 2, Class B (Electricity Undertakings) of the Town and Country Planning (General Permitted Development) 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
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
Area Team Boundary - Name: NORTH AREA