MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	138445/FH/2023
Date registered valid:	31 October 2023
Proposal:	Erection of a part single-storey, part two-storey side/rear extension together with a hip to gable roof alteration and installation of a rear roof dormer
Address:	77 Birchfields Road, Manchester, M13 0XX
Ward(s):	Rusholme Ward
Applicant:	Ms Michelle Sharif
Agent (if any):	Mr Lapas Chowdhury
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Decline to Determine

Date of recommendation: 5 December 2023

Application details

Type of application: Full Householder Application

Development type: Householder

Date of site visit: 4 December 2023

Standard consultations:
No consultations have been printed and sent.

Neighbour notifications
Printed: 13 November 2023 Expired: 4 December 2023

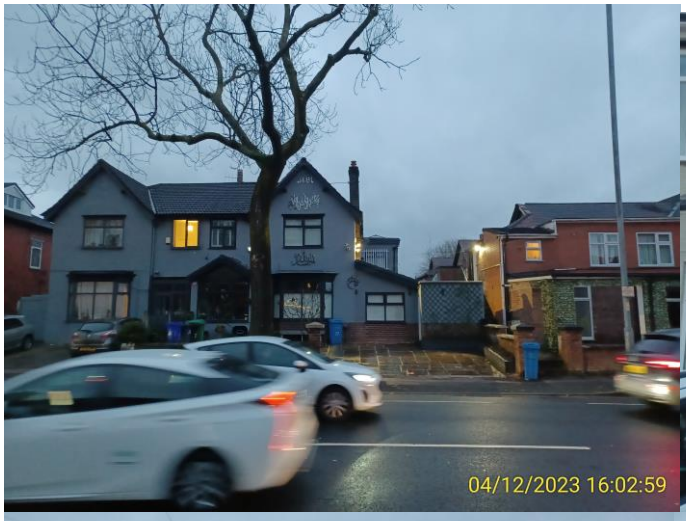
Site notice
No site notice has been produced

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 property is a two storey grey rendered and brick finished residential property located along the busy Birchfield's Road which forms a radial route connecting the City Centre to south Manchester. The property has an area of hardstanding to the front used for off road car parking with private amenity space set out to the rear. The southern boundary of the property is shared with the rear of the commercial properties along Meldon Road. To the rear boundary of the property is an area of land which is fenced and accessed from Copthorne Crescent.

The area is predominantly residential in nature although to the south along Meldon Road is a cluster of commercial properties with residential uses on upper floors. Number 3 Meldon Road was converted to a residential use in the 1990s under approval reference 051928/FO/CENTL1/97.

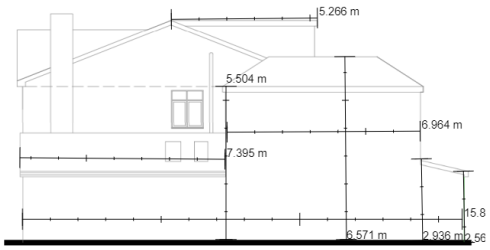
Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

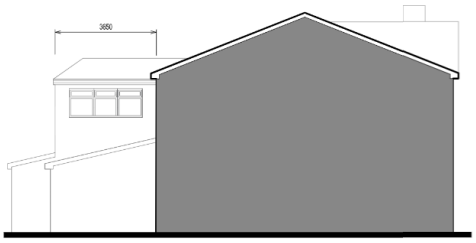
The applicant is seeking planning permission to erect a part single-storey, part two-storey side/rear extension together with a hip to gable roof alteration and installation of a rear roof dormer.



Proposed Side Elevation



Proposed Rear Elevation


Proposed Sectional Side Elevation

The front elevation contains a ground floor window to the side element and a first floor window both facing towards Birchfields Road. The side elevation indicates facing brick work to closely match existing. The two storey is proposed to have a hipped roof with windows in the side wall facing towards the shared boundary with no. 75 Birchfields Road (adjoining semi-detached dwelling). The rear elevation would contain and additional single storey element with a ground floor window and at first floor it would contain a Juliet balcony.

Consultations & Notification Responses

Publicity – Notification letters were sent to nearby residential properties (see appendix 1 for the list of properties).

Local residents/public opinion – No objections, comments or representations in support of the application have been received.

Relevant Planning History

The following applications are of relevance to this proposal:

125479/FH/2019 - The property was subject to planning approval reference 125479/FH/2019 for the 'Erection of a single storey side extension, hip to gable roof alteration and installation of a rear dormer to create additional living accommodation'. **Approved 28.04.2020**

130364/FH/2021 - A further application was submitted in 2021 to retain a part single storey, part two storey side/rear extension with balcony to provide additional living accommodation.

This application was **refused** permission on the **01.07.2021** for the following two reasons:

> *1) The proposed development by reason of its proximity to the boundary with the properties on Meldon Road, together with the projection, size, scale, bulk and massing of the proposal, it is considered that the proposed side and rear extension together with the rear balcony would have an overbearing impact and would create an intrusive feature in the form of expanse of brickwork along this boundary, to the detriment of the residential amenity and privacy to the occupiers of properties at numbers 3 and 5 Meldon Road. The proposal is therefore contrary to policies SP1 and DM1 of the Manchester's Core Strategy Development Plan Document and saved Unitary Development Plan policies DC1.1, DC1.2 and DC1.4 and the guidance within the National Planning Policy Framework.*
>
> *2) The proposed flat roof design of the proposed first floor extension would be out of character with the pattern of development found within the area and would result in an incongruous and visually obtrusive feature on the rear elevation of the property, to the detriment of the general character of the existing property and the visual amenity of the area within which it is situated. The proposal is therefore contrary to Policies SP1 and DM1 of the Core Strategy and saved Policy DC1.1, DC1.2 and DC1.3 Unitary Development Plan for the City of Manchester (1995) and the guidance within the National Planning Policy Framework.*

ENF/15154/21 – Enforcement notice issued **21.06.2021** with effect from **22.07.2021** – **Appeal** against notice **withdrawn**.

A subsequent appeal against the above refusal of planning permission was made and was **dismissed** under reference **APP/B4215/D/21/3279297** on the **21.02.2022**.

131152/FH/2021 - A further application was submitted under reference 131152/FH/2021 for the Erection of single storey and part two storey side extension and single storey rear extension to provide additional living accommodation being **approved** on the **21.09.2021**.

134157/FH/2022 – In October 2022 an application was validated under the reference: 134157/FH/2022 for the Erection of a part single-storey, part two-storey side/rear extension, the Council as LPA **declined to determine** on the **12.12.2022** the application for the following reasons:

> *On 21 June 2021 the Council issued an enforcement notice, reference ENF/15154/21, in relation to the following specified breach of planning control:*
>
> *Without planning permission, the erection of a part single-storey, part two-storey side/rear extension.*
>
> *The notice came into effect on 22 July 2021, and required the following steps to be taken.*

Demolish the part single-storey, part two-storey side/rear extension and return the building to its condition before the breach took place, as shown in photograph ENF/01.

Or

Construct a single storey side/rear extension in full accordance with planning permission 125479/FH/2019 and as shown in the attached drawing no. 07A - Elevations Proposed.

Under Section 70C of the Town and Country Planning Act 1990, a Local Planning Authority may decline to determine an application for planning permission, if granting that permission would involve granting, wholly or partly, a permission for any matters specified in a pre-existing enforcement notice. A notice is "pre-existing" if it had been issued before the receipt of the planning application being determined as specified by Section 70C(2).

In the opinion of the Local Planning Authority, the proposal of this planning application (ref: 134157/FH/2022) as set out in the documents and associated plans, relates to matters pertaining to a "pre-existing" enforcement notice, i.e. one issued prior to the submission of the application on the 24.06.2022 and made valid on the 17.10.2022 and are matters for which planning permission is deemed to be required.

As the Council have already deemed the development to be unacceptable and have taken formal action, any approval of the matters presently before me will be in direct contradiction to those decisions previously made. Therefore, pursuant to Section 70C of the Town and Country Planning Act 1990, the Council as Local Planning Authority, hereby declines to determine the application and the appropriate entry will be made in the planning register to reflect this decision.

Issues

Policy

Unitary Development Plan for the City of Manchester (UDP)

The Unitary Development Plan (UDP) for the City of Manchester (1995) – The Unitary Development Plan for the City of Manchester was adopted in 1995 and has largely been replaced with the policies contained within the Core Strategy. However, there are a number of policies that are extant and are relevant to consideration to the proposed extension to a residential dwellinghouse.

Policy DC1 of the Unitary Development Plan seeks to accommodate the demand for more living space, while at the same time ensuring that the amenities of neighbours are protected, and that the overall character of the surrounding area is not harmed. It relates specifically to residential extensions and the relevant criteria from this policy include:

DC1.1 The Council will have regard to:

a. The general character of the property
b. The effect upon the amenity of neighbouring occupiers
c. The overall appearance of the proposal in the street scene;
d. The effect of the loss of any on-site car-parking

Policy DC1.2 states extensions will be allowed subject to:

a. They are not excessively large or bulky (for example, resulting in structures which are not subservient to original houses or project out too far in front of the original buildings)
b. They do not create a loss of sunlight/daylight or privacy
c. They are not out of character with the style of development in the area
d. They would not result in the loss of off-street parking

Policy DC1.3 states that Notwithstanding the generality of the above policies, the Council will not normally approve (relevant listed below) :

a. rearward extensions greater than 3.65m (12 ft) in length;
b. 2-storey extensions with a flat roof, particularly those which would be visible from the public highway;
c. 2-storey extensions to terraced properties which occupy the full width of the house;
d. flat roofed extensions to bungalows;
e. extensions which conflict with the Council's guidelines on privacy distances (which are published as supplementary guidance).

DC1.4 In considering proposals for 2-storey side extensions, the Council will have regard to the general guidance above and also to supplementary guidance to be issued. In particular, the Council will seek to ensure that:
a. the development potential of the gap between detached and semi-detached houses is capable of being shared equally by the owners or occupiers of the two properties concerned;
b. the actual or potential result of building the extension will not be the creation of a terracing effect, where this would be unsympathetic to the character of the street as a whole;
c. the actual or potential result of building the extension will not be the creation of a very narrow gap between the properties, or any other unsatisfactory visual relationships between elements of the buildings involved.

As a guide, and without prejudice to the generality of this policy, the Council will normally permit 2-storey house extensions which, when built, would leave a minimum of 1.52m (5 ft) between the side wall and the common boundary, and which meet the other requirements of this policy. Proposals which cannot meet these requirements will be judged on their merits, but with weight being given to (a) and (c) above.

Core Strategy

The relevant Core Strategy Policies are SP1 and DM1.

Policy SP1 sets down the spatial principles that will guide development in the City. The emphasis is on the creation of neighbourhoods of choice, providing high quality and diverse housing around district centres which meet local needs, all in a distinct environment. It goes on to say that development in all parts of the City should:-

Make a positive contribution to neighbourhoods of choice including (amongst others):-

- making a positive contribution to the health, safety and wellbeing of residents

Policy DM1 says;

All development should have regard to the following specific issues, (amongst others), for which more detailed guidance may be given within a supplementary planning document:

- Appropriate siting, layout, scale, form, massing, materials and detail.
- Impact on the surrounding areas in terms of the design, scale and appearance of the proposed development. Development should have regard to the character of the surrounding area.

National Planning Policy Framework

Consideration of Planning Application 127524/FO/2020 with regards to Section 70C of the Town and Country Planning Act 1990

Legislation

Section 70C(1) of the Town and Country Planning Act 1990 states that a local planning authority may decline to determine an application if granting planning permission for the development "would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control."

Does Section 70C apply?

In this instance, on 21 June 2021 the Council issued an Enforcement Notice ("the notice") (reference ENF/15154/21) in relation to the following specified breach of planning control:

> *Without planning permission, the erection of a part single-storey, part two-storey side/rear extension.*

The notice took effect on 22 July 2021 and required the following steps to be taken:

> Demolish the part single-storey, part two-storey side/rear extension and return the building to its condition before the breach took place, as shown in photograph ENF/01.
>
> Or
>
> Construct a single storey side/rear extension in full accordance with planning permission 125479/FH/2019 and as shown in the attached drawing no. 07A – Elevations Proposed.
> A compliance period was specified as "three months" following the notice taking effect.

The reason for the Council issuing the notice was given as;

> *It appears to the Council that the above breach of planning control has occurred within the last four years.*
>
> *The Council considers that it is expedient to issue this notice because the unauthorised development by reason of its proximity to the boundary with the properties on Meldon Road, together with the projection, size, scale, bulk and massing of the proposal, is considered to have an overbearing impact and creates an intrusive feature in the form of expanse of brickwork along this boundary, to the detriment of the residential amenity and privacy to the occupiers of properties at numbers 3 and 5 Meldon Road.*
>
> *The flat roof design of the first floor extension is considered to be out of character with the pattern of development found within the area and results in an incongruous and visually obtrusive feature on the rear elevation of the property, to the detriment of the general character of the existing property and the visual amenity of the area within which it is situated.*

The unauthorised development is therefore contrary to policies SP1 and DM1 of the Manchester's Core Strategy Development Plan Document and saved Unitary Development Plan policies DC1 and the guidance within the National Planning Policy Framework.

Should Section 70C be used?

The Council has a discretion as to whether or not to use the power in Section 70C. The following matters appear relevant to the exercise of that discretion.

The aim of Section 70C is to prevent a developer from having 'two bites of the cherry' in respect of unauthorised development. In this instance the applicant was granted planning permission reference 125479/FH/2019 and, having elected not to build the extensions in accordance with the approved plans, consent was sought to retain the subsequent unauthorised development, reference 130364/FH/2021. Following the refusal of this application an appeal was lodged and dismissed and dismissed by the Secretary of State on 21 February 2022.

A third application with reference 131152/FH/2021 was submitted, this application sought to address some of the concerns raised by the Council and was subsequently approved on the 21 September 2021.

In 2022, a fourth application was submitted to erect a part single storey, part two storey side/rear extension and consideration was given as to whether the use of Section 70C should apply. The Council subsequently declined to determine the application as the proposal related to matters pertaining to a "pre-existing" enforcement notice and were matters for which planning permission is deemed to be required. However, as the Council had already deemed the development to be unacceptable and have taken formal action, the approval of the application would be in direct contradiction to those decisions previously made.

The enforcement notice has not been complied with and, together with the incremental nature of the changes proposed, this suggests that this latest planning application is yet a further play for time. This is supportive of the use of Section 70C, which was introduced to prevent the making of such tactical applications.

Comparison of the notice with this planning application

The enforcement notice requires that either the part single-storey, part two-storey side/rear extension and return the building to its condition before the breach took place, as shown in photograph ENF/01 or construct the single storey side/rear extension in full accordance with planning permission 125479/FH/2019. In addition, the applicant has a further option to implement planning approval 131152/FH/2021 which would expire on the 21 September 2024.

In this application the applicant is seeking to retain the part single-storey, part two-storey side/rear extension that has already been deemed unacceptable by reason of its proximity to the boundary with the properties on Meldon Road. Together with the projection, size, scale, bulk and massing of the proposal, is considered to have an overbearing impact and creates an intrusive feature in the form of expanse of brickwork along this boundary, to the detriment of the residential amenity and privacy to the occupiers of properties at numbers 3 and 5 Meldon Road.

The proposal shows that the flat roof to the first floor extension which was considered to be of an incongruous design and visually obtrusive would be increased in height to include a hipped roof which would further highlight this incongruous addition to the property and surrounding area.

This application would differ from planning approval 125479/FH/2019 in that it includes additions above ground floor side and rear of first floor extensions along the full depth of the property and extending into the rear garden. Windows to the front ground floor window would be wider than the approved scheme and the extension would project beyond the rear wall of the property. The only similarity would be the rear dormer and hip to gable roof extension.

The approval reference 13115/FH/2021 differs from the current application in that it would include a first floor element set back from the front face of the property with a pitched roof, the first floor element would not project beyond the rear wall of the original house. A ground floor flat roof extension would extent at the side into the rear garden.

With such substantial overlap between the proposal and the unauthorised as-built development, there can be no doubt that granting planning permission for the proposed would involve granting permission for part of the matters specified in the enforcement notice.

Conclusion

Whilst it is accepted that there are differences between the proposal applied for in this application compared with the unauthorised development, which is subject to enforcement action, the proposals if approved would retain the majority of the development which has already been deemed to be unacceptable by the Council and the Secretary of State.

Therefore, any approval of the matters presently before the Council will be in direct contradiction to those decisions previously made. Pursuant to Section 70C of the Town and Country Planning Act 1990, the Council as Local Planning Authority, hereby declines to determine the application and the appropriate entry will be made in the planning register to reflect this decision.

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: Decline to Determine

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

On 21 June 2021 the Council issued an enforcement notice, reference ENF/15154/21, in relation to the following specified breach of planning control:

Without planning permission, the erection of a part single-storey, part two-storey side/rear extension.

The notice came into effect on 22 July 2021, and required the following steps to be taken.

Demolish the part single-storey, part two-storey side/rear extension and return the building to its condition before the breach took place, as shown in photograph ENF/01.

Or

Construct a single storey side/rear extension in full accordance with planning permission 125479/FH/2019 and as shown in the attached drawing no. 07A - Elevations Proposed.

Under Section 70C of the Town and Country Planning Act 1990, a Local Planning Authority may decline to determine an application for planning permission, if granting that permission would involve granting, wholly or partly, a permission for any matters specified in a pre-existing enforcement notice. A notice is "pre-existing" if it had been issued before the receipt of the planning application being determined as specified by Section 70C(2).

In the opinion of the Local Planning Authority, the proposal of this planning application (ref: 138445/FH/2023) as set out in the documents and associated plans, relates to matters pertaining to a "pre-existing" enforcement notice, i.e. one issued prior to the submission and validation of the application on the 31 October 2023 and are matters for which planning permission is deemed to be required.

As the Council have already deemed the development to be unacceptable and have taken formal action, any approval of the matters presently before me will be in direct contradiction to those decisions previously made. Therefore, pursuant to Section 70C of the Town and Country Planning Act 1990, the Council as Local Planning Authority, hereby declines to determine the application and the appropriate entry will be made in the planning register to reflect this decision.

Appendix 1 – List of consultees & neighbours notified

Flat At, 9 - 11 Meldon Road, Manchester, M13 0TZ
1A Meldon Road, Manchester, M13 0TZ
Top Flat, 7 Meldon Road, Manchester, M13 0TZ
1A Copthorne Crescent, Manchester, M13 0RA
5A Meldon Road, Manchester, M13 0TZ
3 Meldon Road, Manchester, M13 0TZ
8 Birchfields Road, Manchester, M13 0XR
6 Birchfields Road, Manchester, M13 0XR
2 Birchfields Road, Manchester, M13 0XR
5 Meldon Road, Manchester, M13 0TZ
9 - 11 Meldon Road, Manchester, M13 0TZ
1 Meldon Road, Manchester, M13 0TZ
7 Meldon Road, Manchester, M13 0TZ
4 Birchfields Road, Manchester, M13 0XR
75 Birchfields Road, Manchester, M13 0XX

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 Zone - All Exceeding 90M
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: SOUTH AREA