Planning

Growth & Development

Delegated officer report for planning application

Application no.	137909/LP/2023
Date registered valid:	24 August 2023
Proposal:	Replacement of non-compliant façade materials
Address:	Stonebridge House, Cobourg Street, Manchester
Ward(s):	Piccadilly Ward
Applicant:	Stonebridge House
Agent (if any):	Mr Peter Knight Scanlans FM Ltd
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Grant
Date of recommendation:	19 October 2023

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: 17th October 2023

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



Stonebridge House a former warehouse located on Cobourg Street is an eight-storey building that is in use as flats. The building fronts both Cobourg Street and presents an elevation at the rear to Minshull Street South/ Ebden Street. The application site is flanked on either side by two similar sized (in terms of height) residential buildings know as Cedar House and Lambert Hall.

Listed building: Not applicable

Conservation area: Whitworth Street Conservation Area 1985

Tree Preservation Order: Not applicable

Description of area

The application site is located within the Whitworth Street/Princess Street conservation area with its physical form being established by the wealth of Victorian and Edwardian buildings erected between 1850 and 1920. They reflect the historical importance of the textile industry in the city.

Majority of the former warehouse in this area have been repurposed into new uses including offices and apartments.

Description of development

Certificates of lawfulness to replace non-compliant façade materials.

Consultations & Notification Responses

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 application relates to an 8 storey building located on Cobourg Street within the City Centre.

The building is a former warehouse which was converted into 43 residential units under planning reference: **053771/CC/CITY3/98** in April 1998.

The submitted documentation raises that a fire risk assessment was undertaken in August 2020 by Chartered Fire Engineers, Design Fire Consultants, that identified that the MCM and the balconies timber decks are non-compliant with the current Building Regulations, The Regulatory Reform (Fire Safety) Order 2005.

A higher risk building is currently classed as a building that is greater than 6 storeys and or 18 metres or above, with two or more residential dwellings.

The applicant is therefore seeking a certificate lawful development to replace non-compliant façade materials.

The proposed work is not intended to alter the dimensions of the building, nor to visually alter the appearance of the subject building.

The work is intended solely to remove the defective materials and replace them with compliant materials that aesthetically closely match the existing in both style and colour.

To ensure the façade performs as intended the Metaline Unity panels will be installed in-line with the manufacturer’s installation requirements.

In order to comply with the amended regulations, replacement façade materials must achieve a minimum fire rating of A2-s1, d0 when tested to BS EN 13501 methodology.

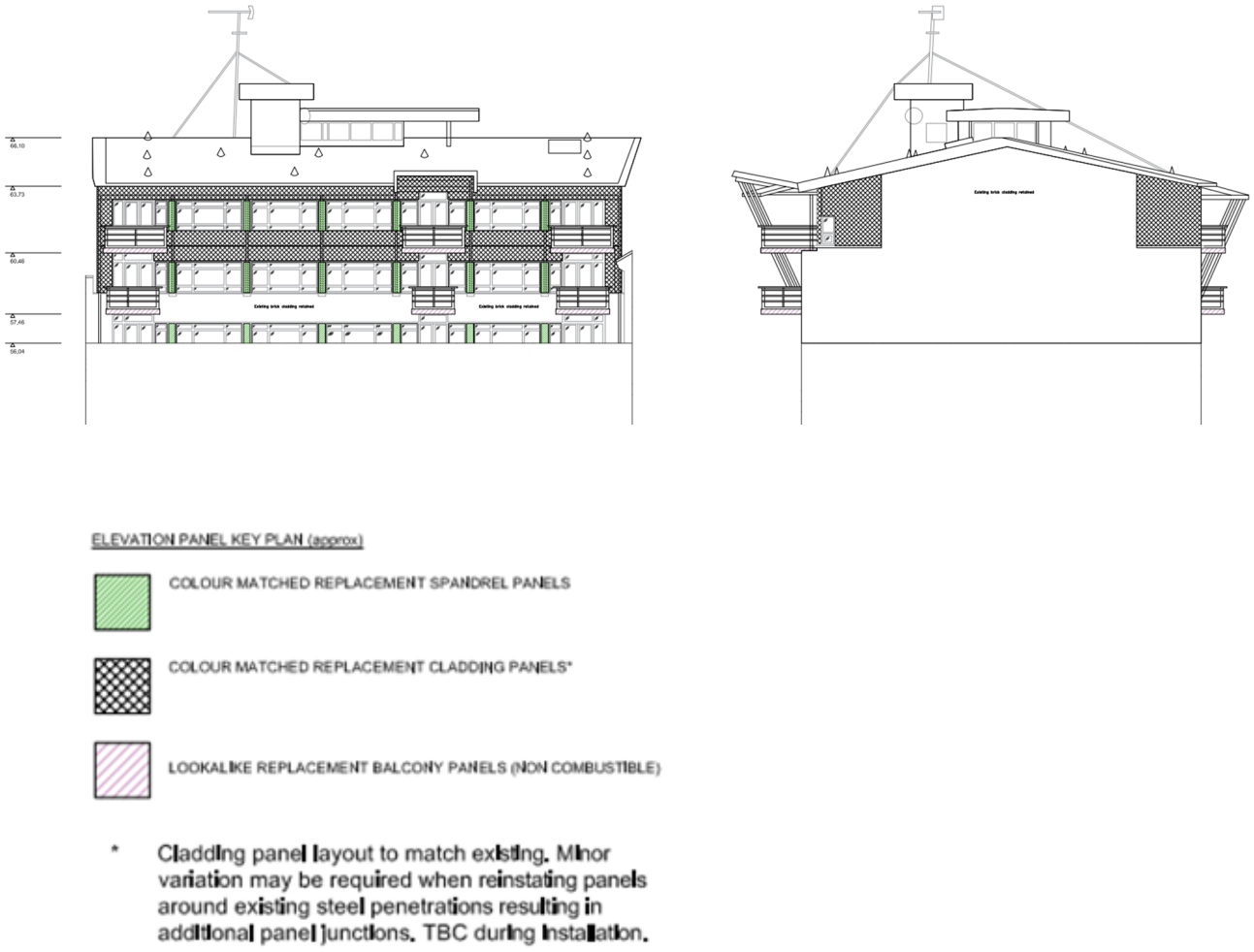


Image 1 Proposed Elevations facing Cobourg Street and Lambert Hall, to show proposed works.

The works relate to the 7th and 8th Storey of the building and as shown in image 1 the applicant seeks to replace the spandrel panels, cladding panels and balcony panels all colour matched to the existing building. The drawings and supporting documents state and show that the materials would be similar in appearance.

Whereas dwellinghouses benefit from a wide range of permitted development rights under Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England)Order 2015 (as amended) (referred to GPDO for the rest of this report), flats and maisonettes do not.

For the purpose of interpretation of the Order, Article 1 explains that a “dwellinghouse” does not include a building containing one or more flats, or a flat contained within such a building.

Section 55(1) of the Town and Country Planning Act 1990 as amended (1990 Act) states that ‘development’ (which requires planning permission) means the carrying out of building, engineering, mining or other operations or the making of a material change in the use of land.

Therefore, in the first instance the question that needs to be asked is if the replacement of all the cladding to the upper floor is a building operation at all, and if they are whether there is material effect on the external appearance of the building by virtue of section 55(2)(a)(ii) of the Town and Country Planning Act 1990.

It is important to note that designation as a conservation area, or harm to the character of an area, has no impact on this latter test.

In this case works proposed by the applicant would not be considered to be development as it would not involve, the carrying out of building, engineering, mining or other operations or the making of a material change in the use of land.

The certificate should be granted.

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 works would not amount to operational development as set out in Section 55(1) of the Town and Country Planning Act 1990 (as amended), and would therefore not require planning permission.

Appendix 1 – List of consultees & neighbours notified

Appendix 2 – Planning constraints

Article 4 Direction - City Centre PD Restriction - Class B1(a) To C3
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
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Conservation Area - Whitworth Street Conservation Area 1985
Area Team Boundary - Name: CENTRAL