MANCHESTER CITY COUNCIL

# Planning

## Growth & Development

## Delegated officer report for planning application

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| **Application no.** | 138475/LP/2023 |
| **Date registered valid:** | 9 November 2023 |
| **Proposal:** | Enlargement of dwellinghouse with a rear dormer |
| **Address:** | 36 Neale Road, Manchester, M21 9DQ |
| **Ward(s):** | Chorlton Ward |
| **Applicant:** | Karina Brennan |
| **Agent (if any):** | |
| **Case officer:** | Robert Tyrer<br>Tel: 0161 234 4068<br>Email: robert.tyrer@manchester.gov.uk |
| **Recommendation:** | Refuse |
| **Date of recommendation:** | 29 December 2023 |

**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 two storey mid -terraced dwellinghouse. The property is brick built with pebbledash render to the first floor. The roof is a grey/blue slate roof tile.

**Listed building:** Not applicable

**Conservation area:** Not applicable

**Tree Preservation Order:** Not applicable

**Description of area**

Primarily residential with a mixture of housing types.

**Description of development**

The applicant is seeking a certificates of lawfulness for a rear dormer.

**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 for a rear dormer.

**Permitted development**

**B. The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.**

**Development not permitted**

| Paragraph | Complies |
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| B.1 (a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G,M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use); | N/A |
| B.1 (b) any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof; | Yes |
| B.1 (c) any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway; | Yes |
| B.1 (d) the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than— | |
| (i) 40 cubic metres in the case of a terrace house, or | Yes |
| (ii) 50 cubic metres in any other case; | N/A |
| Dormer = ½ x (width x length x height)<br>= ½ x (4.34metre x 3.60metre x 1.71metre)<br>= **13.35 metre$^3$** | |
| include— B.1 (e) it would consist of or | |
| (i) the construction or provision of a veranda, balcony or raised platform, or | Yes |
| (ii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe | Yes |
| B.1 (f) the dwellinghouse is on article 2(3) land.; or | Yes |
| B.1 (g) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).; or | N/A |
| B.1 (h) the existing dwellinghouse has been enlarged in reliance on the permission granted by Class AA (enlargement of a dwellinghouse by construction of additional storeys). | N/A |

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| B.2 (a) the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse; | No |
| Explanation<br><br>Page 35 of the Permitted development rights for householders technical guidance (September 2019) advises that:<br><br>*"the face and sides of a dormer window should be finished using materials that give a similar visual appearance to existing house. So the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level."*<br><br>The existing dwellinghouse has a grey/blue slate tiled roof and a grey shiplap cladding has been proposed for the dormer. It is therefore considered that the proposed materials would not be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse and therefore does not comply with B.2(a). | |
| B.2 (b) the enlargement must be constructed so that—<br><br>(i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension— | Yes |
| (aa) the eaves of the original roof are maintained or reinstated; and | Yes |
| (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves; and | Yes |
| (ii) other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse; and | Yes |
| B.2 (c) any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be—<br>(i) obscure-glazed, and<br>(ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. | Yes |

**Interpretation of Class B**

**B.3** For the purposes of Class B, “resulting roof space” means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not.

**B.4.** For the purposes of paragraph B.2(b)(ii)—
(a) roof tiles, guttering, fascias, barge boards and other minor roof details overhanging the externalwall of the original dwellinghouse are not to be considered part of the enlargement; and
(b) “rear or side extension” includes an original part of, or a subsequent extension of, the dwellinghouse that extends from the rear or side of the principal part of the original dwellinghouse.

**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:** Refuse

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

1) Refuse on the basis that the proposed rear dormer as shown on drawings titled “ PROPOSED DORMER CONVERSION 36, NEALE ROAD, CHORLTON”, does not constitute permitted development and is not in accordance with Part 1, Schedule 2, Class B.2(a) of the Town and Country (General Permitted Development) Order 2015 (as amended), as the proposed composite grey shiplap cladding would not be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

**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 Zone - All Exceeding 90M
Historic Landfill Site 250m Buffer -
Area Team Boundary - Name: SOUTH AREA