

## Planning

## Growth & Development

### Delegated officer report for planning application

**Application no.** 138158/LP/2023

**Date registered valid:** 21 September 2023

**Proposal:** Conversion of integral garage to study and utility room, modification of front elevation to include replacing garage door with window and brickwork

**Address:** 7 Clearwater Drive, Manchester, M20 2ED

**Ward(s):** Didsbury West Ward

**Applicant:** Mr & Mrs Fisher

**Agent (if any):** Mr S Miles S R Miles Ltd

**Case officer:** Robert Tyrer  
Tel: 0161 234 4068  
Email: [robert.tyrer@manchester.gov.uk](mailto:robert.tyrer@manchester.gov.uk)

**Recommendation:** Refuse

**Date of recommendation:** 7 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 modern two storey semi-detached dwellinghouse with an integral garage and driveway. The property has both front and rear gardens.

**Listed building:** Not applicable

**Conservation area:** Not applicable

**Tree Preservation Order:** Not applicable

## **Description of area**

The area is predominantly residential in nature, with a variety of design and styles. From the converted former hospital and surrounding buildings to the more modern housing estate surrounding the former hospital. The area is located close to West Didsbury local centre on Burton Road and sources of employment at Withington Hospital and Siemens sites.

## **Description of development**

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.

## **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.

**West Didsbury Residents Association (WDRA)** - The WDRA would like it noted that these properties were built with Garages generally to small house the standard modern car. the WDRA wish to raise no objection. The WDRA are however concerned about both the loss of off road parking in the area and the ongoing destruction of front gardens to create parking spaces. Should the planners be minded to approve the application we would request that there's an agreement that there is no further loss of garden or green amenity on the property in the future eg to create further off road parking.

## **Issues**

### **Planning History**

The following applications are of relevance to this application site:

**Application Reference: 060302/00/SOUTH2/00** - Outline application for offices, housing, a 150 bed hotel together with associated car parking and access following demolition of the existing buildings. **Approved - Date 14.12.2001**

**Application Reference: 065306/JO/SOUTH2/02** - Variation of condition no. 4 attached to planning reference 060302 to allow substitution of layout plan showing modified split of commercial/residential and vehicular access points and phasing. **Approved - Date 26.07.2002**

**Application Reference: 067581/MO/SOUTH2/03** - RESERVED MATTERS APPLICATION following outline permission 060302/00/SOUTH2/00 for erection of Phase 3 of the residential development consisting of two part 3/part 4 storey apartment blocks comprising 24 two bedroomed apartments and 1 one bedroomed apartment and 47 3 and 4 storey houses and duplex units (a total of 72 dwellings) together with associated car parking and landscaping. **Approved – Date 04.09.2003**

## **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: 067581/MO/SOUTH2/03 states the following:

*Notwithstanding the provisions of Article 3 of, and Class A of Part 1 of Schedule 2 to, the Town and Country (General Permitted Development) Order 1995, the garage accommodation hereby approved, as part of this development shall not be converted into living accommodation without the express written permission of the City Council as local planning authority.*

*Reason*

*The loss of garage parking space would result in an unacceptable increase in on-street parking and would thereby be detrimental to highway and pedestrian safety.*

Therefore, as No.7 Clearwater Drive, Manchester, M20 2ED was originally built in accordance with the drawings and documents approved under application reference: 067581/MO/SOUTH2/03 this condition would apply and the certificate should be refused as the proposed works require planning permission.

### **Other Matters**

Comments received from WDRA are noted however, the LPA is required to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. The condition requested cannot be imposed on this certificate.

### **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**

1) Refuse on the basis that the proposed conversion of the integral garage to study and utility room, modification of front elevation to include replacing garage door with window and brickwork requires planning permission as condition 1 of planning permission reference 067581/MO/SOUTH2/03 states the following, "Notwithstanding the provisions of Article 3 of, and Class A of Part 1 of Schedule 2 to, the Town and Country (General Permitted Development) Order 1995, the garage accommodation hereby approved, as part of this

development shall not be converted into living accommodation without the express written permission of the City Council as local planning authority.”

## **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

Susceptible to Surf Water Flood (Less) -

Area Team Boundary - Name: SOUTH AREA