

## Planning

## Growth & Development

### Delegated officer report for planning application

**Application no.** 136799/LP/2023

**Date registered valid:** 24 April 2023

**Proposal:** PART A - Installation of dormer to rear of main and outrigger roofs  
PART B - 4no. roof lights to front.

**Address:** 125 Oswald Road, Manchester, M21 9GE

**Ward(s):** Chorlton Ward

**Applicant:** Mr Bacon & Mr Soper

**Agent (if any):** Ms Sarah Bolsover Smashbox Architecture

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

**Recommendation:** SPLIT Approve and Refuse

**Date of recommendation:** 14 June 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

Printed: 9 May 2023      Expired: 30 May 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

The application site relates to a pre first world war two-storey mid-terraced dwellinghouse with a two-storey rear outrigger. The front garden is small and enclosed by a small boundary wall at the rear is small garden.

**Listed building:** Not applicable

**Conservation area:** Not applicable

**Tree Preservation Order:** Not applicable

### Description of area

Primary a residential area with a mixture of traditional retail and cafes located at road junctions.

### Description of development

Certificate Lawful Development Proposed to install a dormer to rear of main and outrigger roofs with associated roof lights to front.

### 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.

## Planning History

| Application Reference and Status                                                       | Proposal                                                                                                                                                                         |
|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>119314/PDE/2018</b><br>Recv: 06.03.2018<br>Approved extension -<br>GPD - 11.04.2018 | Prior notification of proposed larger home extension for single storey rear extension with a rearward projection of 5.1m, maximum eaves height of 3m and total roof height of 4m |
| <b>117757/FH/2017</b><br>Recv: 20.10.2017<br>Application Refused -<br>29.01.2018       | Erection of single-storey rear extension to form additional living accommodation                                                                                                 |

## 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 to install a dormer to rear of main and outrigger roofs with associated roof lights to front.

- The dormer will be considered under Class B; and,
- The 4no. rooflights will be considered under Class C;

## Permitted development

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

#### Development not permitted

| Paragraph                                                                                                                                                                                                                                                                                                                                                                                                                                  | Complie<br>s |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| 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                                                                                                                                                                                                                                                                                                                                                                                     | No           |
| <b>Explanation</b><br><br>Page 34 of the Permitted development rights for householders Technical Guidance September 2019 advised that:<br><br><i>To be permitted development any additional roof space created must not increase the volume of the original roof space of the house by more than 40 cubic metres for terraced houses and 50 cubic metres for semi-detached and detached houses.</i><br><br>The guidance also advises that: |              |

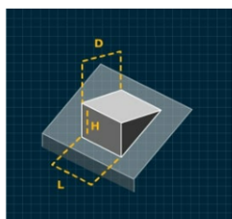
**Any previous enlargement to the original roof space in any part of the house *must be included in this volume allowance.***

Planning History of the site reveals that in 2018 a prior notification of proposed larger home extension for single storey rear extension with a rearward projection of 5.1m, maximum eaves height of 3m and total roof height of 4m under planning reference: 119314/PDE/2018. The proposed and existing drawings indicate that this extension has been built and therefore should be included in the volume allowance.

To calculate the dormer volume, the dormer has been split into the main roof and the outrigger.

## Main Roof

Dormer window — flat roof



Height (metres)

2.37

Depth (metres)

3.78

Length (metres)

4.70

Total Volume:

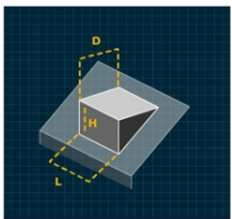
**21.05**

Calculate Volume

Reset

## Outrigger

Dormer window — flat roof



Height (metres)

2.37

Depth (metres)

5.11

Length (metres)

3.25

Total Volume:

**19.68**

Calculate Volume

Reset

## Single Storey Lean to Extension (119314/PDE/2018)

### Lean-to — single pitch roof



Height (metres)

0

Width (metres)

1.792

Length (metres)

5.116

Z (metres)

1.063

Total Volume:

**4.87**

Calculate Volume

Reset

Total Volume = 21.05 + 19.68 + 4.87

= 45.6 cubic metres

(ii) 50 cubic metres in any other case;

N/A

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

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;

Yes

B.2 (b) the enlargement must be constructed so that—

(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—

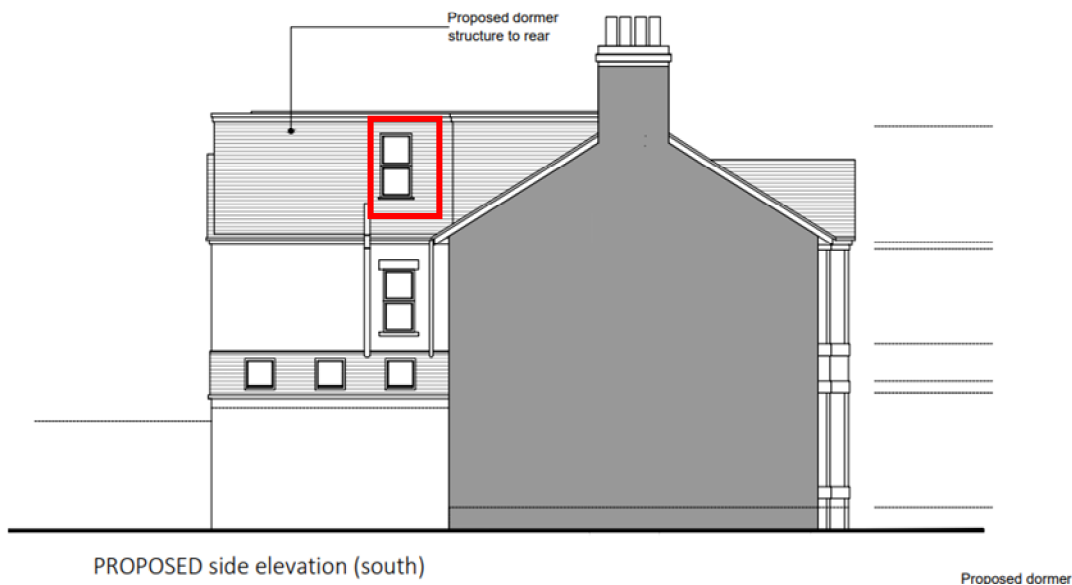
(i) obscure-glazed, and

(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.

No

### Explanation

**NO details have been provided to confirm that the windows of the dormer will be Obscurely glaze \*N.3 as highlighted in the deed the red box below.**



## 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 external wall 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.

## Class C –other alterations to the roof of a dwellinghouse

### Permitted development

**C. Any other alteration to the roof of a dwellinghouse.**

### Development not permitted

| Paragraph                                                                                                                                                                                                                          | Complies |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| <b>C.1</b> Development is not permitted by Class C if—<br>(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      |
| C.1 (b) the alteration would protrude more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof;                                | Yes      |
| C.1 (c) it would result in the highest part of the alteration being higher than the highest part of the original roof; or                                                                                                          | Yes      |
| C.1 (d) it would consist of or include—                                                                                                                                                                                            |          |
| (i) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or                                                                                                                                       | Yes      |
| (ii) the installation, alteration or replacement of solar photovoltaics or solar thermal equipment.; or                                                                                                                            | Yes      |
| C.1 (e) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).                                                                                                                            | N/A      |
| <b>Conditions</b>                                                                                                                                                                                                                  |          |
| <b>C.2</b> Development is permitted by Class C subject to the condition that any window located on a roof slope forming a side elevation of the dwellinghouse must be—                                                             |          |
| (a) obscure-glazed; and                                                                                                                                                                                                            | N/A      |
| (b) 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.                                                                          | 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 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:** SPLIT

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

1) GRANT Part B on the basis that the 4no.rooflights as shown on the submitted drawings 7029\_PL01, 7029\_PL09 and 7029\_PL10 received on the 17 April 2023 constitutes permitted development in accordance with Part 1, Schedule 2, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

2) REFUSE Part A on the basis that the proposed rear dormer as detailed on the submitted drawings 7029\_PL01, 7029\_PL09, 7029\_PL10 and 7029\_PL11 received on the 24 April 2023 does not constitute permitted development and is not in accordance with Part 1, Schedule 2, Class B.1(d)(i) of the Town and Country (General Permitted Development) Order 2015 (as amended), as the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 40 cubic metres and B.2(c)(i)) as the side window is not obscure-glazed.

## **Appendix 1 – List of consultees & neighbours notified**

115 Oswald Road, Manchester, M21 9GE  
38 Kensington Road, Manchester, M21 9QJ  
111 Oswald Road, Manchester, M21 9GE  
50 Grange Road, Manchester, M21 9WX  
150 Oswald Road, Manchester, M21 9GJ  
37 Kensington Road, Manchester, M21 9GH  
146 Oswald Road, Manchester, M21 9QF  
127B Oswald Road, Manchester, M21 9GE  
127A Oswald Road, Manchester, M21 9GE  
158 Oswald Road, Manchester, M21 9GJ  
40 Kensington Road, Manchester, M21 9AX  
119 Oswald Road, Manchester, M21 9GE  
105 Oswald Road, Manchester, M21 9GE  
131 Oswald Road, Manchester, M21 9QL  
144 Oswald Road, Manchester, M21 9QF  
136 Oswald Road, Manchester, M21 9QF  
48 Grange Road, Manchester, M21 9NY  
42 Grange Road, Manchester, M21 9NY  
36 Grange Road, Manchester, M21 9NY  
30 Grange Road, Manchester, M21 9NY  
156 Oswald Road, Manchester, M21 9GJ  
154 Oswald Road, Manchester, M21 9GJ  
152 Oswald Road, Manchester, M21 9GJ  
39 Kensington Road, Manchester, M21 9GH  
42 Kensington Road, Manchester, M21 9AX  
127 Oswald Road, Manchester, M21 9GE  
123 Oswald Road, Manchester, M21 9GE  
121 Oswald Road, Manchester, M21 9GE  
117 Oswald Road, Manchester, M21 9GE  
113 Oswald Road, Manchester, M21 9GE  
109 Oswald Road, Manchester, M21 9GE  
107 Oswald Road, Manchester, M21 9GE  
135 Oswald Road, Manchester, M21 9QL  
133 Oswald Road, Manchester, M21 9QL  
129 Oswald Road, Manchester, M21 9QL  
142 Oswald Road, Manchester, M21 9QF  
140 Oswald Road, Manchester, M21 9QF  
138 Oswald Road, Manchester, M21 9QF  
134 Oswald Road, Manchester, M21 9QF  
132 Oswald Road, Manchester, M21 9QF  
46 Grange Road, Manchester, M21 9NY  
44 Grange Road, Manchester, M21 9NY  
40 Grange Road, Manchester, M21 9NY  
38 Grange Road, Manchester, M21 9NY  
34 Grange Road, Manchester, M21 9NY  
32 Grange Road, Manchester, M21 9NY  
28 Grange Road, Manchester, M21 9NY  
26 Grange Road, Manchester, M21 9NY

## **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

Area Team Boundary - Name: SOUTH AREA