

Planning

Growth & Development

Delegated officer report for planning application

Application no. 136893/LP/2023

Date registered valid: 5 May 2023

Proposal: Part A - Enlargement of dwellinghouse with rear dormer and Part B - Installation of 3no. rooflights to front.

Address: 59 Schuster Road, Manchester, M14 5LX

Ward(s): Rusholme Ward

Applicant: Ms Jasmine Palmer

Agent (if any): Mr Joshua Ram C K Architectural Ltd

Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: SPLIT – GRANT and REFUSE

Date of recommendation: 27 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: 15 May 2023 Expired: 5 June 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 modern mid terraced two storey property which is part rendered and part brick with a front and side gable roofs that have a blue/grey roof tile.

Listed building: Not applicable

Conservation area: Victoria Park Conservation Area 1972

Tree Preservation Order: Not applicable

Description of area

Primarily a residential area with housing dating back to the 1830s/40s, which are usually large and set within spacious grounds. However, not all the large old houses in Victoria Park have survived, and where they were demolished there now stand either groups of smaller houses or large, institutional buildings, such as schools, colleges, churches, university halls of residence and blocks of flats.

Description of development

The applicant has applied for a Certificate Lawful Development Proposed for a rear dormer and installation of 3no. rooflights.

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 than 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

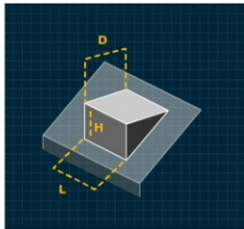
This application is pursued under subsection (1) of section 192, which provides for an application to determine whether any proposed use or operations would be lawful for planning purposes.

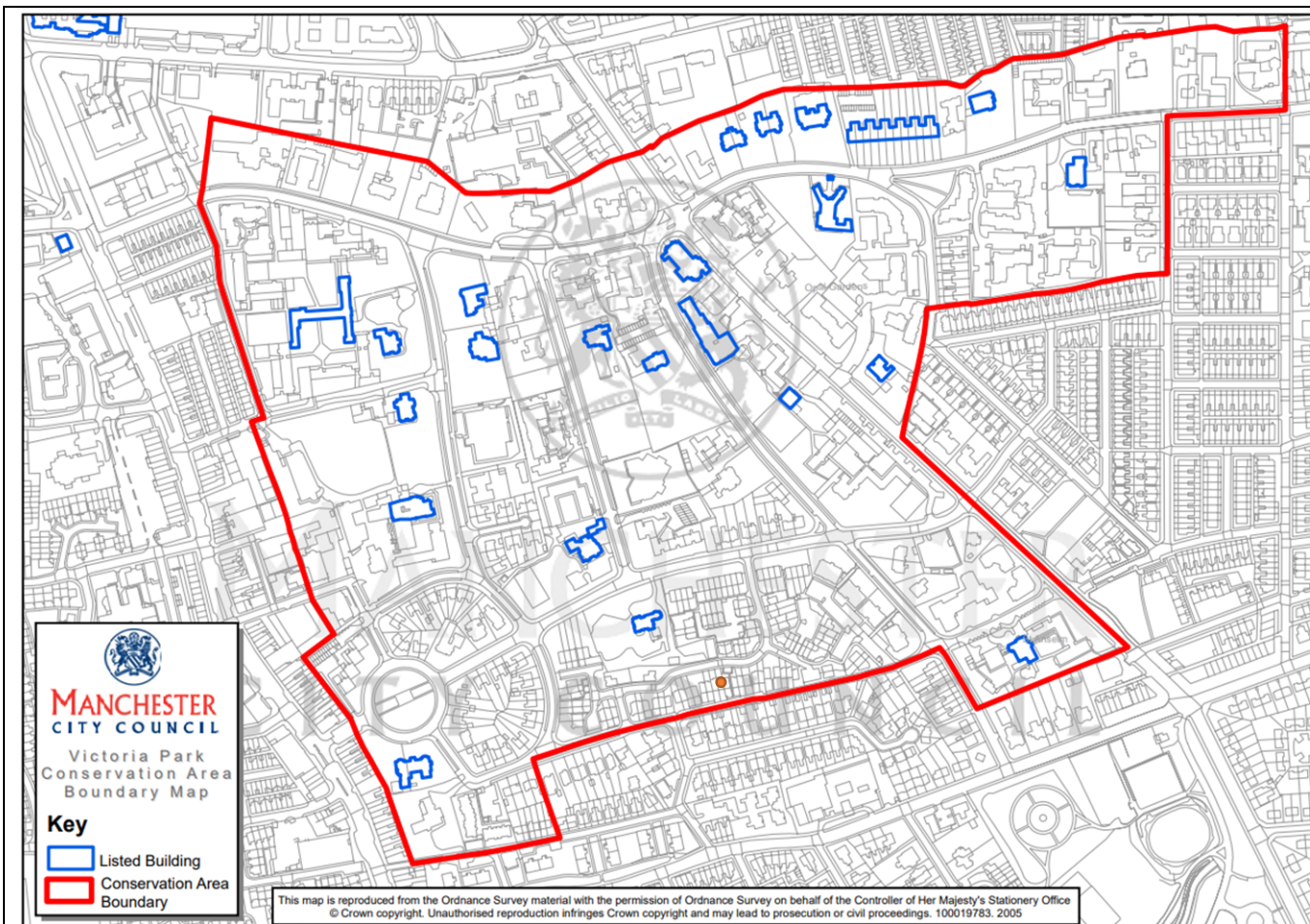
- PART A -The dormer will be considered under Class B; and
- PART B - The 3no. rooflights will be considered under Class C;

Permitted development

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

Development not permitted

Paragraph	Complies
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
Dormer window — flat roof  Height (metres) 2.473 Depth (metres) 3.478 Length (metres) 5.795 Total Volume: 24.92 Calculate Volume Reset	
(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	No
Explanation The application site (shown as an orange dot) is located within Victoria Park Conservation Area (see boundary map below) and therefore any roof extensions such as a dormer are not permitted development and will require an application for planning permission.	



B.1 (g) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).; or

Yes

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—

(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.	N/A

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
C.1 Development is not permitted by Class C if— (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
Conditions	
C.2 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 – GRANT and REFUSE

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

GRANT

- 1) GRANT Part B on the basis that the 3no.rooflights as shown on the submitted drawing M14-3583-PLN-A received on the 05 May 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).

REFUSE

- 1) REFUSE Part A on the basis that the proposed rear dormer as detailed on the submitted drawing M14-3583-PLN-A received on the 05 May 2023 does not constitute permitted development and is not in accordance with Part 1, Schedule 2, Class B.1(f) of the Town and Country (General Permitted Development) Order 2015 (as amended), as the application site is located on article 2(3) land, in this case Victoria Park Conservation Area.

Appendix 1 – List of consultees & neighbours notified

The Consulate For The Peoples Republic Of China, 38A Schuster Road, Manchester, M14 5PE
38 Schuster Road, Manchester, M14 5PE
65 Schuster Road, Manchester, M14 5LX
55 Schuster Road, Manchester, M14 5LX
36 Schuster Road, Manchester, M14 5PE
34 Schuster Road, Manchester, M14 5PE
71 Schuster Road, Manchester, M14 5LX
69 Schuster Road, Manchester, M14 5LX
67 Schuster Road, Manchester, M14 5LX
61 Schuster Road, Manchester, M14 5LX
57 Schuster Road, Manchester, M14 5LX
53 Schuster Road, Manchester, M14 5LX
32 Schuster Road, Manchester, M14 5PE
26 Schuster Road, Manchester, M14 5PE
18 Schuster Road, Manchester, M14 5PE
47 Schuster Road, Manchester, M14 5LX
30 Schuster Road, Manchester, M14 5PE
28 Schuster Road, Manchester, M14 5PE
24 Schuster Road, Manchester, M14 5PE
63 Schuster Road, Manchester, M14 5LX
51 Schuster Road, Manchester, M14 5LX
49 Schuster Road, Manchester, M14 5LX
45 Schuster Road, Manchester, M14 5LX
73 Schuster Road, Manchester, M14 5LX

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
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Conservation Area - Victoria Park Conservation Area 1972
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Middle) -
Area Team Boundary - Name: SOUTH AREA