

Planning

Growth & Development

Delegated officer report for planning application

Application no. 135817/FH/2022

Date registered valid: 21 December 2022

Proposal: Erection of a part single, part two storey rear extension and a part single part two storey side extension to provide additional living space

Address: 13 Olney Avenue, Manchester, M22 8AB

Ward(s): Northenden Ward

Applicant: Mr Naheem

Agent (if any): Mr Chowdhury

Case officer: Tracie Simpson
Tel: 0161 234 4537
Email: tracie.simpson@manchester.gov.uk

Recommendation: Decline to Determine Application

Date of recommendation: **14th February 2023**

Application details

Type of application: Full Householder Application
Development type: Householder
Date of site visit: 30 January 2023
Standard consultations: No consultations have been printed and sent.
Neighbour notifications Printed: 16 January 2023 Expired: 6 February 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 site comprises a two storey end terrace property in the Northenden ward area of Manchester. The roof is hipped reflecting the predominant design of roof in the immediate area. The property lies at the end of a Cul de sac which backs onto properties along Shayfield Drive. Gardens lie to the front, side and rear of the property with boundary treatment made up of timber fencing hedging.



Listed building: Not applicable
Conservation area: Not applicable
Tree Preservation Order: Not applicable

Description of area

The area is predominantly residential in character.

Description of development

The applicant is seeking the erection of a part single, part two storey rear extension and a part single part two storey side extension to provide additional living space

Consultations & Notification Responses

Local residents/public opinion – two letters of representation were received objecting to the proposal. One of the letters has seven signatures from local residents. Summary of comments as follows:

- Due to lack of parking available to multi occupancy housing this is being extended to be.
- Noise disruption from multiple occupancy accommodation to family at adjoining property.
- Extension of this size does not fit within this small Avenue
- Property isn't maintained in anyway by the owner, gardens and exterior of the building unsightly all year round.
- Extension too large and overpowering

Relevant planning history

ENF/15485/22

Temporary Stop Notice issued 21st October 2022, which ceased to have effect on 18 November 2022

ENF/15485/22

Enforcement Notice issued 16th November 2022

1. Demolish, in its entirety, the part single, part two-storey rear extension and the part single, part two-storey side extension,
2. Reinstate the dwellinghouse and the land occupied by the extension, to their condition before the breach took place.
3. Remove from the land all building materials, rubble and waste resulting from carrying out the above steps.

133448/FH/2022

Recv: 14.04.2022

Application Approved - 07.06.2022

Erection of single storey side and rear extensions to form additional living accommodation

130488/FH/2021

Recv: 27.07.2021

Application Approved - 10.11.2021

Erection of single storey rear extension

130330/LE/2021

Recv: 17.05.2021

Application Approved - 13.07.2021

Certificate of lawful existing development for the erection of a single storey side extension to dwelling

128079/FH/2020

Recv: 28.09.2020

Application Refused - 23.11.2020	Erection of a part single part two storey side and part single part two storey rear extension to provide additional living accommodation
126873/FH/2020 Recv: 07.06.2020 Application Refused - 30.07.2020	Part-retrospective application for the erection of a part single, part two storey rear extension and a two storey side extension to provide additional living accommodation
126841/JO/2020 Recv:	
Application Returned -	Variation of condition no. 2 (approved drawings) attached to planning permission 125485/FH/2019 to allow for an increase in the size of the previously approved house extensions
125485/FH/2019 Recv: 20.11.2019 Application Approved - 18.03.2020	Erection of a part single, part two storey rear extension and a part single part two storey side extension to provide additional living space.

Policy

Unitary Development Plan for the City of Manchester (UDP)

The relevant UDP Policy is saved policy DC1

Policy DC1 for Residential Extensions is still considered of relevance.

DC1.1 states that in determining planning applications for extensions to residential properties, the Council will have regard to: a. The general character of the property; b. The effect upon the amenity of the neighbouring occupiers; c. The desirability of enabling people to adapt their houses in appropriate ways to meet changing household needs; d. The overall appearance of the proposal in the a street scene; e. The effect of the loss of any on-site car parking. DC1.2 states that extensions to residential properties will be allowed subject to compliance with other relevant policies of the Plan and the following criteria: a. They are not excessively large or bulky (for example resulting in structures which are not subservient to original houses or project out too far in front of original buildings); b. They do not create undue loss of sunlight, daylight or privacy; c. They are not out of character with the style of development in the area or the surrounding scene by virtue of design, use of materials or construction details. d. they would not result in the loss of off-street car-parking, in a situation where there is so severe an existing on-street parking problem that unacceptable additional pressures would be created. DC1.3 Notwithstanding the generality of the above policies, the Council will not normally approve: a. rearward extensions greater than 3.65m (12 ft) in length; b. 2-storey extensions with a flat roof, particularly those which would be visible from the public highway; c. 2-storey extensions to terraced properties which occupy the full width of the house; d. flat roofed extensions to bungalows; e. extensions which conflict with the Council's guidelines on privacy distances (which are published as supplementary guidance).

The relevant Core Strategy Policies are:

Policy SP1 - Spatial Principles
Policy DM 1 - Development Management
Policy EN1 - Design Principles

Policy SP1 sets down the spatial principles that will guide development in the City. The emphasis is on the creation of neighbourhoods of choice, providing high quality and diverse housing around district centres which meet local needs, all in a distinct environment. It goes on to say that development in all parts of the City should:-

Make a positive contribution to neighbourhoods of choice including (amongst others):-

- making a positive contribution to the health, safety and wellbeing of residents

Policy DM1 says;

All development should have regard to the following specific issues, (amongst others), for which more detailed guidance may be given within a supplementary planning document:

- Appropriate siting, layout, scale, form, massing, materials and detail.
- Impact on the surrounding areas in terms of the design, scale and appearance of the proposed development. Development should have regard to the character of the surrounding area.

Policy EN1 (Design Principles and Strategic Character Areas); states that all development in Manchester will be expected to follow the seven principles of urban design, as identified in national planning guidance and have regard to the strategic character area in which the development is located.

The National Planning Policy Framework (NPPF), (July 2021)

Paragraph 2 states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

Paragraph 7 tells us that the purpose of the planning system is to contribute to the achievement of sustainable development.

Paragraph 11 Plans and decisions should apply a presumption in favour of sustainable Development and that for decision making this means approving development proposals that accord with an up to date development plan without delay.

Issues

Consideration of Planning Application 135817/FH/2022 with regards to Section 70A and 70B of the Town and Country Planning Act 1990

Legislation

Section of 70A of the Town and Country Planning Act 1990 (as amended) (“the Act”) states that:

“(1) A local planning authority may decline to determine a relevant application if—

(a) any of the conditions in subsections (2) to (4) is satisfied, and

(b) the authority think there has been no significant change in the relevant considerations since the relevant event.

(2) The condition is that in the period of two years ending with the date on which the application mentioned in subsection (1) is received the Secretary of State has refused a similar application made to the Secretary of State under section 62A or referred to him under section 76A or 77.

(3) The condition is that in that period the Secretary of State has dismissed an appeal—

(a) against the refusal of a similar application, or

(b) under section 78(2) in respect of a similar application.

(4) The condition is that—

(a) in that period the local planning authority have refused more than one similar application, and

(b) there has been no appeal to the Secretary of State against any such refusal”

Section 70B of the Act states that:

“ ...

(4A) A local planning authority in England may also decline to determine an application for planning permission or permission in principle for the development of any land in England which is made at a time when the condition in subsection (4B) applies in relation to a similar application.

(4B) The condition is that—

(a) a similar application is under consideration by the Secretary of State,

(b) the similar application is an application deemed to have been made by section 177(5), and

(c) the Secretary of State has not issued his decision.

(5) An application is similar to another application if (and only if) the local planning authority think that the development and the land to which the applications relate are the same or substantially the same.

(6) The determination period is—

(a) the period prescribed by the development order for the determination of the application, or

(b) such longer period as the applicant and the authority have agreed for the determination of the application.”

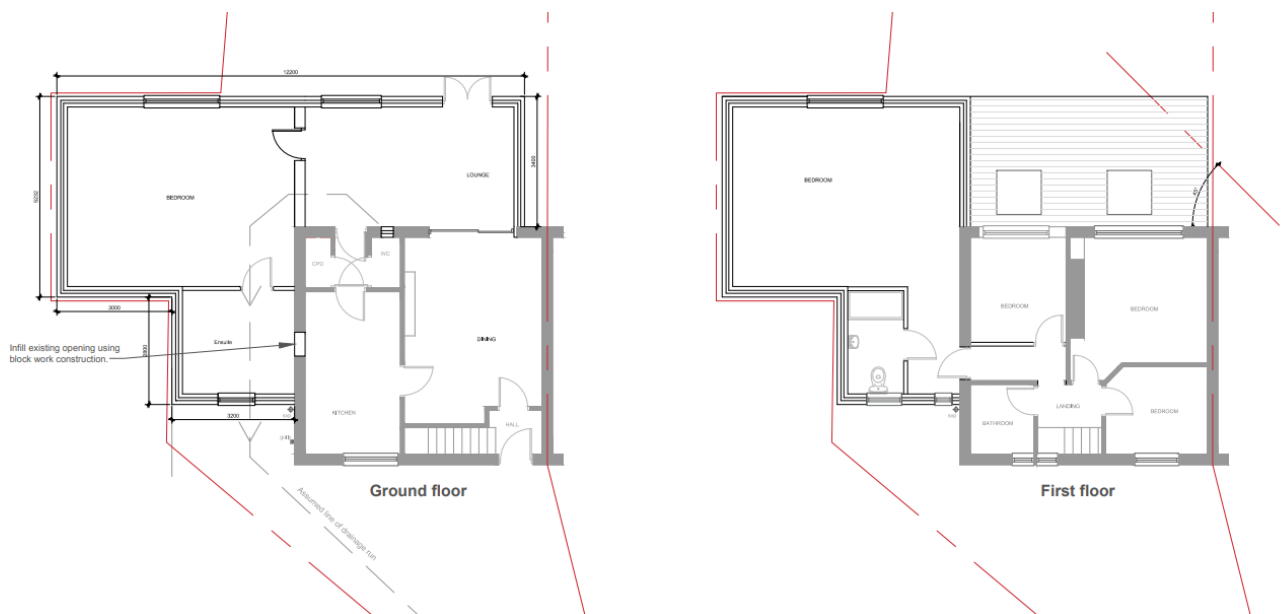
Does Section 70A and/or 70B apply?

There are two appeal decisions on two similar development proposals, both of which have been dismissed by the Secretary of State in the two years prior to this application being submitted (i.e. after 21 December 2020) and therefore Section 70A would apply in this case.

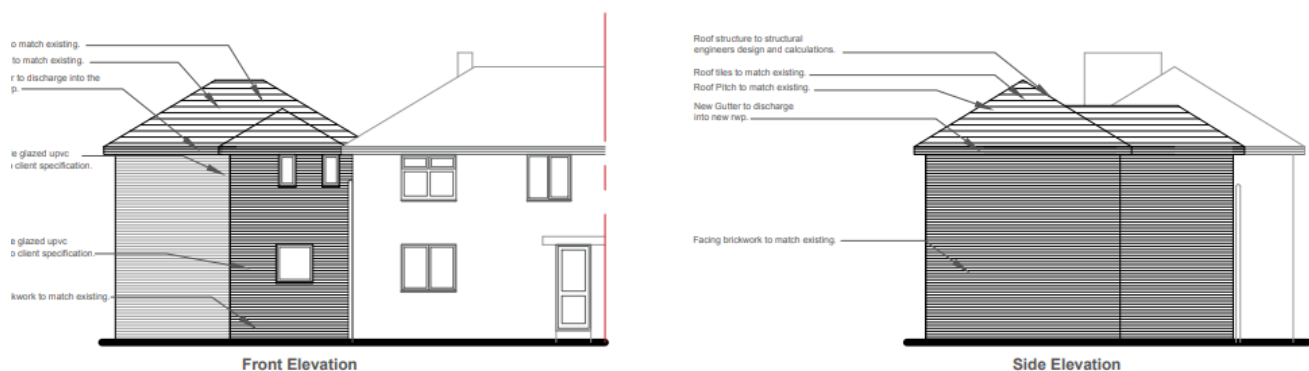
In relation to Section 70B, the Council issued an enforcement notice on 16 November 2022, which alleged: *“Without planning permission, erection of a part single, part two-storey rear extension and a part single, part two-storey side extension”*. On 2 December 2022, a Ground (a) appeal against the notice was lodged with the Secretary of State and has not yet been determined. As such, sub-paragraph (4B) of Section 70B would be engaged, as the Secretary of State has not issued a decision on the overlapping (and similar) application made under s.177(5).

Previous appeal decisions

On 11 May 2020, a planning application was submitted for “part-retrospective permission for the erection of a part single, part two storey rear extension and a two storey side extension to provide additional living accommodation” (ref: 126873/FH/2020).



Proposed ground and first floor plans (ref: 126873/FH/2020)

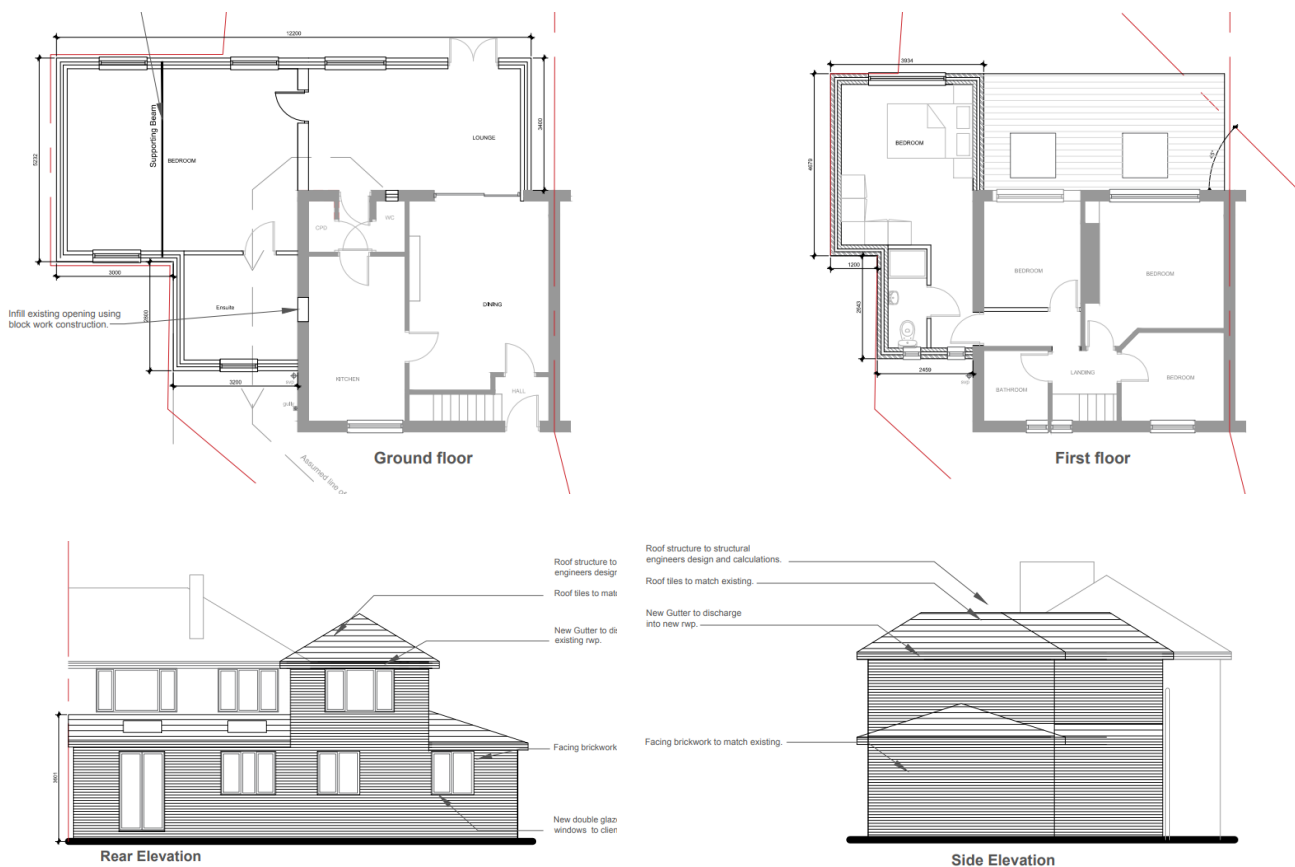


Proposed front and side elevations (ref: 126873/FH/2020)

On 3 July 2020, planning permission was refused by the Council for the following reason:

The proposed development due to its scale, bulk, massing, size and its relationship to the original house would not be subservient to the main house; would form an overly dominant and visually obtrusive feature within the street scene, and would be incongruous with the character of the area in general, which would also have an overbearing appearance to neighbouring occupiers to the detriment of visual amenity particularly no. 11 Olney Avenue and as such is contrary to saved policy DC1 of the Unitary Development Plan for the City of Manchester and policies SP1 and DM1 of Manchester's Core Strategy Development Plan Document and the NPPF.

On 23 September 2020, a planning application was submitted for the “erection of a part single part two storey side and part single part two storey rear extension to provide additional living accommodation” (ref: 128079/FH/2020).



Ground and first floor plan, rear elevation and side elevation facing no. 11 Olney Avenue (ref: 128079/FH/2020)

On 23 November 2020, planning permission was refused by the Council for the following reason:

The proposed development due to its scale, bulk, massing, size and its relationship to the original house would form an overly dominant and visually obtrusive feature within the street scene, and would be incongruous with the character of the area in general, which would also have an overbearing appearance to neighbouring occupiers to the detriment of visual amenity particularly no. 11 Olney Avenue and as such is contrary to saved policy DC1 of the Unitary Development Plan for the City of Manchester and policies SP1 and DM1 of Manchester's Core Strategy Development Plan Document and the NPPF.

On 4 February 2021, the Secretary of State dismissed two appeals against the above decisions (appeal refs: APP/B4215/D/20/3258882 and APP/B4215/D/20/326471). In dismissing both appeals, the appointed Planning Inspector concluded that:

DL14. For all of these reasons, I therefore conclude that both schemes under Appeal A and Appeal B would unacceptably harm the character and appearance of the appeal site and surrounding area. This is contrary to the design, character and appearance aims of UDP Policy DC1, Policies SP1, DM1 of the Council's Local Development Framework Core Strategy Development Plan Document 2012 (CS). Additionally, the scheme fails to accord with the requirements of the National Planning Policy Framework (the Framework).

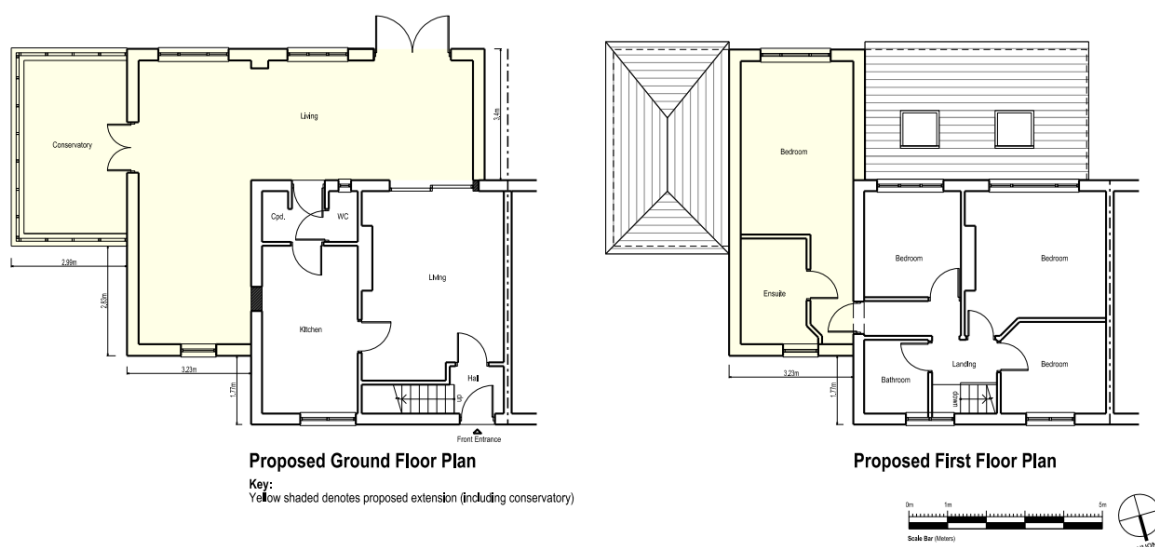
DL22. Whilst I accept the absence of other harm arising from the schemes, including living conditions, this does not outweigh my assessment on character and appearance. Given my findings above, both schemes conflict with the development plan when taken as a whole, and there are no other material considerations that indicate otherwise. It is also at odds with the requirements of the Framework.

DL23. Taking all matters into consideration, I conclude that both Appeal A and Appeal B should be dismissed.

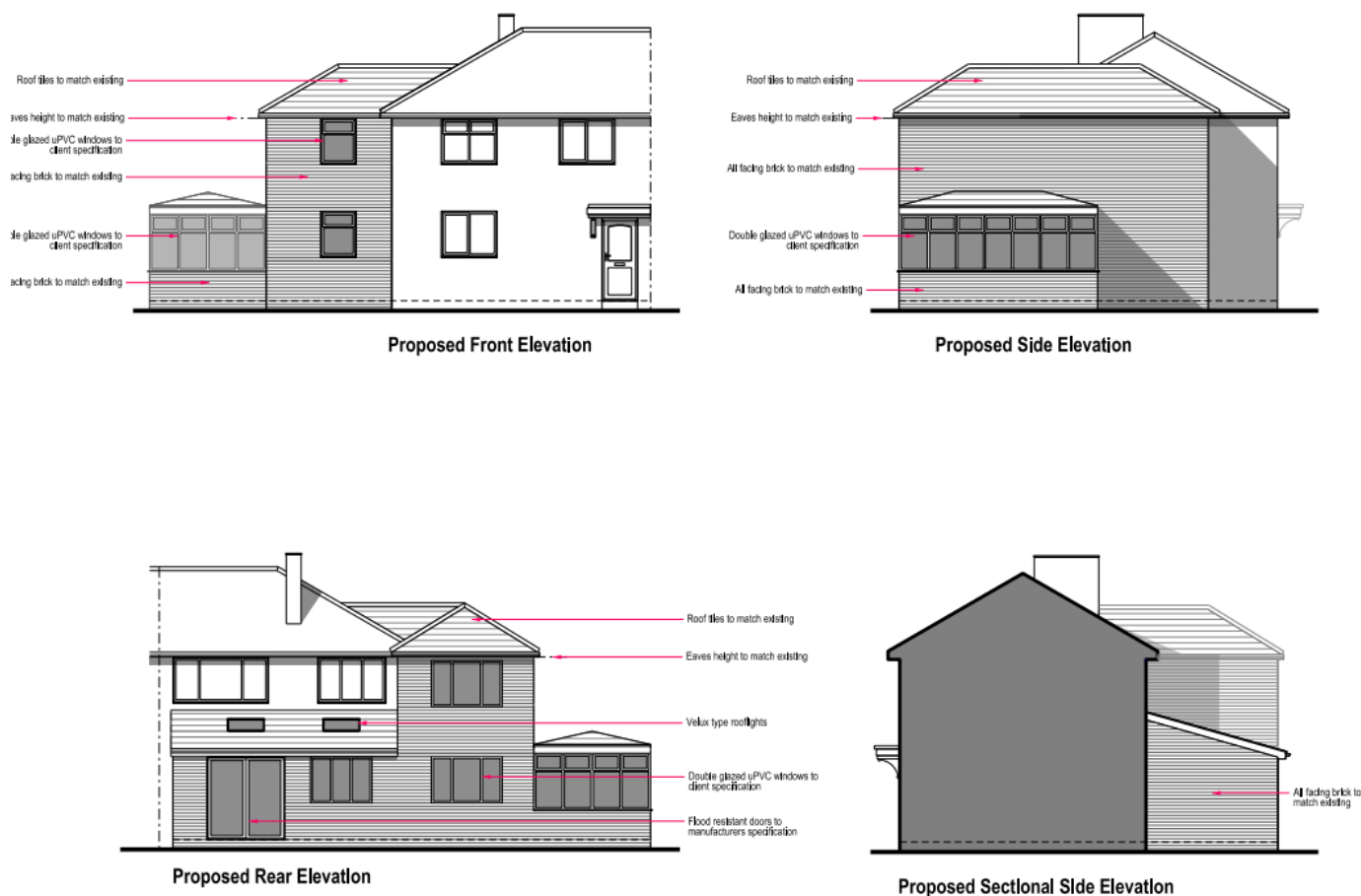
The current application proposal

Planning application 135817/FH/2022 was registered on 21st December 2022 and the description of the proposal provided by the applicant was "Erection of a part single, part two storey rear extension and a part single part two storey side extension to provide additional living space".

The application was accompanied by appropriately completed application forms, location plan (PL01) dated 21st December 2022 identifying no. 13 Olney Avenue and existing and proposed plans and elevations.



Drawing reference numbered PL03 proposed floor plans



Drawing reference numbered PL04 proposed elevations

The ground floor element of the proposal would be setback from the front wall of the property by 1.77m to a width of 3.23m extending a length of 2.83m. This would increase in width by a further 2.99m towards the shared boundary with no. 11 Olney Avenue with a projection beyond the rear wall of 3.4m forming a conservatory on the side. The ground floor would form a wrap around the property up to the shared boundary with the adjoining semi detached property no. 15 Olney Avenue.

The first floor element would be setback from the front wall of the property by 1.77m extending rearwards beyond the rear wall of the property by 3.4m to a total width of 3.23m. The roof would be hipped on the two storey element and the conservatory and would have a mono pitch sloping roof to the rear with the addition of two roof lights. Windows are proposed on the front with a glazing to the conservatory along the side and windows to the rear.

Comparison between the current proposal and those dismissed by the Secretary of State at an appeal

The descriptions of development provided by the applicant for the current proposal and those dismissed at appeal are similar, in that they all refer to part single, part two storey rear extension and a part single part two storey side extension to provide additional living space. The plans and drawings above show a similar footprint, scale and massing for all three proposals.

The proposals subject of this current application recreate the previous proposals in terms of mass and bulk. Although it is acknowledged that the roof design has been altered, the footprint of the

development remains the same. Similarly, although there has been a change in the proposed materials to the side extension, the dimensions also remain the same.

In dismissing the two appeals, the Secretary of State explicitly upheld the Council's reasons for refusing planning permission for the two proposals. There has been no change in policy since the Council made those decisions and, as such, the current proposal does not overcome any of the Council's objections – or, indeed, the Secretary of State's objections – to the development

It is therefore considered that the proposals currently before the Council trigger Section 70A of the Act.

Comparison between the current proposal and the development that is currently being considered by the Secretary of State by way of an appeal against an enforcement notice

The current proposal is similar to that which the Council has enforced against, although it is accepted that the development has not been completed and remains partially built. However, the applicant has made a valid appeal against the enforcement notice, which is currently under consideration by the Secretary of State. The current proposal is therefore considered to be an "overlapping application" for the purposes of Section 70B of the Act.

Conclusion

The current proposal is similar to two proposals that have been dismissed on appeal by the Secretary of State, within two years prior to the submission of this application. There has been no material change in circumstances in the intervening period and the Council considers that, similar to the previously refused and dismissed applications, this proposal fails to comply with local and national policy.

The Council issued an enforcement notice, on 16 November 2022, which alleged: "Without planning permission, erection of a part single, part two-storey rear extension and a part single, part two-storey side extension". On 2 December 2022, an appeal against the notice under Section 177(5) of the Act was lodged with the Secretary of State and has not yet been determined. The Council considers that the current proposal is similar to the deemed planning application that is currently being considered by the Secretary of State at appeal.

Therefore, pursuant to Section 70A and Section 70B of the Town and Country Planning Act 1990 (as amended), the Council as Local Planning Authority, hereby declines to determine the application.

The appropriate entry will be made in the planning register to reflect this decision.

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: Decline to determine application.

Reason for Decision:

Under Section 70A of the Town and Country Planning Act 1990 (as amended), a Local Planning Authority may decline to determine an application for planning permission, if the Secretary of State has dismissed an appeal against the refusal of a similar application in the two years prior to the submission of that application.

In the opinion of the Local Planning Authority, the proposal of this planning application as set out in the documents and associated plans, is similar to two previous planning applications (refs: 126873/FH/2020 and 128079/FH/2020) that the Local Planning Authority refused, and the Secretary of State subsequently dismissed at appeal (refs: APP/B4215/D/20/3258882 and APP/B4215/D/20/326471)

There has been no material change in circumstances in the intervening period and the Council considers that, similar to the previously refused applications that were subsequently dismissed on appeal, this proposal fails to comply with local and national policy.

Under Section 70B of the Town and Country Planning Act 1990 (as amended), a Local Planning Authority may decline to determine an application for planning permission, if a similar application, deemed to have been made by Section 177(5), is under consideration by the Secretary of State and a decision has not yet been issued.

On 16 November 2022, the Council issued an enforcement notice, which alleged: "Without planning permission, erection of a part single, part two-storey rear extension and a part single, part two-storey side extension". On 2 December 2022, an appeal against the notice was lodged with the Secretary of State; this appeal includes consideration of a deemed application under Section 177(5) and has not yet been determined. The Council considers that the current proposal is similar to the deemed planning application that is currently being considered by the Secretary of State at appeal.

Therefore, pursuant to Section 70A (subsections 1 and 3) and Section 70B (subsections (1)(b) and (4B)) of the Town and Country Planning Act 1990 (as amended), the Council as Local Planning Authority, hereby declines to determine the application.

As the decision to decline to determine the application has been made within the statutory 8 week period, there is no right of appeal to the Secretary of State against non-determination under Section 78 as that right is lost under the provision of Section 78(2)(aa).

Appendix 1 – List of consultees & neighbours notified

49 Shayfield Drive, Manchester, M22 8DT
8 Olney Avenue, Manchester, M22 8AB
11 Olney Avenue, Manchester, M22 8AB
47 Shayfield Drive, Manchester, M22 8DT
45 Shayfield Drive, Manchester, M22 8DT
43 Shayfield Drive, Manchester, M22 8DT
41 Shayfield Drive, Manchester, M22 8DT
39 Shayfield Drive, Manchester, M22 8DT
16 Olney Avenue, Manchester, M22 8AB
15 Olney Avenue, Manchester, M22 8AB
9 Olney Avenue, Manchester, M22 8AB
7 Olney Avenue, Manchester, M22 8AB
18 Shayfield Road, Manchester, M22 8DG
16 Shayfield Road, Manchester, M22 8DG

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 45M
Flood Zones Type 2 (low to medium risk) -
Flood Zones Type 3 (high risk) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Middle) -
Area Team Boundary - Name: SOUTH AREA