

Planning

Growth & Development

Delegated officer report for planning application

Application no. 134157/FH/2022
Date registered valid: 17 October 2022
Proposal: Erection of a part single-storey, part two-storey side/rear extension
Address: 77 Birchfields Road, Manchester, M13 0XX
Ward(s): Rusholme Ward

Applicant: Mr Sharif 77 Birchfields Road, Manchester, M13 0XX
Agent (if any): Mr Mohamed Ahmed M1 Architecture Ltd 322 Platt Lane, Manchester, M14 7DA
Case officer: Robert Griffin
Tel: 0161 234 4527
Email: robert.griffin@manchester.gov.uk

Recommendation: Decline to Determine Application
Date of recommendation: 12.12.2022

Application details

Type of application: Full Householder Application

Development type: Householder

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 16 November 2022

Expired: 7 December 2022

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

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area



The application property is a two storey render and brick finished residential property located along the busy Birchfield's Road which forms a radial route connecting the City Centre to south Manchester. The property has an area of hardstanding to the front used for off road car parking with private amenity space set out to the rear. The southern boundary of the property is shared with the rear of the commercial properties along Meldon Road. To the rear boundary of the property is an area of land which is fenced and accessed from Copthorne Crescent.

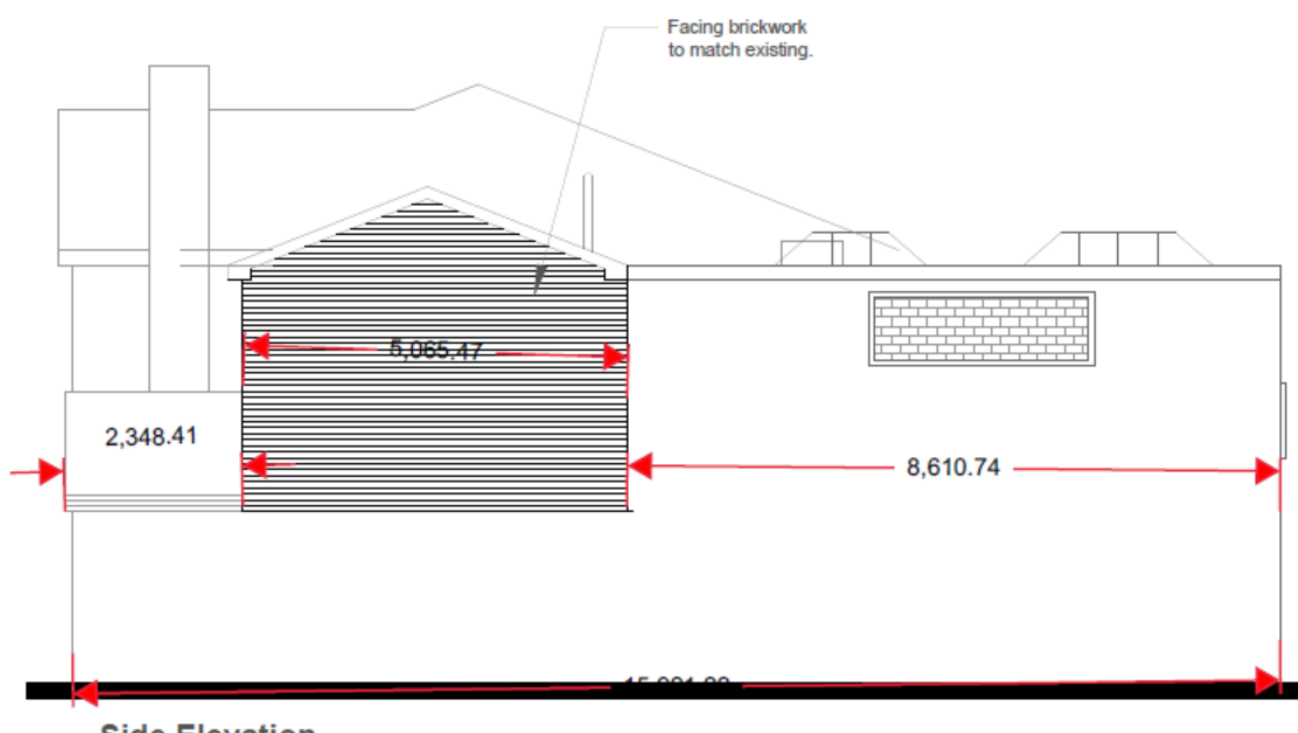
The area is predominantly residential in nature although to the south along Meldon Road is a cluster of commercial properties with residential uses on upper floors. Number 3 Meldon Road was converted to a residential use in the 1990s under approval reference 051928/FO/CENTL1/97.

Description of development

The proposals seek the approval of the Council for the erection of a part single-storey, part two storey side/rear extension which includes the retention of the flat roof side and rear extension with the addition of a further element forward of this on the side elevation and a first floor element over the ground floor rear extension.

The front elevation contains a ground floor window to the side element and a first floor window facing towards Birchfields Road. The side elevation indicates facing brickwork to match and a side window although it is unclear if this is clear glazed, bricked or some other glazed solution. The flat roof two storey side extension would have two roof lights. The rear elevation of the flat roof extension would contain a first floor Juliet balcony and a ground floor window, the part single/part two storey rear extension would contain ground floor patio doors and first floor rear facing window.

The side extension would project 2.6m from the side gable wall of the existing house and extend 15.9m in depth into the rear garden. The single storey element would be 2.3m in extent on the side, with the two storey element projecting the remainder of the depth. The proposal incorporate the constructed flat roof two storey extension which extends to 8.6m on the side and a pitched roof element which has a depth of 5m.



Consultations & Notification Responses

Neighbouring properties were notified of the proposals no responses were received.

Policy

Relevant policy to this application is contained in the NPPF (2021) and Core Strategy policies DM1 and SP1 and saved UDP policy DC1.

The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied. It provides a framework within which locally prepared plans for housing and other development can be produced.

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.

Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

- a) an economic objective - to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
- b) a social objective - to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
- c) an environmental objective - to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

Core Strategy policy DM1 indicates all development should have regard to the following specific issues 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.
- Effects on amenity, including privacy, light, noise, vibration, air quality, odours, litter, vermin, birds, road safety and traffic generation. This could also include proposals which would be sensitive to existing environmental conditions, such as noise.
- Accessibility: buildings and neighbourhoods fully accessible to disabled people, access to new development by sustainable transport modes.
- Community safety and crime prevention.
- Design for health.
- Adequacy of internal accommodation and external amenity space.
- Refuse storage and collection.
- Vehicular access and car parking.
- Effects relating to biodiversity, landscape, archaeological or built heritage.
- Green Infrastructure including open space, both public and private.

- The use of alternatives to peat-based products in landscaping/gardens within development schemes.
- Flood risk and drainage.
- Existing or proposed hazardous installations.

Core Strategy policy SP1 states that the key spatial principles which will guide the strategic development of Manchester to 2027 include: 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.

The Unitary Development Plan (UDP) for the City of Manchester (1995) - The Unitary Development Plan for the City of Manchester was adopted in 1995 and has largely been replaced with the policies contained within the Core Strategy. However, there are a number of policies that are extant.

Unitary Development Plan

Policy DC1 of the Unitary Development Plan seeks to accommodate the demand for more living space, while at the same time ensuring that the amenities of neighbours are protected, and that the overall character of the surrounding area is not harmed. It relates specifically to residential extensions and the relevant criteria from this policy include:

DC1.1 The Council will have regard to:

- a. The general character of the property
- b. The effect upon the amenity of neighbouring occupiers
- c. The overall appearance of the proposal in the street scene;
- d. The effect of the loss of any on-site car-parking

Policy DC1.2 states extensions will be allowed subject to:

- 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 the original buildings)
- b. They do not create a loss of sunlight/daylight or privacy
- c. They are not out of character with the style of development in the area
- d. They would not result in the loss of off-street parking

Policy DC1.3 states that 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).

Policy DC1.4 indicates that in considering proposals for 2-storey side extensions, the Council will have regard to the general guidance above and also to supplementary guidance to be issued. In particular, the Council will seek to ensure that:

- a. the development potential of the gap between detached and semi-detached houses is capable of being shared equally by the owners or occupiers of the two properties concerned;
- b. the actual or potential result of building the extension will not be the creation of a terracing effect, where this would be unsympathetic to the character of the street as a whole;
- c. the actual or potential result of building the extension will not be the creation of a very narrow gap between the properties, or any other unsatisfactory visual relationships between elements of the buildings involved.

As a guide, and without prejudice to the generality of this policy, the Council will normally permit 2-storey house extensions which, when built, would leave a minimum of 1.52m (5 ft) between

the side wall and the common boundary, and which meet the other requirements of this policy. Proposals which cannot meet these requirements will be judged on their merits, but with weight being given to (a) and (c) above.

Policy DC1.5 states the Council will consider on their merits exemptions to the above policies in the case of applications from disabled people who may require particular adaptations to their homes.

S149 Equality Act 2010 provides that in the exercise of all its functions the Council must have regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between person who share a relevant protected characteristic and those who do not. This includes taking steps to minimise disadvantages suffered by persons sharing a protect characteristic and to encourage that group to participate in public life. Disability is a protected characteristic.

Relevant Planning History

125479/FH/2019 - The property was subject to planning approval reference 125479/FH/2019 for the 'Erection of a single storey side extension, hip to gable roof alteration and installation of a rear dormer to create additional living accommodation'. Approved 28.04.2020

ENF/15154/21 – Enforcement notice issued 21.06.2021 with effect from 22.07.2021 – Appeal into notice withdrawn

130364/FH/2021 - A further application was submitted in 2021 to retain a part single storey, part two storey side/rear extension with balcony to provide additional living accommodation. This application was refused permission on the 01.07.2021 for the following two reasons:

1) The proposed development by reason of its proximity to the boundary with the properties on Meldon Road, together with the projection, size, scale, bulk and massing of the proposal, it is considered that the proposed side and rear extension together with the rear balcony would have an overbearing impact and would create an intrusive feature in the form of expanse of brickwork along this boundary, to the detriment of the residential amenity and privacy to the occupiers of properties at numbers 3 and 5 Meldon Road. The proposal is therefore contrary to policies SP1 and DM1 of the Manchester's Core Strategy Development Plan Document and saved Unitary Development Plan policies DC1.1, DC1.2 and DC1.4 and the guidance within the National Planning Policy Framework.

2) The proposed flat roof design of the proposed first floor extension would be out of character with the pattern of development found within the area and would result in an incongruous and visually obtrusive feature on the rear elevation of the property, to the detriment of the general character of the existing property and the visual amenity of the area within which it is situated. The proposal is therefore contrary to Policies SP1 and DM1 of the Core Strategy and saved Policy DC1.1, DC1.2 and DC1.3 Unitary Development Plan for the City of Manchester (1995) and the guidance within the National Planning Policy Framework.

A subsequent appeal against this decision was made and was dismissed under reference APP/B4215/D/21/3279297 on the 21st February 2022.

131152/FH/2021 - A further application was submitted under reference 131152/FH/2021 for the Erection of single storey and part two storey side extension and single storey rear extension to provide additional living accommodation being approved on the 21st September 2021.

Issues

Consideration of Planning Application 134157/FH/2022 with regards to Section 70C of the Town and Country Planning Act 1990 Legislation

Section 70C(1) of the Town and Country Planning Act 1990 states that a local planning authority may decline to determine an application if granting planning permission for the development "would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control."

Does Section 70C apply?

In this instance, on 22nd June 2021 the Council issued an enforcement notice (reference ENF/15154/21) in relation to the following specified breach of planning control:

'Without planning permission, the erection of a part single-storey, part two-storey side/rear extension'.

A compliance period was specified as "six months" following the notice taking effect. On 23 February, after the Secretary of State had dismissed the applicant's appeal against the refusal of permission for the retention of the development, the Council varied the compliance period to 21 August 2022.

The reason for the Council issuing the notice was given as;

"The Council considers that it is expedient to issue this notice because the unauthorised development by reason of its proximity to the boundary with the properties on Meldon Road, together with the projection, size, scale, bulk and massing of the proposal, is considered to have an overbearing impact and creates an intrusive feature in the form of expanse of brickwork along this boundary, to the detriment of the residential amenity and privacy to the occupiers of properties at numbers 3 and 5 Meldon Road.

The flat roof design of the first floor extension is considered to be out of character with the pattern of development found within the area and results in an incongruous and visually obtrusive feature on the rear elevation of the property, to the detriment of the general character of the existing property and the visual amenity of the area within which it is situated".

As the current application seeks permission for the retention/modification of the extensions, granting permission would involve granting planning permission in respect of the matters specified in the enforcement notice as constituting a breach of planning control. As such, the power to decline to determine the present application under Section 70C is available to the Council.

Should Section 70C be used?

The Council has a discretion as to whether or not to use the power in Section 70C. The following matters appear relevant to the exercise of that discretion.

The aim of Section 70C is to prevent a developer from having 'two bites of the cherry' in respect of unauthorised development. In this instance the applicant was granted planning permission reference 125479/FH/2019, having elected not to build the extensions in accordance with the approved plans as required by condition 2 attached to the permission consent was sought to

retain the extensions in their modified form, reference 130364/FH/2021. Following the refusal of this application an appeal was lodged and dismissed (reference APP/B4215/D/21/3279297) on the 21st February 2022. A third application with reference 131152/FH/2021 was submitted, this application sought to address some of the concerns raised by the Council and was subsequently approved on the 21st September 2021.

The enforcement notice has not been complied with, together with the incremental nature of the changes proposed, suggests that this further attempt at a planning application is yet a further play for time. This is supportive of the use of Section 70C, which was introduced to prevent the making of such tactical applications.

Comparison of the Enforcement notice and application reference 134157/FH/2022

The Enforcement Notice require the extensions to either be demolished or modified in accordance with the original planning permission reference 125479/FH/2019. In addition, the applicant has a further option to implement planning approval 131152/FH/2021.

This application would differ from planning approval 125479/FH/2019 in that it includes for the additions above ground floor side and rear of first floor extensions along the full depth of the property and extending into the rear garden. Windows to the front ground floor would be wider than the approved scheme and the extension would project beyond the rear wall of the property. The approved scheme also showed a hip to gable roof extension and rear dormer extension.

The approval reference 131152/FH/2021 differs from the current application in that it would include a first floor element set back from the front face of the property with a pitched roof, the first floor element would not project beyond the rear wall of the original house. A ground floor flat roof extension would extend of the side into the rear garden.

It is evident that the applicant is seeking to minimise as far as possible any works necessary to make the extensions acceptable.

The high degree of similarity between the current proposal and the extensions as built rather than as approved points therefore in favour of use of the powers in Section 70C.

Conclusion

As the Council have already deemed the development to be unacceptable and have taken formal action to require the removal/modification of the extensions, any approval of the matters presently before the Council will be in direct contradiction to those decisions previously made. Therefore, pursuant to Section 70C of the Town and Country Planning Act 1990, the Council as Local Planning Authority, hereby declines to determine the application and the appropriate entry will be made in the planning register to reflect this decision.

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

Article 35 Declaration

The proposal would not improve the social and environmental conditions of the area nor does it comply with the development plan and therefore does not comprise sustainable development. There are no conditions which could reasonably have been imposed, which would have made the development acceptable and it is therefore not possible to approve the application.

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

On 21 June 2021 the Council issued an enforcement notice, reference ENF/15154/21, in relation to the following specified breach of planning control:

Without planning permission, the erection of a part single-storey, part two-storey side/rear extension.

The notice came into effect on 22 July 2021, and required the following steps to be taken.

Demolish the part single-storey, part two-storey side/rear extension and return the building to its condition before the breach took place, as shown in photograph ENF/01.

Or

Construct a single storey side/rear extension in full accordance with planning permission 125479/FH/2019 and as shown in the attached drawing no. 07A - Elevations Proposed.

Under Section 70C of the Town and Country Planning Act 1990, a Local Planning Authority may decline to determine an application for planning permission, if granting that permission would involve granting, wholly or partly, a permission for any matters specified in a pre-existing enforcement notice. A notice is "pre-existing" if it had been issued before the receipt of the planning application being determined as specified by Section 70C(2).

In the opinion of the Local Planning Authority, the proposal of this planning application (ref: 134157/FH/2022) as set out in the documents and associated plans, relates to matters pertaining to a "pre-existing" enforcement notice, i.e. one issued prior to the submission of the application on the 24.06.2022 and made valid on the 17.10.2022 and are matters for which planning permission is deemed to be required.

As the Council have already deemed the development to be unacceptable and have taken formal action, any approval of the matters presently before me will be in direct contradiction to those decisions previously made. Therefore, pursuant to Section 70C of the Town and Country Planning Act 1990, the Council as Local Planning Authority, hereby declines to determine the application and the appropriate entry will be made in the planning register to reflect this decision.

Appendix 1 – List of consultees & neighbours notified

4 Birchfields Road, Manchester, M13 0XR
3 Meldon Road, Manchester, M13 0TZ
75 Birchfields Road, Manchester, M13 0XX
1A Meldon Road, Manchester, M13 0TZ
Flat At, 9 - 11 Meldon Road, Manchester, M13 0TZ
5A Meldon Road, Manchester, M13 0TZ
Top Flat, 7 Meldon Road, Manchester, M13 0TZ
1A Copthorne Crescent, Manchester, M13 0RA
5 Meldon Road, Manchester, M13 0TZ
9 - 11 Meldon Road, Manchester, M13 0TZ
1 Meldon Road, Manchester, M13 0TZ
7 Meldon Road, Manchester, M13 0TZ
8 Birchfields Road, Manchester, M13 0XR
6 Birchfields Road, Manchester, M13 0XR

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