

Planning

Growth & Development

Delegated officer report for planning application

Application no. 134277/LP/2022

Date registered valid: 6 July 2022

Proposal: Erection of front porch

Address: 38 Allanson Road, Manchester, M22 4WW

Ward(s): Northenden Ward

Applicant: Tristan Evans 38 Allanson Road, Manchester, M22 4WW

Agent (if any): Tristan Evans Crowstone Ltd 3 Elm Grove, Allanson Road, Manchester, M20 6PL

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

Recommendation: GRANT

Date of recommendation: 30 August 2022

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: None Required

Standard consultations:

Printed: 15 July 2022 Expired: 5 August 2022

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

The application site relates to a two storey end terraced property with a gable end roof.

The property has been previously extended under planning reference: 111190/FH/2016/S2 with a two storey side extension, including car port to provide additional living accommodation that was subsequently amended under planning reference: 115186/NMC/2017.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The surrounding area is located within a residential area to the east of Northenden Village district centre which provides range of amenities and facilities.

Description of development

The applicant is seeking a certificate of lawful proposed development for the erection of a front porch.

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

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 proposed lawful development for the erection of a front porch.

The proposal will be considered under Part 1, Schedule 2, Class D of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) - the relevant legislation when considering the addition of porches to properties.

Class D – porches

Permitted development

D. The erection or construction of a porch outside any external door of a dwellinghouse.

Development not permitted

D.1 Development is not permitted by Class D 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);

Complies [N/A] Dwellinghouse pre-dates any of these changes.

(b) the ground area (measured externally) of the structure would exceed 3 square metres;

Complies [✓] The external ground area would measure 2.7092 square metres.

(c) any part of the structure would be more than 3 metres above ground level; or

Complies [✓]

(d) any part of the structure would be within 2 metres of any boundary of the curtilage of the dwellinghouse with a highway.; or

Complies [✓] – The drawings show that the porch would be just over 2 metres away from the front boundary that fronts a highway.

(e) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).

Complies [N/A] Dwellinghouse pre-dates any of these changes.

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: GRANT

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

1) Grant on the basis that the proposed front porch as shown on drawing PL001 constitutes permitted development in accordance with Part 1, Schedule 2, Class D of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Appendix 1 – List of consultees & neighbours notified

High Speed Two (HS2) Limited

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

Flood Zones Type 2 (low to medium risk) -

HS2 Phase 2b Safeguarding Zones - HS2 Safeguarding Zones (June 2022)

HS2 Phase 2b Safeguarding Zones - HS2 Safeguarding Zones (October 2020)

Area Team Boundary - Name: SOUTH AREA