

Planning

Growth & Development

Delegated officer report for planning application

Application no. 134171/LP/2022

Date registered valid: 19 July 2022

Proposal: Installation of a hip to gable roof extension and rear dormer

Address: 13 Wyverne Road, Manchester, M21 0XF

Ward(s): Chorlton Park Ward

Applicant: Mr. Fayyaz Ali 13 Wyverne Road, Manchester, M21 0XF

Agent (if any): Mr. Niamat Ali NA Design 47 Egerton Road South, Manchester, M21 0YW

Case officer: Robert Tyrer
Tel: 0161 234 4068
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Recommendation: REFUSE

Date of recommendation: 13 September 2022

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

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 semi-detached dwellinghouse which has previously been extended with a part two storey, part single storey side extension and single storey rear extension to form additional living accommodation.

Listed building: Not applicable

Conservation area: No

Tree Preservation Order: Not applicable

Description of area

The area is characterised as being residential in nature comprising of semi-detached properties of similar age.

Description of development

The applicant is seeking a certificate of proposed lawful development for the installation of a hip to gable roof extension and rear dormer

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 – There have been two previous planning applications at this address, a summary of the applications are provided below:

Application Reference and Status	Description
077057/FH/2005/S1 Recv: 09.11.2005 Application Approved - 16.12.2005	Erection of a part single/part two storey side extension and single storey rear extension to form additional living accommodation
088919/FH/2009/S1 Recv: 16.02.2009 Application Approved - 01.04.2009	Erection of a part 2 storey, part single storey side extension and single storey rear extension to form additional living accommodation

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.

Permitted development

B. The enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Development not permitted

B.1 Development is not permitted by Class B 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 [✓]

b) any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof;

Complies [✓] The proposed dormer would be lower than the ridge height of the highest part of the existing roof.

(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;

Complies [✓]

(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

Complies [N/A] The property relates to a semi-detached dwellinghouse.

(ii) 50 cubic metres in any other case;

Complies [X]

In this case the house is not terraced so the 50 cubic metres limit applies in considering the proposed dormer and hip to gable extension. A part 2 storey, part single storey side extension and single storey rear extension to form additional living accommodation has been added to the property (see planning history). Therefore additional roofspace has been created in the main roof, but also unconnected to the main roof is the single storey rear extension too.

The wording is clear for B.1(d) and B.3 of the GPDO in that:

(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 (ii) 50 cubic metres in any other case;

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.**

Government publication Permitted development rights for householders - Technical Guidance. The Guidance advises that: **Any previous enlargement to the original roof space in any part of the house must be included in this volume allowance.** Therefore, we can only conclude from this guidance that all additional roof space, no matter where it is in the house, is taken into account in the volume allowance calculation, irrespective of the means by which it was permitted.

The cubic content for the dormer and hip to gable would be 47.04 cubic metres, however the two storey side extension would have a volume of 9.89 cubic metres, this calculation has taken into account the roof space created by the dormer and hip to gable calculations. Lastly the single storey rear extension has a volume of 16.52 cubic metres and the part single element of the side extension has a roof volume of 2.3 cubic metres. Therefore the total enlargement comes to 75.78 cubic metres.

(e) it would consist of or include—

(i) the construction or provision of a veranda, balcony or raised platform, or

(ii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe;

Complies [✓]

(f) the dwellinghouse is on article 2(3) land.; or

Complies [N/A] – Not located on article 2(3) land.

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

Complies [✓]

(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).

Complies [✓]

Conditions

B.2 Development is permitted by Class B subject to the following conditions—

(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;

Complies [✓]

(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

Complies [✓]

(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

Complies [✓]

(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

Complies [✓]

(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.

Complies [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.

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: REFUSE

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

1) The proposed rear dormer and hip to gable roof extension as shown on the submitted drawings NA-B02 and NA-B03 does not constitute permitted development as it would fail to meet the requirements of Part 1, Schedule 2, Class B.1 (d)(i), of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), in that the cubic content of the resulting roof space would exceed the cubic content of the original roof by more than 50 cubic metres.

Appendix 1 – List of consultees & neighbours notified

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