

Planning

Growth & Development

Delegated officer report for planning application

Application no. 134147/LP/2022

Date registered valid: 29 June 2022

Proposal: Enlargement of property comprising: Part A the erection of a single storey rear extension, and; Part B installation of rear dormer

Address: 18 Amberley Drive, Manchester, M23 2RH

Ward(s): Baguley Ward

Applicant: Windy28.ai Limited 18 Amberley Drive, Manchester, M23 2RH

Agent (if any): Mr Gooding LDM Group LDM House, 46 Great Ancoats Street, Manchester, M4 5AB

Case officer: Robert Tyrer
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Recommendation: SPLIT GRANT AND REFUSE

Date of recommendation: 24 August 2022

Application details

Type of application: Certificate Lawful Developmnt Proposed

Development type: Certificates of lawfulness

Date of site visit: None 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 post war two storey semi-detached painted brick built dwellinghouse. The property and the other adjoining semi are of an unusual design as (approximately) a third of the property is recessed to the rear and the main entrance to the house is located at the side within the recess rather than at the front.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area contains a mixture of modern and post war (1950/60s) housing ranging from two storey semi-detached, to three storey apartment buildings and detached two storey modern housing

Description of development

The applicant is seeking a certificate of proposed lawful development for the erection of a single storey rear extension together with 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.

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 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.

The applicant is seeking a certificate of proposed lawful development for a single storey rear extension and dormer, in turn each part of the proposal will be considered under the relevant class of the Town and Country (General Permitted Development) Order 2015 (as amended).

Rear Extension

The rear extension will be considered under Class A of the Town and Country (General Permitted Development) Order 2015 (as amended) - the relevant legislation when determining the enlargement, improvement or other alterations to dwellinghouses.

Under Class A for "*the enlargement, improvement or other alterations of a dwellinghouse*" the status of the original house needs to be taken into account, as this states the base from which all measurements should be taken. Under the Order, the term "original" means:

in relation to a building existing on 1st July 1948, as existing on that date and, in relation to a building built on or after 1st July 1948, as so built

There have been no previous applications at the property and appears to be unchanged since it was first built.

The Town and Country Planning (General Permitted Development) (England) Order 2015

Class A – enlargement, improvement or other alteration of a dwellinghouse

A. The enlargement, improvement or other alteration of a dwellinghouse.

Development not permitted

A.1 Development is not permitted by Class A 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) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

Complies [✓]

(c) the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;

Complies [✓]

(d) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse;

Complies [✓]

(e) the enlarged part of the dwellinghouse would extend beyond a wall which—

(i) forms the principal elevation of the original dwellinghouse; or

(ii) fronts a highway and forms a side elevation of the original dwellinghouse;

Complies [✓] – The proposed extension is located to the rear of the property.

(f) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and—

(i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or

Complies [✓] – The property is a mid-terrace and the proposed extension would have a rearward projection of 3 metres.

(ii) exceed 4 metres in height;

Complies [✓] – The proposed extension would have a maximum height of 3.76 metres.

(g) for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and—

(i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or

(ii) exceed 4 metres in height;

Complies [N/A]

(h) the enlarged part of the dwellinghouse would have more than a single storey and—

(i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or

(ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse;

Complies [N/A]

(i) the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres;

Complies [✓] – Eaves height would be 2.67 metres.

(j) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would—

(i) exceed 4 metres in height,

Complies [✓]

(ii) have more than a single storey, or

Complies [N/A]

(iii) have a width greater than half the width of the original dwellinghouse; or

Complies [X] - The rear wall of the dwellinghouse is not uniform as it contains an original projection which accommodates a window in a bay arrangement at ground floor, which comprises two side walls, each wall clearly facing the side boundaries of the curtilage. There is no indication that this is not an original feature of the dwellinghouse.

As the proposed enlargement will extend beyond both side walls of the original rearward projection, it will, when complete, have a width greater than half the width of the original dwellinghouse. Accordingly, the proposal does not satisfy all of the conditions and limitations and is therefore not permitted under the above Order and an application for planning permission is required for the single storey rear extension.

(ja) any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in subparagraphs (e) to (j);

Complies [N/A]

(k) it would consist of or include—

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

Complies [✓] – None proposed.

(ii) the installation, alteration or replacement of a microwave antenna,

Complies [✓] – None Proposed

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

Complies [✓] – The proposal does not.

(iv) an alteration to any part of the roof of the dwellinghouse; or

Complies [✓]

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

A.2 In the case of a dwellinghouse on article 2(3) land, development is not permitted by Class A if—

(a) it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles;

Complies [N/A] – The property is not located within article 2(3)land.

(b) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse; or

Complies [N/A] – The property is not located within article 2(3)land.

(c) the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwellinghouse.

Complies [N/A] – The property is not located within article 2(3)land.

Conditions

A.3 Development is permitted by Class A subject to the following conditions—

(a) the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;

Complies [✓]

(b) any upper-floor window located in 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; and

Complies [✓] – No upper side windows are proposed

(c) where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.

Complies [✓] – Proposal is single storey only.

Conclusion

As the proposed single storey extension will extend beyond both side walls of the original rearward projection, it will, when complete, have a width greater than half the width of the original dwellinghouse. The proposal under Part A therefore, does not constitute permitted development and is not in accordance with Part 1, Schedule 2, Class A.1 (j), (iii) of the Town and Country (General Permitted Development) Order 2015 (as amended).

Rear Dormer

The rear dormer will be considered under Class B of the Town and Country (General Permitted Development) Order 2015 (as amended) - the relevant legislation when determining the The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.

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 [✓]

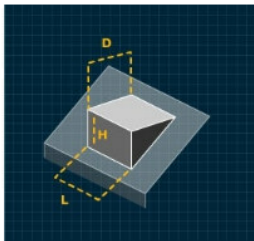
(d) the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than—

(i) 40 cubic metres in the case of a terrace house, or

Complies [N/A]

Dormer Volume

Dormer window — flat roof



Height (metres)

2.08

Depth (metres)

2.97

Length (metres)

10.27

Total Volume:

31.72

Calculate Volume

Reset

(ii) 50 cubic metres in any other case;

Complies [✓] 31.72 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 [✓]

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.

Conclusion

In conclusion, the proposed rear dormer complies with Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended and the application pursued under subsection (1) of section 192 should be approved.

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

0) Part B installation of rear dormer

1) Grant Part B on the basis that the proposed rear dormer as shown on drawings PS212 Rev D, PS522 Rev D, PS122 Rev D and Location Plan constitutes permitted development in accordance with Part 1, Schedule 2, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

2) Part A erection of a single storey rear extension

3) Refuse Part A on the basis that the proposed single storey rear extension as shown on PS212 Rev D, PS522 Rev D, PS122 Rev D and Location Plan does not constitute permitted development and is not in accordance with Part 1, Schedule 2, Class A.1 (j), (iii) of the Town and Country (General Permitted Development) Order 2015 (as amended).

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 45M

Susceptible to Surf Water Flood (Less) -

Area Team Boundary - Name: SOUTH AREA