

Planning

Growth & Development

Delegated officer report for planning application

Application no. 133449/FH/2022

Date registered valid: 6 April 2022

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

Address: 63 Elsdon Road, Manchester, M13 0TN

Ward(s): Rusholme Ward

Applicant: The Company Secretary Advisual Ltd, 651A Mauldeth Road West, Manchester, M21 7SA

Agent (if any): Mr Nick Howard, 29 Riverside Avenue, Salford, M44 6DR

Case officer: Dave Morris
Tel: 0161 600 7924
Email: dave.morris@manchester.gov.uk

Recommendation: Decline to Determine Application

Date of recommendation: **24.05.2022**

Application details

Type of application: Full Householder Application

Development type: Householder

Date of site visit: 22 April 2022

Standard consultations:

Printed: 19 April 2022 Expired: 10 May 2022

Neighbour notifications

Printed: 19 April 2022 Expired: 10 May 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

This application relates to a two storey semi detached property located at the junction of Elsdon Road and Old Hall Lane. The site is broadly triangular with a small rear garden and larger gardens to the front and side. The property as built was a simple box with a hipped roof. There are no outriggers or leans to extensions. On the front elevation there is a full width canopy and a bay window at ground floor level.



Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

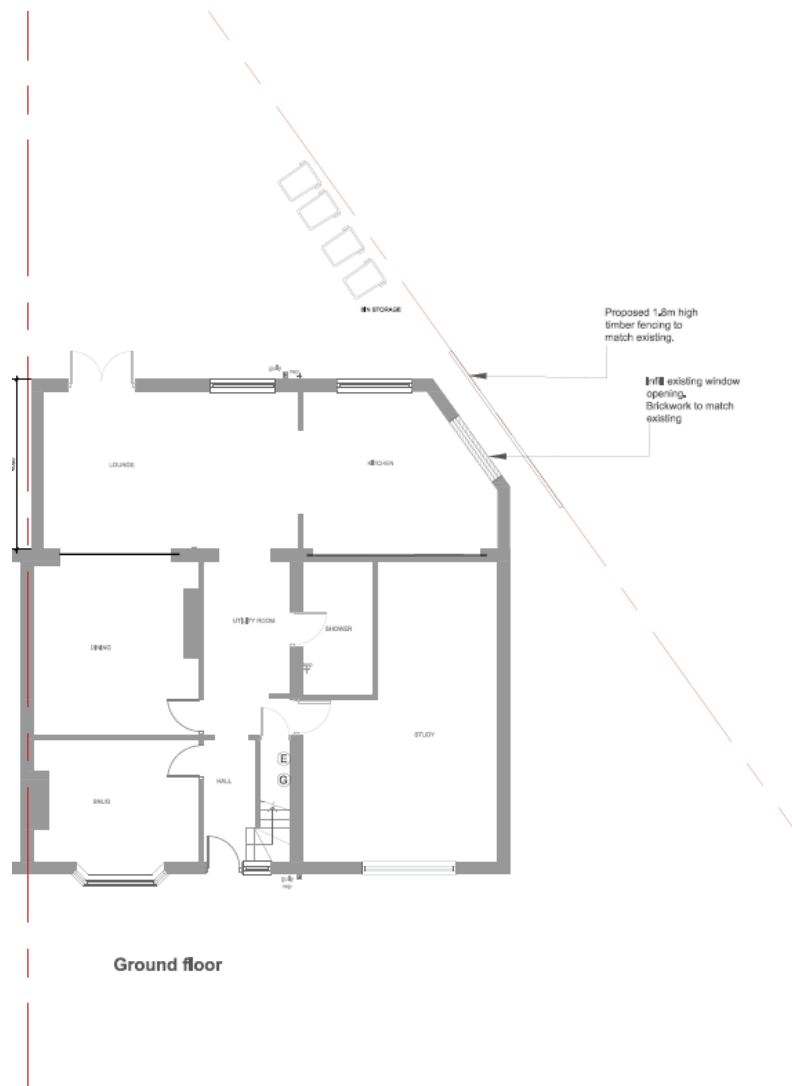
Description of area

This is a predominance residential area. The other half of the semi is to the north there is a large single storey rear extension constructed under the larger homes provisions of the GPDO. To the south is the side garden of a residential property facing Old Hall Lane. Facing the site across Elsdon Road are the side gardens of properties fronting Elsdon Road and Old Hall Lane. Across Old Hall Lane are further two storey residential properties. The tip of the rear garden adjoins the rear gardens of properties on Beresford Road.

Description of development

This application seeks consent for the erection/retention of a two storey side and single storey rear extension that were not built in accordance with the plans approved under reference 123133/FH/2019 and which are the subject of an enforcement notice reference ENF/15287/21 .

The two storey side extension projects approximately 4.2 metres and is the full depth of the original property. The extension would have a hipped roof, the ridge being the same height as the existing property. The eaves height being that of the original dwelling.

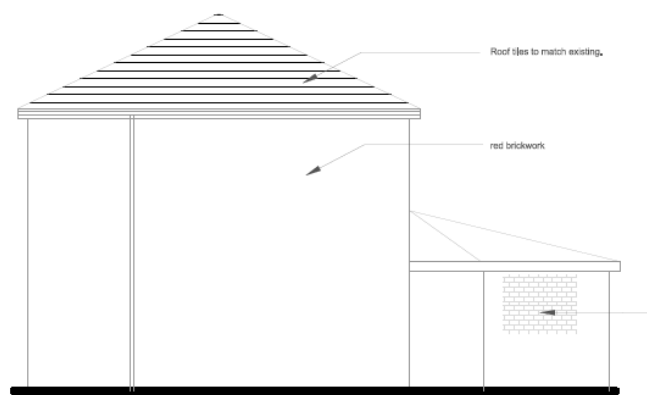


The front elevation contains a single window at both ground and first floor levels, the windows differing in style and size to what has been installed in the development. The original canopy is extended across the full width of the property., The ground floor is painted grey to match the original dwelling whilst it is proposed to paint the first floor brickwork in a colour to be agreed with the City Council.



Front Elevation

There are no windows in the side elevation of the two storey extension. In the rear elevation there are two first floor windows.



Side Elevation



The ground floor extension projects 4 metres and extends across the full width of the property and the side extension. Due to the geometry of the site the southern corner of the extension is chamfered. The roof has a hipped design over the chamfer with a mono pitch to the rest of the extension. The rear elevation contains two windows and a set of French doors, there is a third window in the chamfered rear wall which is to be bricked up.



Rear Elevation

Consultations & Notification Responses

Local Residents

No representations received.

HS2

Are satisfied that the proposed development will not impact on HS2

Policies

National Planning Policy Framework 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 objective of the planning system is to achieve 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.

Core Strategy

The relevant Core Strategy policy is DM1, which says:

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.
- Subject to scheme viability, developers will be required to demonstrate that new development incorporates sustainable construction techniques as follows (In terms of energy targets this

policy should be read alongside policy EN6 and the higher target will apply):- a) For new residential development meet as a minimum the following Code for Sustainable Homes standards. This will apply until a higher national standard is required: Year 2010 – Code Level 3; Year 2013 - Code Level 4; Year 2016 - Code Level 6; and (b) For new commercial developments to demonstrate best practice which will include the application of the BREEAM (Building Research Establishment Environmental Assessment Method) standards. By 2019 provisions similar to the Code for Sustainable Homes will also apply to all new non-domestic buildings

Unitary Development Plan

The relevant saved UDP policy is DC1, which says:

-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 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 street-scene;
- e. the effect of the loss of any on-site carparking.

-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 the original buildings);
- b. they do not create an 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 street scene by virtue of design, use of materials or constructional 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.

-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).

-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.

-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.

Relevant planning History

In May 2019 planning permission reference 123133/FH/2019 was granted for the erection of a two storey side and single storey rear extension to provide additional living accommodation. The permission was subject to the following conditions:

1. The development must be begun not later than the expiration of three years beginning with the date of this permission.
Reason - Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.
2. The development hereby approved shall be carried out in accordance with the following drawings and documents:
Stamped received on 26th March 2019 numbered 01 Existing and Proposed Location Plan
Stamped received on 26th March 2019 numbered 04 Proposed Ground Floor Plan
Stamped received on 26th March 2019 numbered 05 Proposed First Floor Plan
Stamped received on 26th March 2019 numbered 06 Proposed Elevations and Roof Plan
Reason - To ensure that the development is carried out in accordance with the approved plans. Pursuant to policies SP1 and DM1 of the Core Strategy.
3. The materials to be used on the external surfaces of the extension hereby permitted shall match those of the existing building in type, size, colour and texture.
Reason - To ensure the appearance of the building to be extended is not adversely affected by the materials to be used in the construction of the extension, pursuant to saved policies DC1.1, DC1.2 and DC1.4 of the Unitary Development Plan for the City of Manchester and policy DM1 of the Manchester Core Strategy.

In response to the development not being built in accordance with the approved plans the applicant submitted the following application reference 132710/FH/2022, for the erection of a two storey side and single storey rear extension to provide additional living accommodation. The application was refused in March 2022 for the following reasons

1. The mansard roof design of the two storey side extension is out of character with the pattern of development found within the area and results in an incongruous and visually obtrusive feature on the side elevation of this prominent corner 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 of the Unitary Development Plan for the City of Manchester (1995) and the guidance within the National Planning Policy Framework.
2. The side window in the single storey rear extension by reason of its close proximity to the site boundary results in the overlooking and loss of privacy in the side garden of 24 Old Hall Lane. The development is therefore contrary to the provisions of Core Strategy policies SP1 and DM1 and saved Unitary Development Plan Policy DC1.
3. The brick used in the first floor front elevation of the two storey side extension is a poor match in terms of colour to the brick used on the main property. The extension is therefore visually incongruous and out of character with the main building to the detriment of the visual amenity of the area. The development is therefore contrary to the provisions of Core Strategy policies SP1 and DM1 and saved Unitary Development Plan Policy DC1.

Issues

Consideration of Planning Application 133449/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 3 November 2021 the Council issued an enforcement notice (reference ENF/15287/21) in relation to the following specified breach of planning control:

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

The notice was to take effect on 15 April 2022 and required the owner to:

1. Demolish the two-storey side extension and the single-storey rear extension and return the front, side, rear elevations and roof of the property to their condition before the breach took place as shown in the attached images ENF/01, using materials that are similar in appearance to the original building.

OR

Make alterations to the extensions so that they fully accord with planning permission 123133/FH/2019, as set out in the attached decision letter of 21 May 2019 and as shown in the attached drawing nos. 1906/04, 1906/05 and 1906/06.

2. Remove from the land all building materials, rubble and waste resulting from carrying out the above steps.

A compliance period was specified as "six months" following the notice taking effect.

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

It appears to the Council that the above breach of planning control has occurred within the last four years.

"The Council considers that it is expedient to issue this notice because the unauthorised development, by virtue of its design, siting and materials used, is considered to be out of keeping with the character and appearance of the surrounding area. The mansard roof design of the two storey side extension is out of character with the pattern of development found within the area and results in an incongruous and visually obtrusive feature on the side elevation of this prominent corner 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 side window in the single storey rear extension by reason of its close proximity to the site boundary results in the overlooking and loss of privacy in the side garden of 24 Old Hall Lane.

In addition, the brick used in the first-floor front elevation of the two-storey side extension is a poor match in terms of colour to the brick used on the main property. The extension is therefore visually incongruous and out of character with the main building to the detriment of the visual amenity of the area. The development is therefore considered to be contrary to policies SP1 and DM1 of the core strategy, Saved UDP Policy DC1 and contrary to guidance contained in the National Planning Policy Framework."

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 123133/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 132710/FH/2022. Following the refusal of this application a third one reference 133449/FH/2022, was submitted this application sought to address some of the concerns raised by the Council. As submitted the plans contained drafting error in respect of the roof to the single storey extension and the ground floor front window to the side extension. The applicant was made aware of these and has amended the drawings in respect of the roof. As submitted the application involved the replacement of the roof to the two storey side extension with a hipped roof the same as in the original approval, a proposal to erect a fence in front of the window in the chamfer and the painting of the none matching brickwork on the front elevation. The application was subsequently amended and the window in the chamfer bricked up. The enforcement notice has not been complied with, together with the incremental nature of the changes proposed, suggests that this third 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 133449/FH/2022

The Enforcement Notice require the extensions to either be demolished or modified in accordance with the original planning permission reference 123133/FH/2019. This application would differ from the approved scheme in that the single storey rear extension extends across both the original property and the side extension whereas in the original permission it was limited to the width of the original property. The window referred to in the Enforcement Notice is situated in the unauthorised part of the rear extension. The ground floor front window in the side extension in the original permission was a bay window which in the as built was a flat window and that is what is shown on the current applications elevations, however the installed window is smaller than shown on the drawings. Finally, the first floor brickwork was to match the original brickwork of the house, as built a non matching brick has been used. The current application initially proposed no solution claiming that there are other extensions in the area which use non matching bricks. The scheme was then amended to proposed the painting of the bricks in a colour to be agreed with the City Council.

It is evident that the applicant is seeking to minimise as far as possible any works necessary to make the extensions acceptable. Although the applicant has not sought to appeal either the refusal of planning permission or the enforcement notice.

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 Decline to Determine Application

Article 35 Declaration

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

1) On 3 November 2021 the Council issued an enforcement notice, reference ENF/15287/21, in relation to the following specified breach of planning control:

Without planning permission, the erection of a two storey side extension and a single storey rear extension.

The notice came into effect on 15 April 2022, and required the following steps to be taken.

1. Demolish the two-storey side extension and the single-storey rear extension and return the front, side, rear elevations and roof of the property to their condition before the breach took place as shown in the attached images ENF/01, using materials that are similar in appearance to the original building.

OR

Make alterations to the extensions so that they fully accord with planning permission 123133/FH/2019, as set out in the attached decision letter of 21 May 2019 and as shown in the attached drawing nos. 1906/04, 1906/05 and 1906/06.

2. Remove from the land all building materials, rubble and waste resulting from carrying out the above steps.

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: 133449/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 receipt of the application on 6 April 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

High Speed Two (HS2) Limited

37 Old Hall Lane, Rusholme, Manchester, M13 0TH
61 Elsdon Road, Manchester, M13 0TN
154 Beresford Road, Manchester, M13 0TF
41 Old Hall Lane, Rusholme, Manchester, M13 0TH
35 Old Hall Lane, Rusholme, Manchester, M13 0TH
33 Old Hall Lane, Rusholme, Manchester, M13 0TH
39 Old Hall Lane, Rusholme, Manchester, M13 0TH
24 Old Hall Lane, Rusholme, Manchester, M13 0TL
43 Old Hall Lane, Rusholme, Manchester, M13 0TH
26 Old Hall Lane, Rusholme, Manchester, M13 0TL
44 Elsdon Road, Manchester, M13 0TW
156 Beresford Road, Manchester, M13 0TF

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
Coal Authority - Surface Coal Resources - Name: Coal bearing strata at surface
HS2 Phase 2b Safeguarding Zones - HS2 Safeguarding Zones (October 2020)
Area Team Boundary - Name: SOUTH