

Planning

Growth & Development

Delegated officer report for planning application

Application no. 133728/LP/2022

Date registered valid: 17 May 2022

Proposal: Enlargement of the dwellinghouse by the addition of dormer extension atop of the rear outrigger

Address: 38 Bankfield Avenue, Manchester, M13 0ZP

Ward(s): Rusholme Ward

Applicant: Mr A Mahmood 38 Bankfield Avenue, Manchester, M13 0ZP

Agent (if any): Younus Khan 6 Longton Street, Blackburn, BB1 1UF

Case officer: Ian Jarvis
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Email: ian.jarvis@manchester.gov.uk

Recommendation: Refuse

Date of recommendation: 26 July 2022

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: Not applicable

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

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Consultations & Notification Responses

None

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.

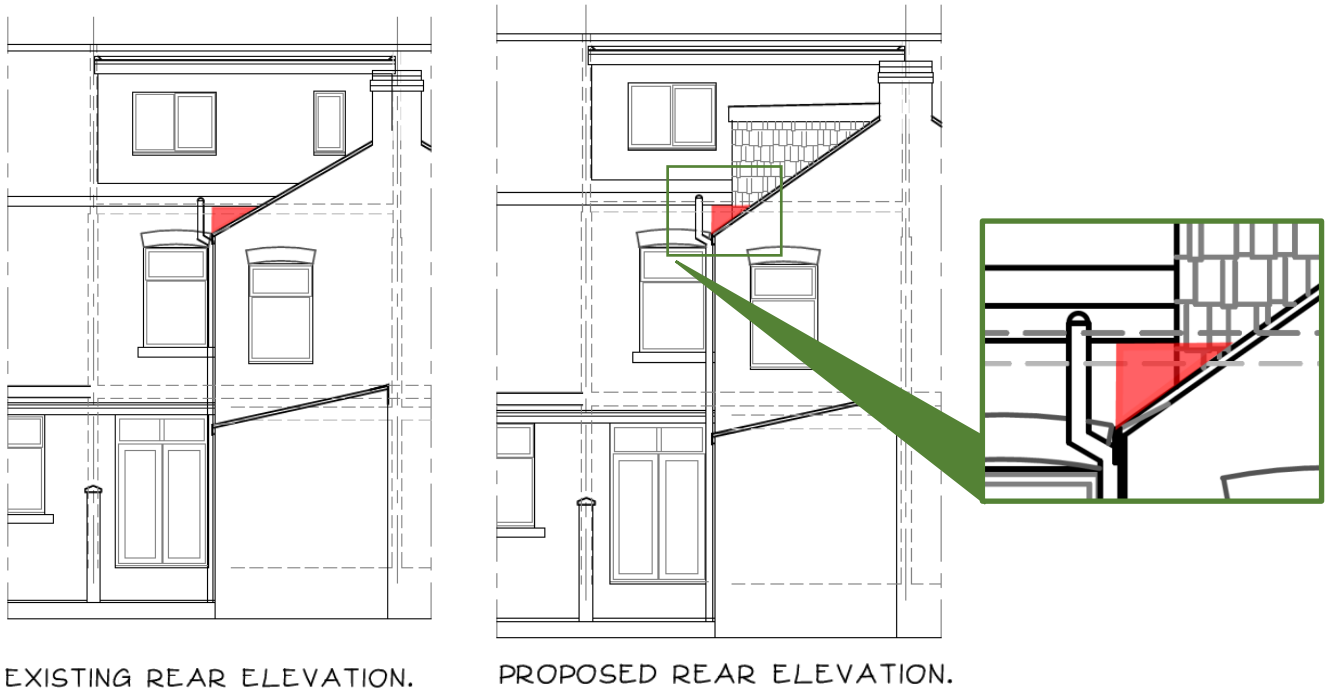
This application relates to a two-storey mid-terrace house comprising red-brick elevations and a grey slate roof. The house is in a predominantly residential area, being constructed to the back of pavement and incorporates a walled rear yard.

The certificate of lawful development has been applied for because the applicant wishes to gain confirmation that a proposed rear dormer extension constitutes permitted development. The proposal therefore needs to be assessed with regards to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended); this sets out the rules concerning what extensions, improvements and alterations a householder may make to their house and the area around it without the need for an application for planning permission. Such works are known as 'permitted development'.

When considering whether a development proposal is permitted development, all of the relevant Parts of the Order and all the Classes within those Parts need to be taken into account. In order to be permitted development, a proposal must meet all the limitations and conditions under each Class relevant to the proposal. It is therefore essential that any proposed household development is considered in the context of the permitted development rules as a whole in order to determine whether it benefits from permitted development rights and therefore does not require an application for planning permission.

The rules on permitted development, set out in Schedule 2 of the Order, are sub-divided into a series of Parts. Part 1 specifically deals with development within the curtilage of a house.

The Existing and Proposed Plans



As the proposed dormer addition is to sit atop of the roof of the rear outrigger and as a result in the differing eaves heights between the outrigger and the main dwellinghouse, in order to construct the dormer extension, it would in part extend from the rear wall of the main house (triangular section highlighted), as well as resulting in an extension to the roof of the rear outrigger, as such the following Classes will apply:

Class A which covers the enlargement, improvement or alterations to a house such as rear or side extensions as well as general alterations such as new windows and doors.

Class B which covers additions or alterations to roofs which enlarge the house such as loft conversions involving dormer windows.

The existing roof configuration has a ridge line running from west to east and the property has an existing rear dormer. There is no record of any permission/certificate of lawful development relating to that existing dormer, but it has dimensions of 2.04m (h) x 3.28m (d) x 4.78m (w), giving it a volume of approximately 15.99 cubic metres, and in all respects, it meets permitted development criteria of Class B.

As noted, the application seeks to confirm that the erection of second flat roof dormer to the existing outrigger roof would be lawful. This proposed dormer extension would have dimensions of 1.75m (h) x 2.6m (d) x 3.7m 4.56 (w), giving it a volume of approximately 10.37 cubic metres. This proposed dormer extension would be offset from the eaves of the outrigger by approximately 250mm, but this is not sufficient to take it higher than the eaves of the main house. Consequently, the proposed dormer will attach and therefore extend from the rear wall of the main house as shown in the images above; the section sitting just below the main roof eaves level will extend approximately 4.29m from this wall.

The dormer would be no higher than the existing outrigger roof ridge or the main roof ridge. When considered together, the existing and proposed dormers would have a combined volume of approximately 26.36 cubic metres.

As the assessment also need to consider compliance with Class A, the dormer fails on a number of the limitations, in that it has more than a single-storey and extends beyond the rear wall by more than 3m and it would also be within 7m of the boundary opposite the rear wall, as set out in sub-paragraph (h). In addition, the enlarged part would be within 2 metres of the boundary of the curtilage of the property and would result in the height of the eaves exceeding 3m, as set out in sub-paragraph (i), notwithstanding the limitation of sub-paragraph (ja).

Whilst there are no breaches of the limitations of Class B, the proposed extension fails to meet the requirements of Class A and cannot therefore be said to be lawful; planning permission is required for the proposal.

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) Whilst it may satisfy the requirements of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), it would not satisfy Class A, in that the proposed extension is to be attached to the rear wall of the house and has more than a single-storey that extends beyond the rear wall by more than 3m; it would also lie within 7 metres of the boundary opposite the rear wall and the eaves height of the enlarged part would exceed 3 metres and be within 2 metres of the boundary of the curtilage of the property. The proposal would therefore fail the limitations of sub-paragraph (h) and (i) of Class A and on that basis that the proposed extension shown on drawings numbered 3582 01 rev A and 3582 02 rev A, is not considered to be lawful.

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

Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA

Area Team Boundary - Name: NORTH