

Statement prepared in support of an application for a Certificate of Lawfulness for proposed development under Section 192 of the Town and Country Planning Act 1990 (as amended by Section 10 of the Planning and Compensation Act 1991)

The application seeks to confirm that a proposed change to the rear elevation of the dwellinghouse involving the replacement of a first-floor window opening with a French window opening and associated safety railing at 10 Russell Street, Prestwich, Manchester, M25 1EQ, is lawful.

Statement prepared by MRH Planning Services

November 2023

SITE LOCATION



1.0 Introduction and Background

1.1 MRH Planning Services have been commissioned by Qudsia Khamker to submit to the Local Planning Authority (LPA) a Certificate of Lawfulness of proposed development under the provisions of Section 192 of the Town and Country Planning Act 1990 (the Act) (as amended).

1.2 The applicant is seeking a legal determination from the LPA to confirm that a proposed development to be undertaken at 10 Russell Street, Prestwich, Manchester, M25 1EQ is permitted development, lawful and therefore does not require prior planning permission from the Council. The proposed development includes the following:

Proposed change to the rear elevation of the dwellinghouse involving the replacement of a first-floor window opening with a French window opening and associated safety railing.

1.3 10 Russell Street is a two-storey semi-detached dwelling house property with private garden areas to the front and rear. The exact site location is clearly identified on Page 2 of this Statement. The original dwelling house has been previously extended and altered with the additions of a two storey and single storey rear extension, a side garage extension and a front porch.

1.4 The applicant is wishing to make a further alteration and improvement to the dwelling house involving the proposed installation of a French window in the first-floor rear elevation. A French window is a type of window that consists of pair of glazed doors in an outside wall, serving as a window and door. This type of elevational feature is also sometimes referred to as 'Juliet' balcony. The French window will provide a modern look to the property and bring more air and light into the room it serves. The proposed window alteration works would be carried out using the householder permitted development rights that are afforded to the property under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

1.5 There would be an inwardly opening pair of glazed doors installed in the window opening that would replace the current standard bedroom window. The French window is narrower in width than the existing bedroom window opening, so there will be a requirement to repair and make good the rear wall of the property and this will be undertaken by building contractors using external render material that suitably matches the host dwelling house. The proposed window will not extend beyond the existing wall of the building, and it will not increase the amount of useable floor space in the room. This situation will be fully controlled by the installation of a safety railing that will be fitted on the outside of the window opening. The safety railing also assists in preventing any potential overlooking into neighbouring property windows meaning the proposed development works will have no greater material impact on the neighbours than the current window does.

1.6 This statement is organised into the following sections:

- Section 1: Introduction
- Section 2: Central Government Advice and Legal Background
- Section 3: Site Planning History
- Section 4: The Evidence
- Section 5: Analysis of Evidence
- Section 6: Conclusions

2.0 Central Government Advice and Legal Background

2.1 Section 192 (1) of the 1990 Town and Country Planning Act states that:

If any person wishes to ascertain whether—

(a) any proposed use of buildings or other land is lawful; or

(b) any operations proposed to be carried out in, on, over or under land,

would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

2.2 Section 192 (2) of the 1990 Town and Country Planning Act also states that:

If, on an application under this section, the local planning authority are provided 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.

2.3 This section therefore allows persons to apply to the local planning authority (LPA) in writing for formal confirmation that the proposed development which he or she proposes to carry out is lawful. The various procedures in relation to lawful development certificate applications are described in Article 39 of the Town and Country Planning (General Development Procedure) Order 2015.

2.4 When considering the evidence associated with a lawful development certificate application, the relevant test is “the balance of probability”.

2.5 National Planning Practice Guidance

2.6 In the section on Lawful Development Certificates, Paragraph 005 states that the information in a Lawful Development Certificate application must be sufficient and precise.

2.7 Paragraph 006 states that the applicant is responsible for providing the necessary evidence to support an application. Although the local planning authority is able to canvas other evidence, it must share this with the applicant and provide them with the opportunity to respond. In the case of an existing use, if the local planning authority has

no contradictory evidence, there is no good reason to refuse the Lawful Development Certificate as long as the applicant's evidence is sufficiently precise and unambiguous.

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

- 2.8** Paragraph 009 states that a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. **Planning merits are not relevant at any stage in this particular application or appeal process.**

3.0 Site Planning History

- 3.1** According to the on-line Bury Council Planning records, there are no planning applications showing for the application site.
- 3.2** As mentioned earlier in this statement, the original dwelling house has been previously extended and altered at some point in the past with the additions of a two storey and single storey rear extension, a side garage extension and a front porch. The exact age of these developments is unknown and it possible that they may have been undertaken prior to the Council digitising their planning records. The publicly available Google Street View and Google Earth records confirm that they are not recent additions and therefore they would be considered 'lawful' in planning terms due to the length of time they have been in situ. If there are no historical planning permissions in place for the developments, the applicants do of course have the option to apply for a Certificate of Lawfulness of existing development should they wish to seek the necessary legal confirmation in the future.

4.0 The Evidence

4.1 The evidence in support of the Certificate of Lawfulness application takes the form of:

1. Plan drawings prepared by William McCall Architectural Services showing the proposed development works (see Appendix 2). These include site location, site layout and proposed elevations and floor plan.
2. The permitted development rights for this dwelling house appear to be intact, which therefore enables the owner to carry out the construction of extensions, outbuildings and to make other improvements and alterations to the dwelling house that meet the permitted development criteria specified in the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). 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. Part 1 is then sub-divided into Classes covering various types of development as outlined below:

Class A covers the enlargement, improvement or other alteration of a dwellinghouse.

Class B covers the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.

Class C covers any other alterations to the roof of a dwellinghouse.

Class D covers the erection or construction of a porch outside any external door of a dwellinghouse.

Class E covers the provision within the curtilage of the dwellinghouse of—

- (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or
- (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

5.0 Analysis of Evidence

5.1 Schedule 2 Part 1 (**Development within the Curtilage of a Dwellinghouse**) Class A specifically deals with the ‘enlargement, improvement or other alteration of a dwellinghouse’. It provides a list of criteria and conditions that must be met for a development to be considered permitted development. The proposed development works in this case would be considered an improvement or other alteration to the dwelling house.

5.2 We have provided an assessment of the proposed development (as shown in the drawings prepared by William McCall Architectural Services) against all the ‘relevant’ GPDO criteria detailed in Class A and our explanation why it is considered permitted development is outlined below. We would wish to highlight that most of the criteria detailed in Class A is not directly relevant to the proposed development as it is a minor improvement / alteration to the dwelling house. The relevant extract from the legislation is also provided in Appendix 3 for suitable reference.

Proposed Development

Proposed change to the rear elevation of the dwellinghouse involving the replacement of a first-floor window opening with a French window opening and associated safety railing.

The proposed development as detailed above complies with the permitted development criteria in Class A [A.1 (a) to (k), A2, A3 and A4] of the GPDO for the following reasons:

- 1) Permission to use this dwellinghouse as a dwellinghouse was not granted by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of Schedule 2 (changes of use).
- 2) The dwelling house is not a Listed Building, it is not located on Article 2(3) land and there is no Article 4 direction in place withdrawing permitted development rights.
- 3) The height of the part of the dwellinghouse being improved / altered does not

exceed the height of the highest part of the roof of the existing dwellinghouse **(the proposed French window is being installed in the first-floor rear elevation of the house replacing an existing bedroom window opening).**

- 4) The window improvement / alterations do not project forward of 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 **(the French window is being installed in the first-floor rear elevation of the house).**
- 5) The proposed development does not consist of or include the construction or provision of a verandah, balcony or raised platform **(the proposed window will not extend beyond the existing wall of the building, and it will not increase the amount of useable floor space in the room it serves. This situation will be controlled by the installation of a safety railing that will be fitted on the outside of the window opening)**
- 6) The materials to be used in the exterior work of the proposed development will be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse **(the proposed French window will have a UPVC frame to match the existing windows of the house and matching render will be used on the outside wall to repair and make good the change to the window opening).**
- 7) The proposed upper floor French window is not being positioned in a wall or roof slope forming a side elevation of the dwellinghouse, so it does not need to be obscured or non-opening.

Permitted development rights for householders Technical Guidance document (September 2019)

The Permitted development rights for householders Technical Guidance document also specifies on page 29 that ‘A ‘Juliet’ balcony, where there is no platform and therefore no external access, would normally be permitted development’.

6.0 Conclusion

- 6.1** We consider that the details provided in the submitted plan drawings prepared by William McCall Architectural Services and the analysis of the evidence in Section 5 of this statement justify that the proposed change to the rear elevation of the dwellinghouse involving the replacement of a first-floor window opening with a French window opening and associated safety railing is permitted development under the provisions of Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 6.2** We would therefore respectfully request the Council to grant / issue a Certificate of Lawfulness under the provisions of Section 192 of the Town and Country Planning Act 1990 (the Act) (as amended) to confirm this.

List of Appendices

Appendix 1 – Photographs showing the existing property and the first-floor window opening that would be replaced by the proposed French window opening.

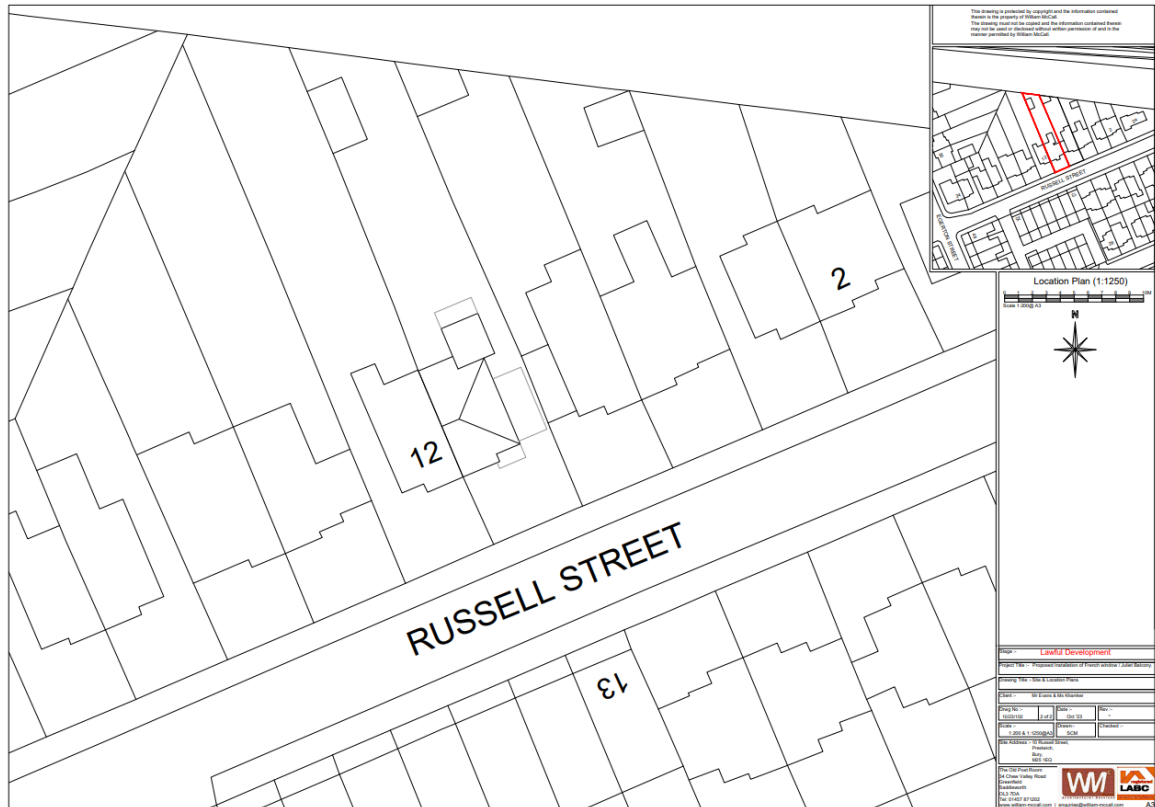
Appendix 2 - Plan drawings for the proposed development prepared by William McCall Architectural Services including site location, site layout, elevations and floor plan layout.

Appendix 3 – Relevant extract from the planning legislation - Schedule 2 Part 1 Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), which specifically relates to the 'enlargement, improvement or other alteration of a dwellinghouse'.

Appendix 1 – Photographs showing the existing property and the first floor window opening that would be replaced by the proposed French window opening



Appendix 2 - Plan drawings for the proposed development prepared by William McCall Architectural Services



Site Location and Site Layout Plan



Existing and Proposed Elevations and Floor Plan Layout

Appendix 3 - Relevant extract from the planning legislation - Schedule 2 Part 1 Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), which specifically relates to 'buildings etc incidental to the enjoyment of a dwellinghouse'.

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

Permitted Development

- 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 M, N, P or Q of Part 3 of this Schedule (changes of use);
- (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);
- (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;
- (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;
- (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;
- (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
 - (ii) exceed 4 metres in height;
- (g) until 30th May 2019, 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;
- (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;
- (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;
- (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,
 - (ii) have more than a single storey, or
 - (iii) have a width greater than half the width of the original dwellinghouse; or
- (k) it would consist of or include—
 - (i) the construction or provision of a verandah, balcony or raised platform,
 - (ii) the installation, alteration or replacement of a microwave antenna,
 - (iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or
 - (iv) an alteration to any part of the roof of the dwellinghouse.

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;
- (b) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse; or
- (c) the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwellinghouse.

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;
- (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
- (c) where the enlarged part of the dwellinghouse has more than a single storey, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.

A.4—(1) The following conditions apply to development permitted by Class A which exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g).

(2) Before beginning the development the developer must provide the following information to the local planning authority—

- (a) a written description of the proposed development including—
 - (i) how far the enlarged part of the dwellinghouse extends beyond the rear wall of the original dwellinghouse;
 - (ii) the maximum height of the enlarged part of the dwellinghouse; and
 - (iii) the height of the eaves of the enlarged part of the dwellinghouse;
- (b) a plan indicating the site and showing the proposed development;
- (c) the addresses of any adjoining premises;
- (d) the developer's contact address; and
- (e) the developer's email address if the developer is content to receive communications electronically.

(3) The local planning authority may refuse an application where, in the opinion of the authority—

- (a) the proposed development does not comply with, or
- (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with,

the conditions, limitations or restrictions applicable to development permitted by Class A which exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g).

(4) Sub-paragraphs (5) to (7) and (9) do not apply where a local planning authority refuses an application under sub-paragraph (3) and for the purposes of section 78 (appeals) of the Act such a refusal is to be treated as a refusal of an application for approval.

(5) The local planning authority must notify each adjoining owner or occupier about the proposed development by serving on them a notice which—

- (a) describes the proposed development, including—
 - (i) how far the enlarged part of the dwellinghouse extends beyond the rear wall of the original dwellinghouse;
 - (ii) the maximum height of the enlarged part of the dwellinghouse; and
 - (iii) the height of the eaves of the enlarged part of the dwellinghouse;
- (b) provides the address of the proposed development;
- (c) specifies the date when the information referred to in sub-paragraph (2) was received by the local planning authority and the date when the period referred to in sub-paragraph (10)(c) would expire; and
- (d) specifies the date (being not less than 21 days from the date of the notice) by which representations are to be received by the local planning authority.

(6) The local planning authority must send a copy of the notice referred to in sub-paragraph (5) to the developer.

(7) Where any owner or occupier of any adjoining premises objects to the proposed development, the prior approval of the local planning authority is required as to the impact of the proposed development on the amenity of any adjoining premises.

(8) The local planning authority may require the developer to submit such further information regarding the proposed development as the authority may reasonably require in order to determine the application.

(9) The local planning authority must, when considering the impact referred to in sub-paragraph (7)—

- (a) take into account any representations made as a result of the notice given under sub-paragraph (5); and
- (b) consider the amenity of all adjoining premises, not just adjoining premises which are the subject of representations.

(10) The development must not begin before the occurrence of one of the following—

- (a) the receipt by the developer from the local planning authority of a written notice that their prior approval is not required;
- (b) the receipt by the developer from the local planning authority of a written notice giving their prior approval; or
- (c) the expiry of 42 days following the date on which the information referred to in sub-paragraph (2) was received by the local planning authority without the local planning authority notifying the developer as to whether prior approval is given or refused.

(11) The development must be carried out—

- (a) where prior approval is required, in accordance with the details approved by the local planning authority;
- (b) where prior approval is not required, or where sub-paragraph (10)(c) applies, in accordance with the information provided under sub-paragraph (2),

unless the local planning authority and the developer agree otherwise in writing.

(12) The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the impact of the proposed development on the amenity of any adjoining premises.

(13) The development must be completed on or before 30th May 2019.

(14) The developer must notify the local planning authority of the completion of the development as soon as reasonably practicable after completion.

(15) The notification referred to in sub-paragraph (14) must be in writing and must include—

- (a) the name of the developer;
- (b) the address or location of the development, and
- (c) the date of completion.