

Appeal Decision

Site visit¹ made on 9 September 2016

by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 October 2016

Appeal Ref: APP/B4215/C/16/3147703

29 Ossory Street, Manchester M14 4BX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Stephen Beech on behalf of Beech Properties against an enforcement notice issued by Manchester City Council.
 - The enforcement notice was issued on 2 March 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of a dwellinghouse to two self-contained flats including the erection of a single-storey rear extension edged green in plan ENF/01, a third floor rear extension edged red in plan ENF/02 and alterations to windows.
 - The requirements of the notice are to:
 - (1) Cease using the property as self-contained flats.
 - (2) Remove the single-storey extension edged in green on photograph ENF/01.
 - (3) Remove the third storey extension edged in red on photograph ENF/02.
 - (4) Restore the property to its condition before the breach took place using materials to match the original house.
 - (5) Remove the first floor rear window (shown boxed in red in photograph ENF/02) and reinstate a window to match the first floor rear window at number 27 Ossory Street (shown boxed in green on photograph ENF/02) in terms of size and position, making good the surrounding brickwork using bricks and bonding pattern to tie into and match the existing rear elevation.
 - (6) Remove from the land all resultant building materials, rubble and waste arising from the alterations
 - The period for compliance with the requirements is nine months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

2. The **main issues** are the following: (1) the impact of the single-storey rear extension and third floor rear extension and alterations to windows on the character and appearance of the host building and locality; (2) whether the development results in an unacceptable loss of a single dwellinghouse, and (3) whether the change of use results in overdevelopment of the property, having particular regard to local parking conditions, noise and disturbance, private amenity space and storage of waste.

¹ I undertook a comprehensive accompanied site visit and carried out a full internal inspection to see for myself the flats' arrangement and to gain an impression of the standard of accommodation and locality.

3. The Development Plan includes policies found in Manchester's Local Development Framework Core Strategy (CS) 2012 and The Manchester Plan Unitary Development Plan (UDP) 1995, saved by Direction of the Secretary of State. The *Guide to Development in Manchester* Supplementary Planning Document 2007 is also cited. I find no significant conflict between the National Planning Policy Framework (NPPF) and these local planning policies, which are referred to in the reasons for issuing the notice and representations.

Character and appearance

4. The reasons for issuing the notice refer to harm caused to the character and appearance to the host property and street scene by alterations to a rear window at first floor level, erection of a single-storey and third floor rear extension. The appellant claims that the roof and single-storey rear extension have been in place since 2009² and have caused no complaint. It is contended that the building work has been carried out in materials matching the host building and the resultant development is to a high standard and has no visual effect. For the following reasons, I disagree with this assessment.
5. The locality is predominantly residential in character with a gridiron settlement pattern of streets and terraces with rear alleyways. Residential buildings have a simple architectural style, subtle fenestration detail, uniformity and symmetry in appearance and layout. The external appearance seems typical of terraced properties of this age and locality.
6. No. 29 is a terraced property and to its rear there is a two-storey outrigger which forms one-half of a symmetrical structure shared with the adjoining property. It is of a similar design to other houses and the rear facade includes vertical window opening with segmental brick arch at first floor level. The arch remains in place but part of the opening has been bricked up and widened. It appeared to me that this has been done to facilitate internal alterations to the ceiling or floor height. The replacement casement is not an issue but the window opening has lost its vertical emphasis and detracts from the simple architectural style of the host building. It significantly alters the external appearance of the building and is perceived as an atypical feature, because the symmetry and uniformity that characterises the block has been lost.
7. The roof alteration, which has been constructed in red brick and blue/black slate cladding, extends over the full width of the rear outrigger and a narrow part of the main roof slope. It has resulted in additional accommodation but the extension appears as an asymmetrical, visually imposing and aesthetically unpleasing structure because of its size. Its stark appearance has an incongruous visual effect due to its bulky built form. In my opinion, it has a top-heavy appearance and is inconsistent with the simple architectural style of the host building.
8. The single-storey rear extension extends to the site's boundary with the alleyway at the back of the property. The rear yard has been virtually replaced by brick and mortar. The extension affords potential occupiers additional internal space that is used for domestic purposes. Nevertheless I consider that the appeal plot is perceived as being overdeveloped because of the bulk, mass and scale of the rear extension. This type of layout is at odds with the prevailing

² Pursuant to section 171BA of the Act, the Council obtained a planning enforcement order on 17 April 2015. The enforcement year began 10 May 2015 terminating on 9 May 2016.

settlement pattern of terraces with small rear private amenity areas. I find that the building work has resulted in a cramped and compressed site layout, because of the extension's size and scale.

9. In my assessment, the appeal extensions are visible in views from public vantages, especially the rear alley. The size and scale of additions combined with the alteration to the external appearance of the building appear out of keeping with the architectural style of properties in this locality.
10. The appellant maintains that similar extensions can be found in the locality, and I have reviewed all of the images provided and seen examples. No specific detail regarding the circumstances of these other extensions has been presented. I do not consider the existence of other extensions is a strong enough justification to allow obtrusive development.
11. I therefore conclude that the single-storey rear extension and third floor rear extension and window alterations have a visually harmful impact upon the character and appearance of the host building and that of the locality. This aspect of the development alleged conflicts with CS policies DM 1 and SP 1, UDP policies DC1.1 a) and DC.1.2 a) and c).

Loss of single dwellinghouse

12. The appellant vehemently claims that, due to location of the site and the layout of the converted property, it is uneconomical to rent to a family. It is contended that certain kind of tenants are attracted to the area, because of affordable rates. He maintains if planning permission is refused the dwelling will not be let out to a large family, though that option is of his own choosing. There is no cogent evidence to suggest that the property's size or layout is not favourable for use as a single dwellinghouse.
13. The unauthorised use has resulted in the loss of a family dwelling. While each flat could, theoretically at least, be occupied by a family their size is too small and inadequate. Practically, the flats cannot provide the same level of accommodation for family housing. While provision of high quality and energy-efficient accommodation is praiseworthy, in my assessment the conversion of this property into flats is at odds with the purposes of creating neighbourhoods of choice, high quality and diverse housing around District Centres, which should be achieved without the loss of family housing.
14. There is no cogent evidence to substantiate the argument that the loss of this family dwelling has no effect on the supply of family dwellings in the area. On the contrary, the CS suggests there is a specific need for this type of accommodation across the City. Should the property revert to its lawful use, it is likely that it would be available for use as a single family dwelling. The change of use has the potential to undermine the CS strategy set out in policy H 5. The unjustified loss of this family dwelling is unacceptable and conflicts with objects of CS policies H 5 and SP 1.

Local parking conditions

15. The appellant strongly argues that the flats' occupiers are students or young professionals who live and work in the area. The site is situated in a sustainable area close to local services and facilities as well as public transport, and it is positioned in walking distance to educational institutions and hospitals. The claim is that tenants tend to cycle because there is secure bicycle storage

facility onsite and none have a car. The assumption is that the development does not generate need for on-street parking of motor vehicles. However, it should be borne in mind that planning permission runs with the land and, irrespective of who occupies the flats currently, it is reasonable to examine the general characteristics of the land use and any environmental consequences.

16. The site has a small frontage similar to its neighbours and there is no off-street car parking available; none can be provided within its curtilage because of the plot's layout. Currently, residents park motor vehicles on either side of the road. Compared to the use of the property as a single dwellinghouse, in my assessment, two self-contained flats occupied by people forming a single household have the potential to produce greater demand for kerbside parking. In the event occupiers were to have access to a motor vehicle, demand for on-street parking is likely to significantly increase given the potential number of occupants. There is also the possibility that visitors coming and going to and from the site generate a need for on-street parking.
17. I appreciate prospective tenants could be asked to confirm whether they need car parking space before signing a tenancy agreement, but there is no guarantee future occupiers would not generate any need for on-street parking given that individual circumstances can change at any time. Alternative private car parking can be arranged but no specific detail has been submitted to show how this works in practice.
18. At the time of my site visit there appeared to be space available for on-street parking, but that is likely to change when residents return home in the late afternoons or evenings. There is no kerbside parking restriction but the area is densely populated and there is likely to be some existing demand for on-street parking. I note the current use has not caused a parking problem but someone else might use the property differently and generate need for on-street parking space. The evidence presented does not show, to my satisfaction, that the potential demand generated by the use of the appeal property as two self-contained flats could easily be absorbed in the street or locality without adding to any existing parking stress.
19. Given the nature and scale of the development, I consider that the intensified residential use of no. 29 has the potential to add pressure on the availability of kerbside parking capacity, or cause unwarranted congestion. There is conflict with UDP policies DC5.1 c) and DC5.3 b), and CS policy DM 1.

Noise and disturbance

20. The appellant asserts that the conversion is to a high standard and in accordance with current building regulations. He says that the installation of sound insulation considerably reduce internal and external sound transmission. The property has been used as flats since 2009, occupied by eight tenants each year and 56 different occupants over the previous seven years. He argues that there has been no consistent complaint about noise nuisance or disturbance from neighbours. The absence of a statutory noise nuisance, however, does not necessarily mean the development is appropriate in this location.
21. In comparison to the property's use as a single dwellinghouse, its conversion into two flats, each potentially occupied by people forming a single household, could give rise to increased comings and goings by residents or visitors. I do not dispute tenants do their utmost to get on with the neighbours and peacefully

coexist. However, disruption and sound generated by additional patterns of activity, or people simply socialising in communal areas is also likely to be particularly noticeable to the human ear, given relatively low background noise levels in this residential street. In addition to all of that, the arrangement of the floor plan combined with the flats' disposition and compact layout has the potential to cause general disturbance to existing and future occupiers within the premises.

22. If the property is occupied by a family, the appellant contends that it would attract a large housing association family, because of the nature of the area and size of dwelling. The claim is such a use is likely to generate more noise and disturbance, but I disagree because a large family would function as a single household.
23. I consider that the nature and scale of development is likely to have an adverse effect on neighbours' quality of life and harm the living conditions of existing and future occupiers of the flats. There is therefore conflict with UDP policy DC5.1 b).

Private amenity space

24. The single-storey rear extension projects to the boundary because of its overall depth. There is access to a passageway via a locked gate and there is secure bicycle storage. However, due to its limited size and shape, this passageway does not provide suitable or practical amenity space neither is it private. The front yard cannot be regarded as being private given its exposed setting. There are public open spaces nearby in walking distance to the site. For example, Whitworth Park, which contains play equipment and opens from 0800 to dusk, and a community open space in Great Western Street, Broadfield Road as well as Great Southern Street/Santiago Street junction. These open spaces are of general benefit and do not adequately replace space deficiency at no. 29.
25. The appellant has referred to an Inspector's finding in a recent appeal decision³ at no. 139 Acomb Street, which is located nearby. The submission is that nil provision of private outdoor space can be regarded as adequate because of that site's location, which is close to Whitworth Park. I reject those submissions. While acknowledging the obvious difference between outdoor private amenity space and public open space at Whitworth Park, the Inspector clearly sets out his reasons why the absence of the former at no. 139 is justified by the presence of the latter. The Inspector was faced with a materially different breach; *change of use of a dwellinghouse to a mixed use comprising office and self-contained flat, which he opined is unlikely to generate significant demand for onsite private amenity space*. In contrast, I am dealing with the creation of two flats where the need for private amenity space onsite, as opposed to public open space off-site, is likely to be greater.
26. I find that the nature and scale of the development, due to the lack of onsite private amenity space, has the potential to harm occupiers' living conditions. Therefore, there is conflict with the aims of UDP policies DC5.1 e) and DC5.3 c).

Storage and collection of waste

27. A communal bin system has recently been introduced and waste container areas in the rear alleyways have been established in response to concerns about

³ APP/B4215/C/14/2214093 dated 17 July 2015.

overflowing bins and rubbish littering the streets; welcomed by local residents and the system is operational. Like most other residents, occupiers of the appeal flats can carry their refuse and recycling bags to the communal bins. I agree with the appellant that the distance from no. 29 to the communal bin area is not too great. This improved refuse storage and collection system has, therefore sufficiently addressed the need for designated space within the site for waste containers. In addition to that, I consider these could be stored in the front yard subject to suitable covering. In this respect, there is compliance with UDP policies DC5.1 g) and DC5.3 d). Notwithstanding this finding, there remains deficiency in outdoor private amenity space.

Other considerations

28. The Council does not provide details of any adopted internal accommodation standards for flat conversions, nor did it explain how the layout fails to satisfy national housing standards. It is accepted that the room sizes exceed the minimum standards used in the relevant licensing regime for houses in multiple occupation⁴. But the appeal building has been physically subdivided into two self-contained flats. To me, they appeared claustrophobic because of a lack of adequate circulation space; domestic furniture further reduces available floorspace. Existing tenants might find the accommodation affordable and acceptable, but it does not automatically follow future occupiers would find the layout suitable. In my mind, this factor has limited weight.
29. The claim is that the rear single-storey extension and dormer window could have been built by virtue of permitted development rights, albeit slightly reduced in size to meet physical tolerances. These are set out in the Town and Country Planning (General permitted Development) (England) Order 2015 as amended (GPDO) and grant a deemed planning permission for, amongst other things, the enlargement and alteration of a dwellinghouse. The arguments presented reveal a misapprehension as to how permitted development rights operate in theory and practice. I shall clear up this misunderstanding.
30. Firstly, a *dwellinghouse*, except in Part 3 of Schedule 2 to the GPDO (changes of use), does not include a building containing one or more flats, or a flat contained within such a building⁵. Secondly, the GPDO grants planning permission for prospective development; it does not apply retrospectively. While much is made of what might be built under householder permitted development rights, there is no realistic prospect of these rights being exercised. I attach very little, if any, weight to the fall-back type argument.
31. In a decision relating to the conversion of no. 5 Ruskin Avenue⁶ into four self-contained flats, erection of third floor extension and single-storey rear extension, the Inspector issued a split decision granting planning permission for the latter. He concluded that the rear extension fills part of the garden and there remains a small yard. There is no precise detail as to the size of the residual area for me to draw any comparisons with.
32. Even if directly analogous the appeal extension considerably reduces the rear garden at no. 29 and gives the impression of a cramped and squeezed site layout. I do not consider that the approval of the single-storey extension at no.

⁴ There is an article 4 direction restricting permitted development rights for change of use to houses in multiple occupation in force.

⁵ This is the definition given in section 2, interpretation, sub-paragraph (1) to the GPDO.

⁶ APP/B4215/C/14/2216127, 18 August 2014.

5 Ruskin Avenue is a strong precedent to permit harmful development. I attach little weight to this argument.

33. Much is also made of economic and social benefits, but the development has the potential to cause environmental harm. I note the enthusiasm in providing high quality affordable accommodation for students or young professionals. The appellant has built up vast amount of experience in the field and has a portfolio of properties that are rented out to students or young professionals. His letting agency is an award winning provider of homes in multiple occupation, and has been in liaison with the Council for some time. However, on evidence it appears the appellant has been aware of the need to obtain planning permission for the conversion before developing the appeal property. In these circumstances, the weight I attach to the perceived benefits is somewhat reduced.
34. The premises could be occupied by a single family or by people forming a single household compared with two self-contained flats. The latter is materially different and it cannot be made acceptable by imposing planning conditions, given the nature and scale of the property's intensified use for residential purposes.

The planning balance

35. The operational development is materially harmful to the character and appearance of the host property and locality.
36. The material change of use has resulted in loss of a family dwelling which is a serious planning objection. It has resulted in the overdevelopment of the property because of the intensified residential use. The character of the use has the potential to adversely affect living conditions of occupiers and neighbours. There is a strong land-use, local and national planning policy objection to the use of this property as two flats.
37. My finding on waste storage and collection is neutral in the overall balance in that it neither supports nor weighs against the grant of planning permission.
38. On the other side of the scales, the site is sustainably located given its proximity to a District Centre and public transport facilities. Educational and health establishments are within reasonable walking distance. The flats are likely to be occupied by students or young professionals and the accommodation is high quality, energy-efficient and affordable. There are economic and social benefits. However, the dwelling is unsuitable for its conversion into two self-contained flats. I attach moderate weight to these matters.
39. Limited weight to the perceived economic and social benefits because of the potential environmental harm. Very little weight I give to the claimed fall-back and precedent arguments.
40. On balance, and in my planning judgement, I find that the other considerations advanced in support of the development, whether taken individually or collectively, do not outweigh my findings on the main issues above to which I attach significant weight.
41. Accordingly, there is conflict with Development Plan policies cited above and the scheme is at odds with the aim and objectives of delivering sustainable development set out in the NPPF. On the particular circumstances of this case,

refusal of planning permission is proportionate and the period of compliance is reasonable.

Conclusion

42. Having regard to all other matters, including support for the appellant and development by local residents and organisations, I conclude that the appeal on ground (a) should not succeed and planning permission on the deemed application should be refused.

43. I have therefore upheld the notice.

A U Ghafoor

Inspector