

Appeal Decision

Site visit made on 6 January 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 1 February 2017

Appeal Ref: APP/W4223/C/16/3154938

177 Balfour Street, Oldham OL4 1NS

- 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 Maurizio Corona against an enforcement notice issued by Oldham Metropolitan Borough Council.
 - The notice was issued on 12 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission the erection of an "L" shaped single storey rear extension to the property on the Land.
 - The requirements of the notice are: permanently remove the "L" shaped single storey rear extension and remove all resultant materials from the Land.
 - The period for compliance with the requirements is: within three months of this Notice taking effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice as corrected is upheld as set out below in the Formal Decision.

Preliminary Matters

2. When the notice was issued the unauthorised structure was annexed to the rear of No 177. It had two elements: a lean-to structure that projected from the main rear elevation, from which a further flat-roofed addition (the bottom part of the "L" shaped structure) extended into the corner of the rear yard. In the interests of clarity the allegation in the notice should be corrected under powers in s176 of the Act to describe these two elements of the extension.
3. I saw on my visit that the lean-to addition has been demolished leaving the flat-roofed structure that has become a detached outbuilding. The deemed planning application under ground (a) comprises the whole of the unauthorised development, however I note that the parties agree that an acceptable alternative development comprises what now exists on site. Indeed the Council is clear that it does not object to the existing structure.

Ground (a) and the deemed application for planning permission

4. The main issues are the effect of the development on: firstly, the character and appearance of the main dwelling and street scene; and secondly the living conditions of occupiers of No 179 Balfour Street with regard to issues of loss of light and outlook.
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5. 177 Balfour Street is a mid-terrace property located in a mainly residential area. As originally built, the appellant does not dispute the Council's view that the structure related poorly to the host dwelling and was a dominant, jarring and incongruous feature when viewed along the rear access that serves the properties on Balfour Street. Nor does he take issue with the Council's concern that the original structure had an overbearing and oppressive impact for the occupiers of 179 Balfour Street.
6. I see no reason to disagree with these views. I therefore find that the development as alleged and taken as a whole is contrary to Policies 9 (Environment) and 20 (Design) of the Council's Development Plan Document: *Joint Core Strategy and Development Management Policies 2011* (DMP) which requires development to reflect the character and distinctiveness of the area and to avoid harmful impacts on neighbouring occupiers.
7. By contrast, the now detached outbuilding sits in the rear yard area at some distance from the rear main elevation of its host. Several rear additions and outbuildings at the rear of Balfour Street extend to the boundary of the back alley, some of them appreciably taller and bulkier than that at No 177. In terms of living conditions at No 179, the ground floor kitchen window is sufficiently far away from the outbuilding not to cause adverse impacts on outlook or loss of light. The Council's statement emphasised that there were no objections to the retention of the detached outbuilding concerning either of these main issues I have identified and again, I see no reason to disagree.
8. I will therefore refuse to grant planning permission for the lean-to element of the unauthorised development and grant permission for the detached outbuilding now standing in the rear of the premises of the host property, since I find it is in accordance with the aims of DMP Policies 9 and 20. The development to be permitted would constitute the "part of" the development enforced against as defined in s177(1)(a) of the Act.

Conditions

9. The Council's statement emphasised that it had no objection to the detached outbuilding. There was no reference to conditions. However correspondence subsequently supplied by the appellant, showed that the Council did "not consider it necessary to proceed with the enforcement appeal as the Council has no objections to the retention of the detached structure, *subject to it being timber clad*" (emphasis added).
10. Although it is surprising that the Council's statement does not refer to this, I take the last comment as a suggestion that a condition might be imposed in relation to the cladding of the outbuilding. I saw that the building's elevations facing the public realm are now timber clad in a suitably darker render than the garish white uPVC cladding that existed when the notice was issued. The timber cladding does not form part of the development enforced against, however, in my view a condition requiring retention of the timber cladding would be reasonable and necessary to preserve local character and appearance.

Conclusions on the ground (a) appeal and the deemed planning application

11. For the reasons given above, and taking all other matters into account, I conclude that the appeal should be allowed in part and dismissed in part and

the deemed application for planning permission should be allowed in part and refused in part.

Ground (f) – the steps required to comply with the notice are excessive

12. Since I have decided to grant permission for the outbuilding and refuse permission for the now demolished structure, no purpose is now served by an appeal on this ground and no further action will be taken on it.
13. It is worth noting that s181(1) of the Act states that compliance with any of the requirements contained in an enforcement notice "shall not discharge the notice". Since the appellant failed to remove the structure before the notice was issued he or a future owner runs the risk of acting illegally by contravening s179 if the demolished structure is ever re-erected. Of course this does not prevent the Council from withdrawing the notice at a later date. I simply note the availability of this power to withdraw at any time, because it is up to the Council whether and if so when to exercise it.

Ground (g) – the time given to comply with the notice is too short.

14. As the only part of the development objected to, has been removed there is no need to alter the period for compliance. This ground of appeal fails.

Overall Conclusion

15. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with a correction and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant, by virtue of s180 of the Act.

Formal Decision

16. It is directed that the enforcement notice be corrected by inserting after "extension" in the allegation of the breach, "(comprising a lean-to roof structure and a flat roofed structure)" and the appeal is allowed insofar as it relates to the erection of a flat-roofed outbuilding at the rear of the dwelling house at 177 Balfour Street, Oldham OL4 1NS and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of the flat-roofed outbuilding at the rear of the dwelling house at 177 Balfour Street, Oldham OL4 1NS subject to the following condition:
 - 1) The south-west, north-west and north-east elevations of the outbuilding hereby permitted shall be clad in timber and rendered with a dark coloured finish which shall thereafter be retained.
17. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the erection of the lean-to extension to the dwelling at 177 Balfour Street, Oldham OL4 1NS and planning permission is refused in respect of the lean-to extension to the dwelling at 177 Balfour Street, Oldham OL4 1NS on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Grahame Kean INSPECTOR