



Appeal Decision

Site visit made on 6 August 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2019

Appeal Ref: APP/B4215/C/18/3219403

Land at 15 Peveril Crescent, Manchester M21 9WR

- 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 Mrs Yasmin Kassam against an enforcement notice issued by Manchester City Council.
 - The enforcement notice was issued on 21 November 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey rear extension.
 - The requirements of the notice are:
 1. Demolish the single storey rear extension, shown edged in blue on the attached photograph ENF/01 and return the land to its condition before the breach took place.
 2. Remove from the land all building materials, rubble and waste resulting from carrying out the above step.
 - The period for compliance with the requirements is one month.
 - 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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Decision

1. It is directed that the enforcement notice be varied in paragraph 6 by the deletion of "One month" and the substitution of "Three months". Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal on ground (a), deemed planning application

Main Issues

2. The main issues in this case are the effect on the:
 - character and appearance of host property and surrounding area; and
 - living conditions of the occupiers of neighbouring properties, with particular regard to outlook.

Reasons

Character and appearance

3. The appeal property is a link detached dwelling constructed in brick with a tiled roof which is situated within a residential area. It has previously been

- extended to the side with a two-storey addition constructed in matching brickwork.
4. The extension is single storey. It has an L-shaped form which extends across the full width of the property's rear elevation with a projecting element (referred to by the appellant as a 'shed') extending to the full depth of the garden and abutting the property's common boundaries with Nos. 5 and 11 Peveril Crescent. It has been constructed in blockwork with cement render which the appellant advises would have a white painted finish on completion. Both the main extension and shed element have dual pitched roofs which adjoin with a valley gutter.
 5. The footprint of the extension is substantial and covers nearly three quarters of the property's rear garden area. In addition, it was agreed between the main parties following measurements taken by them on my site visit, that the eaves height of the extension is 3.14m and not 2.374m as stated in the appellant's statement. The effect of that height is that the resultant roof structure of the main part of the extension has a very shallow pitch, which with its gabled form, appears as an incongruous and dominant addition. The extension as a whole overwhelms the rear elevation of the dwelling and fails to respond in scale, form or visual appearance to the original design characteristics and proportions of the host property. For such a large structure, its materials of construction, including the proposed rendered finish, are not sympathetic to the appearance of the host property and appear visually discordant.
 6. Although raised as a matter under ground (f), the planning merits of removing "the shed" element and retention of the remaining part of the extension need to be considered under ground (a). I appreciate that the removal of the projecting shed element, would reduce the overall scale of the extension and its impact on No 5 Peveril Crescent. However, the remaining full width extension would, by reason of its scale, including eaves height, roof form and materials of construction, still be an incongruous and dominant addition to the property and have a harmful effect on the character and appearance of host property and surrounding area.
 7. I appreciate that the extension cannot be viewed from the street. However, it is clearly visible to neighbouring residents. Moreover, a good design would be expected to be well proportioned and built from appropriate materials, whether or not it can be seen from the street. Whilst I saw on my site visit that the neighbouring property has a single storey flat roof rear extension, it is constructed in matching brickwork and it does not appear as a disproportionate addition to its host property, as is the case with the extension the subject of this appeal.
 8. I conclude that the single storey rear extension has a harmful effect on the character and appearance of the host property and surrounding area. It conflicts with the development plan and in particular with Policies SP1, DM1 and EN1 of Manchester's Core Strategy, adopted 2012 and Saved Policy DC1 of the Unitary Development Plan for the City of Manchester (UDP) which seek to ensure, amongst other things, that new development reinforces local character and is in character and proportion with the host property.

Living conditions

9. The extension abuts the common boundary of both Nos. 5 and 11 Peveril Crescent. Its single storey form does not raise any issues with regard to privacy, nor impact on the sunlight or daylight available to the occupiers of those properties. However, its overall scale and proximity to the site boundaries means that it is a visually dominant addition when viewed from neighbouring properties' windows and gardens. Whilst, I appreciate that it is not finished, its overall appearance is to my mind intrusive and has a harmful effect on the outlook for neighbouring residents.
10. I conclude that the extension has a harmful effect on the living conditions of neighbouring residents, with particular regard to outlook. It conflicts with the development plan, and in particular with saved Policy DC1 of the UDP which seeks, amongst other things, to protect the amenity of neighbouring occupiers.

Other Matters

11. I accept that the appellant has a fallback position available in the form of the extension that has been permitted to the rear of this property¹. However, for significant weight to be afforded to the fallback position, there needs not only a reasonable prospect of it being carried out in the event that planning permission were refused, but it would also need to be equally or more harmful than the scheme for which permission is sought. Despite the cost involved in reverting to the fallback position, from the evidence before me I am satisfied that there is a reasonable prospect of the fallback position being carried out in the event that planning permission were to be refused. However, the extension that has been constructed is significantly larger than the permitted scheme, both in terms of footprint and eaves height. In addition, it has a different roof form and has been constructed in materials that are not sympathetic to the host property. Consequently, its overall appearance, form and impact on neighbouring occupiers is significantly more harmful than the fallback position. I therefore give this consideration very little weight.
12. I understand that the appeal property has the benefit of permitted development rights. However, the evidence has not demonstrated that those rights would permit an extension of this scale in such close proximity to the boundaries of the neighbouring properties. I therefore give this consideration limited weight.

Conclusion

13. For the reasons given above and taking into account all other matters raised, I conclude that the appeal on ground (a) must fail.

Appeal on ground (f)

14. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice. In this case the requirements are to demolish the

¹ Application Ref: 117699/FH/2017

- unauthorised single storey extension and remove from the land all building materials, rubble and waste resulting from carrying out the demolition.
15. Section 173 of the Town and Country Planning Act, 1990 (as amended) indicates that there are two purposes which the requirement of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.
 16. The appellant suggests that lesser steps could require removal of the shed structure alone, claiming that the remaining extension would not be substantially different from the original planning permission granted. However, I have found that whilst the removal of "the shed" would reduce the harm to some degree, it would not result in an acceptable form of extension, and would be more harmful than the extant permission. Furthermore, nor removal of the shed alone would not remedy the breach.
 17. Alternatively, the appellant suggests that the steps could be varied to state: *"Demolish and remove the single storey rear extension, shown edged in blue on the attached photograph ENF/01 or rebuild in accordance with planning permission ref: 117699/FH/2017."* However, I note that the appellant also requests that the rebuilding utilises a rendered blockwork finish. The construction in blockwork with a rendered finish would not be in accordance with the planning permission, which requires the materials to be used in the construction of the extension to match those of the existing building. Furthermore, the construction of the approved extension in a rendered blockwork finish would not form part of the development which is being enforced against. It is not therefore an alternative that could be granted planning permission under the ground (a) appeal.
 18. I appreciate that the appellant has a valid fallback position in the form of the extant planning permission. However, I agree with the Council that as the unauthorised development is larger than the extant planning permission and not constructed out of materials of similar appearance, texture and colour to the host dwelling, the roof and walls will need to be removed to ground level in order to build the extension that has the benefit of planning permission. For this reason, I do not consider that the steps required by the notice are excessive and they are necessary to remedy the breach and achieve the purpose of the notice. Furthermore, the requirements would not preclude the appellant carrying out the extant permission.
 19. In conclusion, the appeal on ground (f) does not succeed.

Appeal on ground (g)

20. The issue is whether the compliance period of one month is reasonable. The appellant considers the time period too short to allow them to raise the necessary funds to hire a competent builder to complete the works. In addition, requiring the works to be undertaken within once month would put the appellant through unnecessary stress, disruption and financial hardship.
21. Whilst the extension may not yet be connected to services, it is a substantial structure which would need to be removed by a builder. I agree with the

appellant that a month is a relatively short period of time within which those services could be engaged, and the work carried out. However, I am also mindful of the serious harm the existing structure causes to the living conditions of neighbouring residents and the enforcement notice was issued to address the harm to local amenity and area character. In the public interest the harm should therefore cease as soon as reasonably possible.

22. The conclusion I have reached is that a period of three months strikes the right balance. To this extent the appeal on ground (g) succeeds.

Human Rights

23. I have taken into consideration the Human Rights Act 1998 and the European Convention on Human Rights and I recognise that the dismissal of this appeal would interfere with the appellant's rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified, the action is in accordance with the law and pursues legitimate aims of protecting the environment and is necessary and proportionate to the situation.

OVERALL CONCLUSION

24. For the reasons given above, and having taken account of all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Elizabeth Pleasant

INSPECTOR