



Appeal Decision

Site visit made on 8 October 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2019

Appeal Ref: APP/B4215/C/19/3223499

Land at 75 Wilmslow Road, Manchester M14 5TB

- 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 Musa Ahmed against an enforcement notice issued by Manchester City Council.
- The enforcement notice was issued on 23 January 2019.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey extension to side/rear, the installation of a flue to the rear elevation and the sub-division and the material change of use of the premises to form one hot food takeaway (Class A5) and one retail unit (Class A1).
- The requirements of the notice are:
 1. Cease the use of the premises as a hot food takeaway (Class A5) and as a retail unit (Class A1).
 2. Dismantle and remove from the land all physical manifestations of the uses in the form of signage and advertisements.
 3. Remove the flue from the rear elevation edged green in the attached photograph ENF/01.
 4. Demolish the unauthorised extension at side/rear edged blue in the attached photograph ENF/02 and reinstate the side and rear elevations to the condition before the breach took place.
 5. Reinstall the brick boundary wall, in materials to match the existing building at 75 Wilmslow Road, between the points marked A, B, C and D on the attached plan ENF/03. The height of the boundary wall shall not exceed 1.8m and shall remain in place in perpetuity.
 6. Remove from the land all building materials, rubble and waste resulting from carrying out the above steps.
- The period for compliance with the requirements is three 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of the Decision: The appeal is allowed, the notice is corrected and quashed, and planning permission is granted in the terms set out in the Formal Decision.

The Enforcement Notice

1. The enforcement notice refers at paragraph 4 to the breach of planning control occurring within the last ten years. However, in this case the notice alleges a breach of planning control in the erection of a single storey extension to the side/rear and the installation of a flue to the rear elevation, as well as a material change of use of the premises. In the case of operational

development, the period for taking enforcement action is four years. Having regard to the grounds of appeal and evidence before me, I am satisfied that correcting the notice to refer both to four and ten years, would not cause any injustice to either the local planning authority or the appellant.

Appeal on ground (a), deemed planning permission

Main Issues

2. The main issues in this case are:

- The effect of the development on the living conditions of neighbouring residents, with particular regard to noise and disturbance;
- The effect of the development on highway safety; and
- Whether or not the development makes adequate provision for the storage of refuse.

Reasons

Living conditions

3. The premises are situated on the corner of Wilmslow Road and Dagenham Road, within the heart of Rusholme district centre. This area is predominantly characterised by shops and eating establishments, and there is clearly a vibrant evening economy, which includes a significant number of hot food takeaways.
4. The key spatial principles to guide the strategic development of Manchester to 2027 are set out in Policy SP1 of the Manchester's Core Strategy 2012-2017 (CS). In general, Policy SP1 advises that the Regional Centre will be the focus of economic and commercial development, beyond which neighbourhoods will provide high quality and diverse housing around district centres which meet local needs. New development should make a positive contribution to the neighbourhoods of choice.
5. Policy C10 of the CS and saved Policy DC10 of the Unitary Development Plan for the City of Manchester, adopted 1995 (UDP) are generally supportive of new development and redevelopment that supports the evening economy and contributes to the vitality of district centres. Support is subject to environmental considerations, including safeguarding residential amenity by ensuring that the proposed use does not create an unacceptable impact on neighbouring uses in terms of noise, traffic and disturbance. In that regard, Policy DM1 of the CS and saved Policy DC26 of the UDP seek to ensure that new development, which has the potential to generate noise, does not adversely affect the living conditions of the occupiers of neighbouring residential properties.
6. The appeal site comprises a three-storey property which had a commercial use on the ground floor and residential use on the floors above. I understand that the planning permission for a hot food takeaway granted by my colleague on appeal in 2016¹ has not been implemented. In particular, because pre-commencement conditions attached to that permission have not been discharged. In addition, that planning permission related to the

¹ APP/B4215/W/16/3155698

premises before the unauthorised extension was built. In this case, the use is for a hot food takeaway (Class A5) business within the original property, and a retail use (Class A1) within the single storey extension that has been constructed to its side/rear and fronting onto Dagenham Road. However, the previous permission is a material consideration in my determination of this appeal.

7. Wilmslow Road is a busy arterial route. There is a high concentration of businesses, including restaurants and takeaways with the near vicinity of the appeal site, and the majority of those are open for business late in the evening. There is undoubtedly a higher noise level and greater pedestrian activity in this area, than one would normally find within a predominantly residential neighbourhood. I therefore agree with my colleague that an additional hot food takeaway would not necessarily bring additional numbers of people into the area, nor generate significant noise.
8. Taking into account the building's rear extension, the appeal premises has a slightly greater floorspace than that which was considered by my colleague in the previous appeal. In addition, it includes a separate retail use which takes access directly from Dagenham Road. However, whilst Dagenham Road provides vehicular and pedestrian access to the neighbouring residential streets of Oxney Road and Deyne Avenue, it is still predominantly commercial in character, serving a small industrial estate, as well as retail premises, including the Syria Sweet store which is directly opposite the new retail unit. Consequently, an additional retail unit would not be an uncharacteristic use in this location. Furthermore, despite having a frontage onto Dagenham Road, given the premises proximity to Wilmslow Road and other retail uses on the street, I am not convinced that the retail use, even when taken together with the hot food takeaway, results in a significant increase in activity or resultant noise or disturbance in this area, either during the day or late evening hours.
9. Consequently, subject to suggested conditions to control the operating hours of the premises and prevent their use in the early morning, I do not consider that the use of the premises as a hot food takeaway and retail unit has a harmful effect on the living conditions of neighbouring residents, with particular regard to noise and disturbance. I therefore find no conflict with the development plan, and in particular with Policies SP1, DM1 and C10 of the CS nor saved Policies DC10.1 and DC26.1 of the UDP, the aims of which are set out above.

Highway safety

10. Dagenham Road has a small number of short-term parking bays on its southern side, with parking on the remainder of the street restricted by double yellow lines. Adjoining Wilmslow Road has similar restrictions. However, the residential streets of Deyne Avenue and Oxney Road are unrestricted. At the time of my visit, which was mid-day in the week, there were no parking spaces available in the vicinity of the appeal site, and the area was heavily congested.
11. I have not been provided with any demonstrable evidence that the retail unit and hot food takeaway have resulted in a significant increase in pedestrian or vehicular activity in this location. Furthermore, the site is located in an

accessible location on a public transport route. Having regard to the character of the existing area, the parking restrictions around the appeal site and the high demand for parking that already exists in the locality, the additional small retail unit within this busy district centre would not to my mind result in a significant increase in demand for on-street parking nor would it have a harmful effect on highway safety.

12. I conclude that the use does not have a harmful effect on highway safety. I find no conflict with the development plan and in particular with Policy C10 or DM1 of the CS or saved Policy DC10.1 of the UDP which requires regard to be had to the availability and arrangements for car parking and servicing and effects of traffic generation.

Refuse Facilities

13. The Council are primarily concerned that the use does not make adequate provision for refuse storage or collection. Concerns have been expressed by neighbouring residents relating to the storage of refuse in the alleyway between the properties on Deyne Avenue and Wilmslow Road.
14. An area dedicated to the storage of waste has been provided within a gated yard at the rear of the building which takes access directly from the alleyway which separates the rear yards of properties on Deyne Avenue and Wilmslow Road. At the time of my visit a large commercial bin was stored within this area as well as bin liners.
15. It is clear from the photographic evidence provided by both parties, as well as from my observations on site, that the alleyway between Deyne Avenue and Wilmslow Road is used as an area to store bins for a number of businesses which have a direct frontage onto Wilmslow Road. Indeed, unlike the appeal premises, many of those businesses do not appear to have any other space available to store their bins without encroaching onto the highway.
16. The Council has not specified what the refuse storage requirements would be for this business. However, there would appear to be adequate space to store up to two commercial bins within its gated yard, and the neighbouring alleyway is sufficiently wide that any additional bins could be stored on it, without encroaching onto the highway or preventing the utilisation of the alleyway for other access purposes. This appears to be the arrangement for neighbouring businesses. Moreover, I have not been provided with any demonstrative evidence that it is the existing refuse arrangements for this business alone that have had a direct impact on an increase in vermin in the area, nor on the living conditions of neighbouring residents.
17. I conclude that the development makes adequate provision for the storage of refuse. Subject to a condition to secure refuse storage and disposal arrangements, I find no conflict with the development plan, and in particular with Policy DM1 of the CS or saved Policy DC10.1 of the UDP, which seek to ensure, amongst other criteria, that new development makes adequate provision for the storage and collection of refuse.

Other Matters

18. The Council has expressed concern over the visual impact of the large flue that has been constructed above the rear extension. I appreciate that given that this property is situated on a corner, the position of the flue is more visible to public views. However, the site lies within a parade of commercial properties and at the heart of a district centre where there is a preponderance of flues and similarly sized extract and ventilation systems. Consequently, the flue in this location does not appear out of character with its surroundings and nor does it have a harmful effect on the overall visual appearance of this area.

Conclusions

19. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the erection of a single storey extension to side/rear, the installation of a flue to the rear elevation and the sub-division and the material change of use of the premises to form one hot food takeaway (Class A5) and one retail unit (Class A1) as described in the notice (as corrected).
20. The purpose of conditions 1 and 2 below is to require the appellant to comply with a strict timetable for dealing with the removal of fumes, odours and refuse which need to be addressed in order to make the development acceptable. The conditions are drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The conditions therefore provide for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the conditions not be met in line with the strict timetable, then the use would have to cease.
21. Conditions are also required to control the hours of use of the premises and the loading/unloading hours to protect the living conditions of neighbouring residents.

Decision

22. It is directed that the enforcement notice is corrected in the first sentence of paragraph 4 by deleting the wording "has occurred within the last ten years" and substituting it with "which comprises operational development has occurred within the last four years. In addition, it appears that a breach of planning control consisting of a material change of use has occurred within the last ten years."
23. Subject to the correction above, the appeal is allowed, the enforcement notice is quashed and the application deemed to have been made under section 177 (5) of the 1990 Act as amended for the development carried out, namely the erection of a single storey extension to side/rear, the installation

of a flue to the rear elevation and the sub-division and the material change of use of the premises to form one hot food takeaway (Class A5) and one retail unit (Class A1) as described in the notice at Land at 75 Wilmslow Road, Manchester M14 5TB as shown on the plan attached to the notice and subject to the following conditions:

- 1) The uses hereby permitted shall cease and all physical manifestations of the uses in the form of signage and advertisements shall be dismantled and removed from the Land within three months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 months of the date of this decision a scheme for the extraction of fumes, vapours and odours from the premises shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The uses hereby permitted shall cease and all physical manifestations of the uses in the form of signage and advertisements shall be dismantled and removed from the Land within three months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 months of the date of this decision a scheme for the storage of waste (including segregated waste recycling) and the disposal of refuse shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) The use of the hot food takeaway unit hereby permitted shall only take place between the hours of 11:30 – 23:30.
- 4) The use of the retail unit hereby permitted shall only take place between the hours of 09:00 and 21:00.
- 5) No loading or unloading shall be carried out on the site outside the hours of 07:30 to 20:00, Monday to Saturday, and at no time on Sundays or Bank Holidays.

Elizabeth Pleasant

INSPECTOR