



Appeal Decision

Site visit made on 5 June 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 19 June 2020

Appeal Ref: APP/B4215/C/19/3242449

222 Burton Road, Manchester M20 2LW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Colin Lowes against an enforcement notice issued by Manchester City Council.
- The enforcement notice was issued on 12 November 2019.
- The breach of planning control as alleged in the notice is without planning permission:
 1. The material change of use of first and second floors from self-contained flat (Class C3) to kitchen, storage and ancillary staff area in connection with the ground floor restaurant (Class A3).
 2. The installation of a shop front, retractable awning at front and flue to rear elevation.
 3. The erection of a single storey rear timber extension.
- The requirements of the notice are:
 1. Cease the use of the first and second floors as a kitchen, storage and ancillary staff area in connection with the ground floor restaurant (Class A3), removing all commercial catering equipment, ovens, sinks, counters and associated paraphernalia from the first and second floors.
 2. Remove the shop front and retractable awning, as shown on the attached photograph ENF/01 and restore the front elevation to its condition before the breach took place by reinstating a shop front, as shown on the attached photograph ENF/02.
 3. Remove the flue, as shown edged in red on the attached photograph ENF/03, and brick up the opening using bricks and bonding pattern to match and tie into the rear elevation.
 4. Remove the single storey rear timber extension, as shown edged in green on the attached photograph ENF/04.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the 1990 Act as amended.

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

Preliminary Matters

1. The Planning Inspectorate initially made arrangements for this appeal to be determined following an 'accompanied' site visit. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined with an 'unaccompanied' site visit without causing prejudice to any party. I conducted the site visit from public viewpoints and I am satisfied I understand the nature of the site, given the points in dispute.

2. The notice refers to the time limit for taking enforcement action as 10 years. As the alleged breaches include both operational development and a material change of use, this should be corrected to specify the different periods of immunity for enforcement control¹. The main parties have agreed that I can make this correction without injustice.

Application for costs

3. An application for costs was made by Mr Colin Lowes against Manchester City Council. This application is the subject of a separate Decision.

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

Main Issues

4. The appeal on ground (a) is that planning permission should be granted for the matters alleged. The terms of the deemed planning application are derived from the allegation, hence, planning permission is sought for:
 - The material change of use of first and second floors from self-contained flat (Class C3) to kitchen, storage and ancillary staff area in connection with the ground floor restaurant (Class A3)
 - The installation of a shop front, retractable awning at front and flue to rear elevation.
 - The erection of a single storey rear timber extension.
5. The main issues are:
 - Whether the loss of the dwelling would have an adverse effect on the availability of housing choice and the vitality of the area;
 - The effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance, and provision for the storage of waste;
 - Whether the shop front, canopy, flue and rear extension would preserve or enhance the character or appearance of the Albert Park Conservation Area, and the street scene in general.

Reasons: Housing Availability

6. The change of use of the upper floors of the premises has led to the loss of a dwelling in an area where the Council states it is seeking to retain and increase housing as part of mixed-use schemes. The Council argues that there are numerous residential premises above the commercial uses along this part of Burton Road, which enhances the vitality of this district shopping centre.
7. My attention has been drawn to a planning permission at No 128A Burton Road for a change of use of the upper floor from residential to offices². The assessment of that development would have been based on similar policy considerations given its nature and location. However, there was no issue in that case with the principle of the development, which indicates the relevant development plan policies are enabling rather than restrictive.

¹ Section 171B of the 1990 Act as amended.

² Ref 125547/FU/2019 dated 20 January 2020.

8. Policy H6 of the Core Strategy³ concerns residential development in south Manchester. The policy encourages higher densities and the provision of smaller housing within district centres to meet local need. However, the policy is aimed at new housing and is not restrictive of development involving a change of use from residential.
9. Policy SP1 is a generic policy that sets out the spatial principles guiding the strategic development of Manchester. The policy promotes the provision of high quality housing in district centres to meet local need. However, there is no up-to-date evidence of local need before me and it is not apparent how the development would conflict with SP1. While the development has led to the loss of one unit, the overall impact on the Council's strategic aim to promote housing choice in south Manchester would be limited.
10. The Council argues that the residential use contributes to the vitality of the area. However, it can equally be argued that the current use of the upper floors supports the continued commercial use of the premises, which also contributes to the economic and social role of the district centre. Moreover, the district centre is within a predominantly residential suburb of Manchester, and it is unlikely the loss of one residential unit in the terrace would have a material effect on its vitality.
11. I conclude on this issue that the development would not have a material impact on the availability of housing choice and the vitality of the area. It would, therefore, meet the aims of Policies SP1 and H6 of the Core Strategy.

Living Conditions

12. The premises is within an area of mixed commercial and residential uses. Burton Road itself is generally busy and, therefore, ambient noise levels would be relatively high in view of the road traffic and the activity associated with the café/bar uses in the vicinity. Several of these have outdoor seating areas and remain open into the evening.
13. The Council acknowledges the context and accepts that the residents of this part of Burton Road may not expect the same level of amenity as areas that are solely residential in character. Nonetheless, it considers that the use of the upper floors in connection with the ground floor commercial use would lead to an unacceptable increase in noise and disturbance to the detriment of immediate neighbours' living conditions. I understand that the opening hours are until 11pm daily, and midnight on Thursday, Friday and Saturday.
14. The Council explains that a new staircase has been installed which, it is argued, has resulted in greater noise transfer from the ground floor of the premises to the adjoining residential units. It is claimed that the noise generated by the previous restaurant use would not have transferred to the uses above the adjoining units. However, in the absence of any evidence to support this statement, I find this to be unlikely. Moreover, the Council refers to comings and goings which would be the same or similar to the activity generated by the previous use, irrespective of whether or not an internal staircase has been inserted.
15. However, I accept that the use of the upper floors in association with the ground floor use has potential to transfer noise to directly adjoining properties,

³ Core Strategy: Development Plan Document (July 2012).

and this may have an adverse impact on the living conditions of the occupiers given the opening hours. Therefore, a planning condition to require appropriate noise attenuation measures is necessary and reasonable in this instance. I note that the internal wall with No 224 has been sound insulated. The completed works could form part of the scheme to be submitted for the Council's approval, along with additional insulation to the party wall with No 220.

16. The Council is also concerned that the storage of bins in the alleyway has a detrimental impact on nearby residential properties. In response to the Council's concerns, the appellant has submitted a waste management strategy which involves utilising a small external glass bin store, accessed from the main bar area, and a small area to the side of the timber extension. I understand that wastepaper is stored in the cellar ready for recycling collection. I am satisfied, therefore, that the implementation of the waste management strategy would overcome the Council's concerns and this could be secured through a planning condition.
17. Subject to the implementation of suitable schemes of noise attenuation and waste management, I find that the development would not have an adverse effect on the living conditions of neighbouring occupiers. This would comply with Policies SP1 and DM1 of the Core Strategy and Policies DC10 and DC26 of the Unitary Development Plan that seek to protect residential amenity and the wellbeing of residents.

Character and Appearance

18. The deemed application seeks permission for a replacement timber shop front with retractable awning, in addition to a flue and a timber extension at the rear. The shop front is largely glazed and has been constructed flush with the front elevation at the rear of the pavement. This is in contrast to the previous shop front which had a recessed doorway and moulded detailing to the stall riser and fascia. The previous shopfront has been replaced, aside from the fascia which remains but is partially obscured by signage. The awning is lightweight and is attached to the fascia cornice. At the rear of the building, a relatively large, dark coloured flue has been installed on the outrigger. It emerges from under the eaves and extends at right angles to above ridge height. The timber extension has a utilitarian appearance with a mono-pitched roof. It is sited within the rear yard adjoining single-storey rear extensions.
19. The Albert Park Conservation Area mainly comprises late-Victorian residential development, but also includes the Burton Road district shopping centre where the appeal site is located. It is probable that the shopping centre developed in association with the housing as its architectural style tends to reflect the late-Victorian era. The appeal site is within a terraced row of shops, constructed from red brick and slate. The row has a simple form comprising shop units at street level where some evidence remains of the traditional timber shop fronts. The upper floors contain large vertical windows with stone detailing and decorative brickwork under a stone cornice. Although there have been alterations, the terrace is relatively good quality and retains features indicative of its development and role as a late-Victorian or Edwardian suburban row of shops.
20. The significance of this part of the Conservation Area, insofar as is relevant to the matters before me, is derived from the age, proportions and architectural detailing of the terraced row, and its historical significance as a shopping area.

21. I saw from my site visit that there are several modern shop fronts within the immediate vicinity, in addition to more traditional designs. Some units have outdoor seating areas with retractable or fixed canopies. On the whole, the replacements retain the proportions and style of the more traditional shop fronts, which is partly why the terrace remains good quality.
22. In this case, the shop front is modern in appearance and has been designed to open fully, in common with the adjoining property, which reflects the current commercial use of the unit. The recessed doorway and stall riser have been lost as a consequence. However, the shop front and awning are of muted colours, which blends with the brickwork, and the materials and proportions are appropriate. The upper floors are unaffected. Parts of the original shop front have been retained as described and, although the fascia and cornice is partly hidden, the capitals remain. Overall, when considering the new shop front and awning in the context of the terraced row and the variety of shop fronts in the wider area, it does not appear bulky or incongruous. The traditional architectural features have been retained to a certain extent and the quality of the unit within the terraced row remains evident. Crucially, the ground floor commercial unit contributes to the function of the district shopping centre and the preservation of this historic row of shops.
23. The awning is attached to the fascia cornice, and the Council would prefer it to be housed within the fascia. However, that solution may lead to the loss of the fascia itself, which would not be desirable. The awning is relatively lightweight and I do not find it overly conspicuous or out-of-character in its setting.
24. The flue is relatively bulky and its high level siting makes it visible from Bottesford Avenue, the rear alley and nearby properties. I saw other flues in the immediate vicinity but such structures are not widespread. Nonetheless, it is apparent that efforts have been made to limit the flue's impact, in respect of its siting, design and colour. The visual impact of the flue is confined to a narrow field of public view from where the alley joins the adjacent road. I appreciate that it can be seen clearly from the rear of the houses on Arley Avenue and the intervening alley, but its presence is not apparent from Burton Road or wider public viewpoints. Overall, taking account of the site-specific circumstances, I consider that the design, colour and siting of the flue render it acceptable in this particular instance. The Council has suggested a condition related to extraction, which is associated with the flue. This is necessary to ensure the flue is fitted appropriately and maintained in good working order.
25. The timber extension is sited within the rear yard. The consequence is that there is limited space for the storage of bins. However, the available space was already limited due to relatively large brick built extensions and a boundary wall. I saw multiple bins within the rear alley, that appeared to be both commercial and private facilities. It is clearly undesirable to create a situation that would contribute further to the proliferation of bins within the alley.
26. In response, the appellant has submitted a waste management strategy as described above. I am satisfied, therefore, that the implementation of the waste management strategy would overcome the Council's concerns in respect of visual amenity and this could be secured through a planning condition.
27. Given the above, I find that the development is not detrimental to the Conservation Area and thus preserves its significance.

28. I conclude on this issue that the proposal would preserve the character and appearance of the Albert Park Conservation Area and the street scene in general. This would satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990, paragraph 192 of the National Planning Policy Framework and would not conflict with Policies SP1, EN3 and DM1 of the Core Strategy and Policies DC10 and DC18 of the Unitary Development Plan that seek, among other things, to promote high quality development that complements its surroundings while ensuring the historic environment is preserved or enhanced.

Other Matters

29. In addition to the conditions specified below, the Council is seeking a condition to restrict the use of the premises. While the permission is specific in terms of the approved use, I have imposed the restrictive condition to ensure the use remains ancillary. I have also imposed a condition requiring schemes for extraction, noise and waste management for the reasons given above. I have varied the timescale from the Council's suggested two months as the current COVID-19 restrictions may affect the appellant's ability to comply with the conditions.
30. I note the letters of objection from the ward Councillors concerning an apparent lack of cooperation from the appellant. However, this alone is not a reason to find against the development.
31. In addition to comments concerning the main issues, the West Didsbury Residents' Association have commented on the lack of information about matters of safety. Health and safety would fall under other legislation and cannot be addressed through a deemed planning application made under section 177(5) of the 1990 Act as amended. The Residents' Association also requests a condition relating to opening hours. However, the premises was already a restaurant and I have no information about its hours of operation. To impose a condition on the use of the upper floors would not be reasonable in these circumstances. I have also been asked to consider the use of the pavement, but this matter is not before me as it does not form part of the allegation.
32. A local resident has commented that the use of the first floor has resulted in overlooking. However, I consider that the previous use of the upper floors for residential purposes would have a similar effect because the window arrangement has not altered. Therefore, I do not find that the effects of the unauthorised development would be material in terms of loss of privacy.

Conclusion

33. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

Formal Decision

34. It is directed that the enforcement notice be corrected by:
- (i) the insertion of the words "in 3.1 above" after "breach of planning control" in the first sentence of paragraph 4 of the notice, and;

- (ii) the addition of “and the breaches of planning control in 3.2 and 3.3. above have occurred within the last four years” after the first sentence in paragraph 4 of the notice.

Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the material change of use of first and second floors from self-contained flat (Class C3) to kitchen, storage and ancillary staff area in connection with the ground floor restaurant (Class A3), the installation of a shop front, retractable awning at front and flue to rear elevation and the erection of a single storey rear timber extension on Land at 222 Burton Road, Manchester M20 2LW, subject to the following conditions:

- 1) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision – (a) a scheme for the extraction of fumes, vapours and odours from the premises; (b) a scheme for the storage and disposal of waste and (c) a scheme for the acoustic insulation of the first and second floors of the premises - shall have been submitted for the written approval of the local planning authority and the schemes shall include a timetable for their implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the schemes 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 schemes shall have been approved by the Secretary of State.
 - iv) The approved schemes shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved schemes specified in this condition, those schemes shall thereafter be maintained/retained/remain in use.

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) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification) the first and second floors of the premises shall only be used as an ancillary storage area, staff welfare area and kitchen area in association with the ground floor A3 use.

Debbie Moore

Inspector