



Appeal Decision

Site visit made on 17 June 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2020

Appeal Ref: APP/B4215/C/19/3243830

Land at 1 Eltham Street, Manchester M19 3AL

- 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 M Ansar, Chohan Properties Mcr Ltd, against an enforcement notice issued by Manchester City Council.
 - The enforcement notice, numbered ENF/14739/19, was issued on 27 November 2019.
 - The breach of planning control as alleged in the notice is without planning permission:
 1. Material change of use of the land and buildings to a self-contained flat (Class C3) and workshop, office and storage area (Class B1) in connection with the business at 848 Stockport Road.
 2. The removal of boundary walls and the formation of a hardstanding to create a vehicle parking area to the front.
 3. The installation of roller shutters to the rear.
 - The requirements of the notice are to:
 1. Cease the use of the land and buildings as a self-contained flat (Class C3) and workshop, office and storage area (Class B1) in connection with the business at 848 Stockport Road.
 2. Remove from the land the area of asphalt hardstanding, the extent of which is approximately shown hatched green on the attached plan "ENF/PLAN1", and make good the area using a porous material.
 3. Reinstall the boundary wall, to a height not exceeding 1m, between points "A", "B" and "C" shown on the attached plan "ENF/PLAN2" using materials similar in appearance to those used in the boundary wall that was in situ before the breach took place, as shown in the attached photograph ENF/01. The boundary wall shall remain in place in perpetuity.
 4. Dismantle and remove from the land the roller shutters, housing box and guides to the rear and replace with concrete base panels, concrete posts and timber panel fencing to a height of 1.8m. The panels, posts and fencing shall remain in place in perpetuity.
 5. 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 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (f) 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.
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Decision

1. I direct that the enforcement notice be corrected by the deletion of paragraph 3(1) of the notice and the insertion of the following; "Material change of use of the land and buildings to a mixed use of self-contained flat and workshop, office and storage area in connection with the business at 848 Stockport Road".

2. I direct that the enforcement notice be corrected by the deletion of paragraph 5(1) of the notice and the insertion of the following; "Cease the mixed use of the land and buildings as a self-contained flat and workshop, office and storage area in connection with the business at 848 Stockport Road".
3. Subject to these corrections 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.

Application for costs

4. An application for costs was made by Manchester City Council against Mr M Ansar, Chohan Properties Mcr Ltd. This application will be the subject of a separate decision.

The ground (b) appeal

5. The appellant's case under ground (b) is there has not been a material change of use of the ground floor of the property as it has been used commercially since the last century and from 2017 as supplemental to the main business at No. 848 Stockport Road. The main business at No. 848 relates to a retail shop selling car audio and security equipment. It is maintained that the rear yard was enclosed in the 1960s and was last used as a DIY shop and workshop since the 1990s. The appellant bought the premises in 2017 which has since been used to install car audio and security equipment to vehicles.
6. The appellant maintains that the ground floor of No. 1 Eltham Street was a retail shop in the 1960s and was used a pet shop in the 1980s. The upper floor was used as a 2-bedroom flat since the 1960s and following its purchase in 2017 the flat was used by employees of the audio and security business or by different tenants.
7. The appellant contends that the front of the premises from the 1960s up to 2010 was an open area used for shop trading and the rear yard and ground floor was being used for a separate DIY shop with access being obtained from the rear. Supporting statements of fact have been submitted with the appeal.
8. Although the Council agrees that there was an historical shop use in the 1960s this was supplanted by an implemented planning permission in 1989 for a change of use from shop to a single dwelling on the ground and first floor. The Council provides details of the approved plans which shows this use extending over the ground floor of the building (excluding the current rear workshop building). The plans show a new bricked up front elevation, bay window and door and pitched roof-canopy, and this is reflected in the street view images of 2008. Based on this evidence it is probable that the 1989 permission was implemented.
9. The appellant has provided statements of fact indicating that the whole of the ground floor and covered yard had been used continuously as commercial premises since before 2005 and includes a letter from the previous owner of the property. However, the information lacks detail and contradicts the physical evidence submitted by the Council which clearly shows images of the property as a house in 2008 corroborated by energy performance certificates issued in 2015 which describes the property as an end of terrace house. There was no mention of a commercial premises in the 2015 energy performance certificate

- and I concur with the Council that this seems improbable that it would not have mentioned it, if it were in use at that time.
10. In all probability from the available evidence, the premises comprised a two-storey dwelling and an independent workshop which had its own access from the rear, The Crescent. These separate uses formed physically and functionally separate units within the premises known as No. 1 Eltham Street.
 11. The alleged uses are materially different in character to these preceding uses. There is a self-contained flat on the first floor which also utilises the ground floor kitchen and living room. The ground floor office, stores and workshop are used in connection with the business at No. 848 Stockport Road, fitting audio and security equipment to vehicles. However, the kitchen appears to be a shared facility between the occupants of the flat and the employees of the workshop. Employees of the audio business have also resided in the flat. In my view this fluctuating use with limited physical and functional separation falls within a mixed use which is used in connection with No. 848. This mixed use is a materially different character of use which is linked to No. 848, whereas the preceding uses were two distinct and separate uses and had no functional/physical relationship to one another and was not used in connection with any other building.
 12. I consider that the alleged use has occurred. The ground (b) therefore fails. Given my conclusion that it is a mixed use there is no reason to express a particular use class in the allegation, and I shall make this minor correction to the allegation/requirement accordingly. I find there is no injustice in correcting the notice as it merely reflects the position as I have found it from the evidence presented with this appeal.
 13. The use enforced against amounts to a material change of use and there is no evidence that planning permission has been granted for it. There has been a breach of planning control and there is no compelling evidence to indicate that it is too late for the Council to take enforcement action against the breach having regard to the time limits set out in 171B(3) of the Act as amended.
 14. In relation to the operational developments there is no compelling evidence to indicate that the breaches have not taken place as a matter of fact. The ground (b) appeal therefore fails.

The ground (a) appeal and the deemed application

15. The deemed application derives its terms from the allegation as corrected. The deemed application relates to the mixed use as a whole entity that is the flat and the workshop, office and storage area in connection with the business at 848 Stockport Road.
16. The main issues are the impact of the development on the character and appearance of the area, its effect on living conditions of nearby residents in relation to noise and disturbance, and the effect on highway safety.
17. The Council indicates that there may be a fallback position whereby the appellant could revert to the last lawful use as a dwelling and workshop which operates independently from No. 848. However, the right to revert to the last use applies where that use is lawful. The last lawful use as a dwelling must have been established but there is some doubt and no compelling evidence has been provided to make any determination under ground (a) that the last workshop

use was lawful. I therefore give little weight to the fallback consideration that the workshop use could be identified as a similar use in planning terms to the mixed use as now corrected in the deemed application.

18. The frontage to Stockport Road near the junction of Eltham Street exhibits a commercial character with car audio shops situated on both sides of the junction. However, the character of Eltham Street from No. 1 and No. 2 onwards towards the end of the street turns to a residential terrace street with boundary walls and landscaping on one side. I concur that the removal of the boundary wall and the introduction of the hardstanding has facilitated the mixed use with vehicles being parked on the front yard of the property. In my view, the character of the street has been altered through this change in appearance. The appeal property no longer relates to the residential character of the street but a busier and more cluttered frontage more akin to the commercial uses adjacent to the appeal property. I consider the removal of the wall and the introduction of the hardstanding is visually discordant with the predominant residential terrace street character to which No. 1 more closely aligns.
19. The appellant indicates that the roller shutter doors were replaced, and an additional roller shutter door was added to the rear of the premises. However, the Council has enforced against the installed roller shutters across the width of the rear appeal premises as they were regarded as new development. The installed yellow coated roller shutters when lowered to their closed position appear stark and incongruous, due to their height and width. Whilst there are other shutters in the vicinity that are brightly coated, the appeal shutters are visually prominent in the street scene due to the height of the housing, the width of the frontage and their bright coloured finish.
20. I conclude that the impact of the development is harmful to the character and appearance of the area. The development conflicts with Manchester's Local Development Framework Core Strategy (CS) Development Plan Document, Policies SP 1 and DM 1. These broadly indicate that development should make a positive contribution to neighbourhoods, create well designed places and protect and enhance the built environment.
21. Residents have raised objections to the appeal development on the basis that the mixed use disturbs their living conditions in relation to the increase in coming and goings from the premises and due to increased noise and vehicular and pedestrian traffic. The residents assert that this has resulted in vehicles being parked on the street and on the pavement which in turn has limited the manoeuvring space within the street and has caused inconvenience and harm to road users. The Council has appended several pictures and street view images of vehicles being parked outside the rear and front of the premises. These images corroborate the problems which have been expressed by the Council and residents concerning the appeal development use at this location.
22. There is another similar workshop next door to the appeal site, and this may also add to the background noise levels and the general busy activity of this part of Stockport Road. The preceding use of the appeal site workshop may have had some impact on residents, but there is no information on how this was run, if it ceased use, and there is doubt in relation to its lawfulness to make any meaningful comparison with the mixed use enforced against. However, residents' concerns are consistent with the documentary evidence

provided that this appeal mixed use is having a detrimental harmful impact on living conditions in relation to noise and disturbance, and is having a harmful impact on highway safety, in relation to parked vehicles outside the premises and on the street limiting the manoeuvring space and passing places on the street.

23. I have considered whether conditions limiting the opening hours of the workshop would overcome these objections, but this measure would not control the volume and flow of customers arriving with their vehicles to the premises during opening hours.
24. In all, I conclude that the development harms the living conditions of nearby residents in relation to noise and disturbance, and the development harms highway safety. I consider the development conflicts with CS Policies SP 1 and DM 1, in relation to the health, safety and well-being of residents and its effects on amenity, impact of noise, and effect on road safety and traffic generation. The development also conflicts with Saved Policy DC26 of the Unitary Development Plan for the City of Manchester. This policy seeks to ensure that the impact of noise on people living and working in the City is reduced when considering the effect of new development which is likely to be generators of noise.
25. The ground (a) appeal and the deemed application should not succeed.

The ground (f) appeal

26. The ground (f) relates to the new second shutter for it to be sealed shut or replaced with an approved galvanised UPVC coated steel cladding. The Council has not distinguished between the replaced shutter door and the installed second shutter and has enforced against the whole shutter installation across the entire width of the rear of the premises. The lesser step of replacing the second shutter only would not in my view remedy the injury to amenity. The Council's requirement dealing with the whole shutter installation and replacing it with fencing is not an excessive step and remedies the injury caused to amenity as it would appear a comparable treatment in context of other boundary treatments in the vicinity of the appeal site.
27. The ground (f) appeal therefore fails.

Iwan Lloyd

INSPECTOR