
Appeal Decision

Site visit made on 25 January 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2021

Appeal Ref: APP/W4223/C/20/3263038

Land at 4 Aden Street, Oldham OL4 5JA

- 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 Yassir Ali against an enforcement notice issued by Oldham Metropolitan Borough Council.
- The enforcement notice was issued on 9 October 2020.
- The breach of planning control as alleged in the notice is: Without planning permission:
 1. the change of use of part of the Land shown hatched in blue on the accompanying plan from vacant land at the side of the dwelling at 4 Aden Street, Oldham to land forming part of the garden curtilage of the dwelling at 4 Aden Street; and
 2. the erection of a boundary fence and gate over one metre in height along the front elevation of the Land which is adjacent to a highway used by vehicular traffic.
- The requirements of the notice are:
 1. Permanently remove from the Land the boundary fence and fencing materials located at the position as shown by the letters A-B-C-D on the plan accompanying this Notice.
 2. Permanently cease the use of that part of the Land shown hatched in blue on the plan accompanying this Notice as a garden extension.
 3. Permanently reduce to a height of one metre the fence and gate along the front elevation of the Land located at the position as shown by the letters D-E on the plan accompanying this Notice.
- The period for compliance with the requirements is 2 months.
- 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. 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 as amended.

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

Decision

1. It is directed that the enforcement notice be corrected by:
 - Deleting all the wording in paragraph 3.1. and substituting it with, "the material change of use of the land shown hatched in blue on the accompanying plan at the side of the dwelling at 4 Aden Street, Oldham to land used for residential purposes; and"
 - Deleting all the wording in the second paragraph of paragraph 4 and substituting it with, "It appears to the Council that the breach of planning control consisting of a material change in the use of the land has occurred in the last ten years and that the erection of the fence and gates has occurred in the last four years."

- Deleting the wording “as a garden extension” in paragraph 5.2. and substituting with, “for residential purposes”
2. Subject to the corrections above, the appeal is allowed, the enforcement notice is quashed 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 development already carried out, namely the material change of use of the land shown hatched in blue on the accompanying plan at the side of the dwelling at 4 Aden Street, Oldham to land used for residential purposes; and the erection of a boundary fence and gates over one metre in height along the front elevation of the Land at 4 Aden Street, referred to in the notice.

The Enforcement Notice

3. The breach of planning control references the previous land use as “vacant land” and it alleges that the use has been changed to “land forming part of the garden curtilage of the dwelling”. However, “vacant land” and “garden curtilage” do not amount to uses of land. The Council and appellant agree that there is no need to specify the previous land use, and that the alleged breach of planning control would be more appropriately described as a material change of use of the land to land used for residential purposes. I shall therefore correct the alleged breach and the requirements of the notice to that effect. The main parties have agreed that this correction would not result in any injustice to them as the purpose of the notice would not be changed.
4. In the Council’s reasons for issuing the notice they state that the breach of planning control has occurred within the last four years. However, whilst four years is the relevant time period for operational development (the gate and fence), section 171B (3) of the Act advises that in the case of any other breach of planning control, the relevant time period is ten years. I shall therefore correct the notice to reflect the correct time periods as set out in section 171B.

Appeal on ground (a), deemed planning permission

Main Issues

5. The main issues in this case are the effect on:
 - The character and appearance of the area; and
 - Highway safety.

Reasons

Character and appearance

6. The appeal site is located at the one end of Aden Street and in a location where the street intersects with Mecca Street, an unmade road. The eastern side of Aden Street is characterised by terraced properties with small forecourt gardens enclosed by low brick walls. The western side of the street, including the appeal site are bungalows. The bungalows are set back from the road and have front gardens enclosed by low walls and high hedge planting. Overall, the boundary treatment to the street frontage of properties on Aden Street and Mecca Street is varied and not visually distinct.
7. The appellant has enclosed a piece of land to the side of his property with a fence and is utilising this land for residential purposes in association with the

No 4 Aden Street. The Council refer to this land as being previously “vacant”, whilst the appellant describes it as having no use or purpose. The appellant states that the land was previously overgrown, fly tipped, unsightly and attracting vermin.

8. The land in question is rectangular in shape, approximately 3m wide and situated between the side garden of No 4 Aden Street and the rear gardens of properties on neighbouring Roxbury Avenue. I have not been provided with any evidence that would cast any doubt on the appellant’s description of the land before the change of use took place, and the Council has not suggested that the land is public open space. Furthermore, I have not been provided with any substantive evidence to demonstrate that this piece of land was a valued asset to the local community or made a positive contribution to the street scene. Taking into account the size, shape and location of the land, which is in a backland position, I am not persuaded that its enclosure and residential use, ancillary to No 4 Aden Street, has a harmful effect on the character and appearance of the area.
9. In addition to the fence that has been erected to enclose the land described in the paragraphs above, a new fence and gates, approximately 2m in height, have been constructed along the front boundary of the appeal site and adjacent to the pavement.
10. I appreciate that this fencing has replaced a low boundary wall, and that no other properties on Aden Street have fences of this height along their frontages. However, the appeal site is situated at the end of the street and is obscured from views along Aden Street by the existing vegetation and high hedges which enclose the neighbouring gardens. The fence is not therefore visually prominent in the street scene. Moreover, in this location the fence is viewed in the context of the back gardens of properties on neighbouring Roxbury Avenue, many of which are enclosed by high fences/gates which front and adjoin Mecca Street. Consequently, the fence and gates that have been erected at No 4 Aden Street do not appear incongruous in this location.
11. I conclude that the material change of use of the land hatched blue to use for residential purposes, and the boundary fence and gates that have been erected, do not have a significant or harmful effect on the character and appearance of the area. I therefore find no conflict with the development plan and in particular with Policy 9 and Policy 20 of Oldham’s Joint Core Strategy and Development Management Policies Development Plan Document, November 2011 (DMPDPD) which seek to ensure, amongst other things, that new development reflects local character and does not have a significant adverse impact on the visual amenity of the surrounding area, including townscape.

Highway safety

12. The Council state in the reasons for issuing the enforcement notice that the boundary fence and gates obstruct visibility on the highway. However, I have not been provided with any substantive evidence that would support that assertion.
13. The fence and gates adjoin the pavement but are set back from the main carriageway behind the deep pavement and verge. Located at the end, and in the corner of the street, the gates and fencing are in a position where only

pedestrians seeking access to the appeal site or the rear of 11 Roxbury Avenue would be likely to pass directly in front of them. Any vehicles exiting the driveway to the appeal site would also be travelling at a very low speed. Furthermore, the adopted highway ends in front of the gates, and in this location, there is a right-angled bend into Mecca Street. Consequently, any vehicles moving along this part of the street would only be travelling very slowly. Considering the position of the appeal site where vehicles speeds and pedestrian activity are very low, the gates and fence in this location would not have a harmful effect on either vehicle or pedestrian safety.

14. I conclude that the development does not have a harmful effect on highway safety. There is therefore no conflict with the development plan, and in particular with Policy 5 of the DMPDPD which seeks to ensure, amongst other criteria, that the safety of pedestrians and other road users is secured. I also find no conflict with paragraph 109 of the National Planning Policy Framework which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Conclusion

15. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the development as described in the notice, as corrected. The appeal on grounds (f) and (g) do not therefore fall to be considered.

Elizabeth Pleasant

INSPECTOR