



Appeal Decision

Site visit made on 29 June 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2021

Appeal Ref: APP/B4215/C/21/3267419

Land at 19 Devon Avenue, Manchester M19 2JH

- 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 Nasir Iqbal against an enforcement notice issued by Manchester City Council.
 - The enforcement notice was issued on 17 December 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a front porch and canopy and a single storey extension at side and rear.
 - The requirements of the notice are:
 1. Demolish the front porch and canopy, as identified by the yellow box on the attached photograph ENF/01.
 2. Return the front elevation to its condition before the breach took place, as shown in the attached photograph ENF/02.
 3. Demolish that part of the single storey side/rear extension that projects beyond the rear elevation of the original dwellinghouse, the approximate extent of which is shown hatched orange on the attached plan ENF/PLAN1 and make good the rear elevation of the side extension using materials that are similar to those used in the construction of the original dwellinghouse.

Or

Make alterations to the single storey side and rear extension to ensure that it is constructed in accordance with the attached drawing no. 1974/19/02D titled "PLANS AND ELEVATIONS AS PROPOSED" and using materials that are similar to those used in the construction of the original dwellinghouse.

 4. 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 four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) (c) (d) (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.
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Decision

1. It is directed that the enforcement notice be:
 - corrected by the deletion of the words "porch and" in paragraphs 3 and 5.1.
 - varied by deleting the word "four" in paragraph 6 and substituting it with "six".
2. Subject to the corrections and variation above, the appeal is dismissed, and the enforcement notice is upheld.

Appeal on ground (c) and ground (d)

3. These grounds of appeal are made solely in respect of the front porch which is situated beneath the front canopy. The issue on ground (c) is whether the porch constitutes a breach of planning control. On ground (d), the appellant argues that at the date the enforcement notice was issued, no enforcement action could be taken in respect of the porch.
4. In relation to a breach of planning control consisting of the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
5. The appellant has provided images of the porch at the premises taken in 2008 and states that he constructed the porch in 2003. This evidence is not disputed by the Council or third parties. Furthermore, the porch which was constructed at that time would not have constituted a breach of planning control, as by reason of its siting and dimensions it was permitted by Class D, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 1995, as amended.
6. However, it is the Council's view that the incorporation of the pre-existing porch into a canopy has resulted in a new development, which as a single structure requires planning permission.
7. From my observations on my site visit and taking into account the images of the original porch, it seems clear to me that the original porch structure is, on the balance of probability, intact and the canopy has been constructed around it. The original walls, door and windows of the porch all remain. Although the porch roof covering has been encapsulated within the suspended ceiling of the new canopy, internally the ceiling within the porch has the same profile as its original roof and the flank walls of the roof of the porch also remain visible.
8. I have had regard to *Oates*¹, but from the evidence before me and as a matter of fact and degree, in this case I am satisfied that the original porch is not part of a new building. It is an independent building whose roof has been encapsulated by the new canopy.
9. For the reasons set out above I conclude that the porch is lawful. I shall therefore correct the notice and remove the reference to the porch from the alleged breach of planning control and vary the requirements of the enforcement notice accordingly. The appeals on ground (c) and (d) succeed in so much as they are argued and relate to the porch.

Appeal on ground (a), deemed planning permission

Main Issues

10. The main issues in this case are the effect on the:
 - Character and appearance of the host property and surrounding area; and the living conditions of the occupiers of No 17 Devon Avenue.

¹ *Oates v SSCLG v Canterbury CC* [2017] EWHC 2716 (admin).

Reasons

Front canopy

11. No 17 Devon Road is a semi-detached property situated at the end of a residential cul-de-sac. It is constructed from a mix of brick and render under a tiled roof. At ground floor, and in common with the adjoining and neighbouring properties, the front elevation has a round bay window. To the side the property has been previously extended with a garage, and has more recently been converted into living accommodation for a disabled relative.
12. The canopy extends across the full width of the property, including the side extension. It has a hipped tiled roof, a deep fascia and is supported by four circular fibreglass pillars/columns finished in white.
13. A number of properties on Devon Avenue have canopies and/or porch extensions which differ in their individual design and form. However, in general those other canopies sit above the bay windows and do not extend below or in front of them. Furthermore, they are relatively simple in form and respect the form, design and proportions of their host property.
14. In this case, by reason of its overall depth, deep fascia and decorative pillars, the canopy is a dominant and discordant addition to the host property. Its overall character and appearance do not respond to or respect the property's original design characteristics. The deep fascia of the canopy partially conceals the front bay window and the hipped roof has resulted in an awkward roof configuration where it joins the side extension's pitched roof. Its bulk and form mean that it is visually conspicuous within the street scene and it has a harmful effect on the visual qualities of the area.
15. I have taken into account the proximity of the canopy to the front bay window of the adjoining property. However, although the supporting pillar would be visible from the neighbour's bay window, the canopy provides an open aspect below its roof and I do not consider that it has a significant enclosing or harmful effect on the outlook for neighbouring residents.
16. I conclude that the canopy has a harmful effect on the character and appearance of the host property and on the street scene. It is contrary to the development plan and in particular with Policies SP1, DM1 and EN1 of Manchester's Local Development Framework, Core Strategy, 2012 (CS) and saved Policy DC1 of the Unitary Development Plan (UDP), which are consistent with the National Planning Policy Framework (the Framework) in that they seek to secure good design and ensure, amongst other things, that new development, including extensions, have regard to the character of the existing property, the street scene and reinforce local character.

Side/rear extension

17. The Council has previously granted planning permission for a single storey side/rear extension to the appeal property. However, the extension that has been constructed is marginally higher at its eaves than the eaves height approved on Drawing No. 1974/19/02D and the eastern side wall of the rear addition has not been set in from the common boundary of the neighbouring property No 17, as was approved. In addition, the facing flank wall to No 17 is constructed in concrete block and not faced in either render or red brick to match the existing property.

18. I appreciate that the dimensions of the extension that has been constructed differs only marginally from those which were approved for both the flat roof and mono-pitched roofed rear extension. However, because the rear extension has been constructed on the party wall of No 17, as opposed to being offset from the common boundary it has not been possible to face that wall in render or brickwork to match the original dwelling.
19. The extent of the facing blockwork wall, which is on the common boundary, is unattractive and stark in its appearance. It has a harmful effect on the visual outlook for the occupiers of No 17 and detracts from the visual qualities of their external amenity space and views from their kitchen window. In addition, the materials of construction do not reflect those used in the construction of the host property and detract from its character and appearance.
20. I have taken into consideration the appellant's suggestion that the harmful effect of the facing wall could be mitigated by the imposition of a condition to require this elevation to be rendered. However, to apply such a finish would require the appellant to access the neighbour's land and gain their permission to do so. Having regard to the tests for conditions set out in Planning Practice Guidance and the Framework, the suggested condition would not be enforceable. Compliance would rely on third party cooperation and the works would not be within the control of the appellant.
21. I conclude that the side/rear extension has a harmful effect on the living conditions of the occupiers of No 17 Devon Avenue, with particular regard to their outlook. It conflicts with the development plan and in particular with saved Policy DC1 of the UDP which requires residential extensions to have regard to the effect on the amenity of neighbouring residents and use materials that are in character with the original house and surrounding area.

Conclusion

22. For the reasons given above the unauthorised development is contrary to the development plan when read as a whole. There are no material considerations or conditions that would overcome the conflict with the development plan and the appeal on ground (a) must fail.

Appeal on ground (f)

23. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
24. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements 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.
25. The purpose of the notice in this instance is to both remedy the breach of planning control and injury to amenity. I have found that the unauthorised side/rear extension has a harmful effect on the living conditions of the occupiers of No 17 Devon Avenue. For the reasons set out in my consideration of ground (a), the condition suggested by the appellant to mitigate the harm would not be enforceable and there are no other planning conditions that could make this development acceptable.

26. The appellant has queried whether or not it is necessary to remove the pillars beneath the front canopy. From my observations on the site visit those pillars form part of the front canopy and were constructed as part of the building operations undertaken to construct that canopy. The requirements of the notice clearly require the canopy, including the pillars which are a part of it to be removed, and this requirement is illustrated by photograph ENF/02 which was attached to the notice. I do not therefore consider that the requirements are ambiguous.
27. There are no lesser steps that would achieve the statutory purpose behind the notice and the appeal on ground (f) fails.

Appeal on ground (g)

28. The issue is whether the compliance period of four months is reasonable. The appellant considers that a period of six months would be more reasonable given the current COVID-19 restrictions and a severe shortage of tradesmen.
29. Current Government guidance indicates that construction related works can safely continue. However, I am mindful that due to current levels of the virus and self-isolation requirements it may be difficult for the appellant to secure contractors and carryout the works required to reconfigure the rear extension within a four month period. A period of six months would be a more realistic time period to secure compliance with the notice in full, and the appeal on ground (g) succeeds.

Conclusion

30. For the reasons given above and taking into account all other matters raised, the appeal fails on ground (a) and ground (f) and succeeds on ground (g). I have concluded that on the balance of probabilities that the porch was a separate building operation which took place more than four years prior to the issue of the enforcement notice and so, at the time the notice was issued, the time for taking enforcement action as set out in section 171B (1) of the 1990 Act as amended had expired. In addition, when the porch was constructed, by reason of its siting and dimensions, it did not constitute a breach of planning control. The appeal succeeds on grounds (c) and (d) to that extent only.
31. Considering my findings on grounds (c) and (d), I shall correct the enforcement to exclude the porch from the allegation. The requirements of the notice will be corrected to correspond with the breach, as corrected. The enforcement notice, with correction and a variation is upheld.

Elizabeth Pleasant

INSPECTOR