
Appeal Decision

Site visit made on 12 October 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 18 November 2021

Appeal Ref: APP/B4215/C/20/3246730

499A and 501 Burnage Lane, Manchester M19 1WL

- 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 Zaid El-Wadi against an enforcement notice issued by Manchester City Council.
- The enforcement notice was issued on 16 January 2020.
- The breach of planning control as alleged in the notice is:
 1. the subdivision and conversion of the dwellinghouse at 501 Burnage Lane to form two self-contained flats;
 2. the erection of a single storey front extension at 501 Burnage Lane; and
 3. the erection of a part single/part two storey dwellinghouse to the side of 501 Burnage Lane to form 499A Burnage Lane.
- The requirements of the notice are:
 1. Cease the use of 501 Burnage Lane as shown hatched blue on the attached plan ENF/PLAN1, as two self-contained flats and reverse all internal changes that have been made to facilitate the sub-division of the property.
 2. Demolish the single storey extension to the front of 501 Burnage Lane, the approximate extent of which is shown hatched green on the attached plan ENF/PLAN1.
 3. Demolish the part single/part two storey dwellinghouse at 499A Burnage Lane, the approximate extent of which is shown hatched orange on the attached plan ENF/PLAN1.
 4. Reinstate the front, side elevations and roof of 501 Burnage Lane to their condition as shown in the attached drawing ENF/PLAN2 as "EXISTING ELEVATIONS 1:100 – SIDE ELEVATION" and "EXISTING ELEVATIONS 1:100 – FRONT ELEVATION" using materials that are similar in appearance to the existing building.
 5. Remove from the land all building materials, rubble and waste arising from carrying out the above steps.
- The period for compliance with the requirements is ten months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Application for costs

1. An application for costs was made by Manchester City Council against Mr Zaid El-Wadi. This application is the subject of a separate Decision.

The appeal site and surroundings

2. The appeal site is situated on Burnage Road within a predominantly residential area, being characterised by mainly two storey semi-detached properties constructed in brick with tiled roofs. There is variety in terms of the scale,

design and materiality of properties in the local area. The site itself is occupied by an extended two storey semi-detached property comprising two flats and a separate two storey dwelling to the side. It is constructed in brick with hipped, tiled roofs with an element of render at first floor level. There is a hardstanding area to the front and landscaped and lawned amenity spaces to the rear.

The Appeal on ground (d)

Legal Basis for Determination

3. When dealing with an appeal on ground (d), the burden of proof is on the appellant and the standard of proof is the balance of probabilities. Following the judgement of *Gabbitas*¹ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
4. The appeal on ground (d) only relates to the subdivision and conversion of the dwellinghouse at 501 Burnage Lane to form two self-contained flats. Under s171B (2) of the Act, no enforcement action may be taken at the end of the period of four years beginning with the date of a breach of planning control consisting of a material change of use of a building to use as a single dwellinghouse. The enforcement notice was dated 16 January 2020 and therefore the material date for the use of the property will be 16 January 2016.
5. I am aware that in its initial Statement of Case dated 8 July 2020 the Council accepted, in the light of the appellant's evidence, that the subdivision and conversion of 501 Burnage Lane took place before the material date but considered that the alleged breach of planning control with respect to the subdivision had been deliberately concealed. Consequently, it did not consider the breach to be subject to the time limits set out in Section 171B of the Act.
6. However; subsequently, the Council obtained additional evidence and on the basis of that evidence contends that the alleged breach of control occurred after the material date and cannot therefore be immune from enforcement action. Therefore, whilst it was considered that the range of evidence submitted by the appellant was sufficiently precise and unambiguous, the Council's additional contradictory evidence has led them to conclude that the appellant's version of events is less than probable. I have no reasons to dispute the conclusions reached by the Council with respect to the evidence originally submitted by the appellant and therefore, the dispute before me is whether or not the additional evidence obtained by the Council makes the appellant's version of events less than probable.
7. The additional evidence obtained by the Council comprises a signed statement from an approved energy assessor, a copy of an Energy Performance Certificate (EPC) and associated photographs, Residential Mortgage Deed dated 24 February 2017, Planning Contravention Notice (PCN) issued on 12 November 2020 and letters from the NatWest dated 13 November 2020 and 17 November 2020.
8. On 20 January 2017 an EPC was produced following a visit by the assessor. It is my understanding that the assessor examines relevant items such as loft

¹ *Gabbitas v SSE & Newham LBC* [1985] JPL 630

insulation, radiators and windows and derives an energy efficiency calculation based on the evidence gathered. The EPC describes the property as “a semi-detached house” with a total floor area of 115 square metres, which is approximately the same floor area as may be derived from the appellant’s plans. The assessor states that to the best of his recollection, at the time of his assessment, the property was not sub-divided into two flats and his assessment was made on the basis of it being a single semi-detached house. Furthermore, there was no separation between the upstairs and downstairs, only one boiler, one kitchen, one gas meter, one electricity meter and one central heating system.

9. The appellant argues that the energy assessor’s attention would have been on examining specific matters such as insulation, radiators and windows etc rather than considering whether the property was in fact two flats. However, I reject this assumption because his observations and the evidence he gathered to assess the energy rating of the property clearly considered a number of very relevant factors such as there being no separation between the ground floor and first floor accommodation, one boiler, one kitchen, one gas meter, one electricity meter and once central heating system; all of which would have been material factors in his energy assessment. This evidence directly contradicts the information given by the appellant.
10. It is my understanding that the appellant purchased the appeal property from his brother in February 2017. The Council has obtained the charge that is attached to the Land Registry Title which was registered on 24 February 2017 and relates to a residential mortgage deed between the National Westminster Bank PLC (NatWest) and the appellant. As a result of their receipt of this document a PCN was issued by the Council on 12 November 2020 requesting additional information from the NatWest regarding their knowledge of the use of the property on the material date of 16 January 2016 and 24 February 2017, the date on which the sale to the appellant took place.
11. On 13 November 2020 the NatWest confirmed that when the property was purchased by the appellant it was “a single dwelling – a semi-detached, four bedroom house”. Following further correspondence from the Council the NatWest then confirmed that the valuation of the property was completed in November 2016 and the purchase took place in February 2017.
12. The appellant has stated that the mortgage application was prepared by a mortgage consultant and that at the time of the visit by the bank’s valuer he was present and the property was being used a two flats. Although I have considered the appellant’s comments regarding the valuation, I find it unfeasible that a valuer would value a property containing two self-contained flats as “a single dwelling – a semi-detached four bedroom house”. In my judgement, I find there to be no reason why the NatWest would make false statements with reference to the matter, bearing in mind that it would be a criminal offence for them to do so. Therefore, this is evidence that the material change of use of 501 Burnage Lane took place within the four year period before the enforcement notice was served.
13. I have considered the detailed evidence submitted by the appellant, including sworn affidavits, tenancy agreements and photographic evidence, but I am concerned that there is a compelling body of contradictory evidence that has been submitted by the Council. In my judgement, the Council’s evidence

directly contradicts the appellant's version of events to the extent that it makes the appellant's version of events less than probable. I therefore dismiss the appeal on ground (d)

The appeal on ground (a)

14. The ground of appeal is that planning permission should be granted. Taken from the enforcement notice, the main issues are the effect on the character and appearance of the area and the effect on the living conditions of the occupants of residential occupants with particular reference to amenity space. I have also noted that there are other objections to the development as set out in appeal submissions and I have dealt with these as other matters.

Character and appearance

15. The new dwellinghouse 499A Burnage Lane is larger than the two storey extension approved by the Council under reference 112145/FH/2016/S2 on 6 September 2016 and it has extended at the front of the property, being now flush with the existing dwellinghouse at ground floor level.
16. As a consequence of its overall scale and massing, the dwelling that has been created is an incongruous addition to the original dwelling, fails to be subservient to the host property and is an overly dominant and visually intrusive within its setting. I understand that permission has previously been granted for a two storey side extension to 501, but the development that has been built is larger than the approved scheme and as a result appears as a more incongruous and dominant addition.
17. Therefore, not only does the extension dominate the host property, but it unbalances the pair of semi-detached houses of which it is part and also the wider row of semi-detached houses along Burnage Road. Some of these have been altered and extended, but not to the extent of the development that has been implemented at the appeal site. The effect that has been created is harmful to the wider street scene as the development has had little regard to the effect on the character and appearance of this residential area.
18. In addition to the side and rear extension, a relatively large single storey front extension has also been carried out at the appeal property. I am concerned that this adds to the overall bulk, scale and massing of built development on the site and cumulatively, it represents development that fails to acknowledge the design, scale and integrity of the host dwelling, the pair of which it is part and the wider street scene.
19. I have taken account of the porch that previously existed at 501, but overall, the development fails to be subservient to the main house and has resulted in a visually dominant and intrusive development in the street scene which it at odds with its surroundings. Again, I understand that other extensions and developments have been permitted in the area, but I do not have the precise details of those schemes, including the reasons why they were allowed and the specific circumstances that existed. In any case I have determined this current appeal on its own merits.
20. The character of an area is not merely defined by how it looks, but also how it functions and how different developments and uses interact with one another. In this case, the existing residential area is mainly defined by houses set within their own plots with gardens. Residential conversions to flats is not an

established pattern of development in this particular area. The appeal site comprised a single dwellinghouse situated within its own plot, including front and rear amenity spaces. The development has resulted in there being three self-contained residential properties within a relatively restricted plot, which has created a cramped form of development which is very much out of character with the area. I am aware that the site is in a relatively sustainable location, with access to local facilities and services access to public transport. However, that does not overcome the concerns I have with respect to character and appearance.

21. Therefore, the development conflicts with Policies SP1, DM1, EN1 of the Core Strategy (the CS), Saved Policy DC5 of the Unitary Development Plan for the City of Manchester (the UDP) and the National Planning Policy Framework (the Framework). Among other objectives these require new development to be appropriate in terms of its siting, layout, scale, form, massing, materials and detail. New development should have regard to the character of the surrounding area in terms of design, scale and appearance.

Living Conditions

22. It is clear to me that the unauthorised development that has been carried out at the appeal site had resulted in less useable private amenity space being available for the occupants of 501. The physical amount of space has reduced and the rear garden has also been sub-divided in order to provide a very small rear private amenity space for the occupants of the ground floor flat in 501. The new two storey residential dwelling known at 499A also has access to some private amenity space. However, there does not appear to be any such access for the occupants of the first floor flat.
23. The amenity space available for the flats is not comparable to other residential properties in the vicinity and, in addition, the layout and arrangement of amenity space gives rise to additional direct concerns such as overlooking and privacy. Furthermore, the proximity of neighbouring amenity spaces to one another in the arrangement that has been carried out gives rise to levels of potential noise and disturbance which are unacceptable in this setting. The appellant contends that there is accessible public space nearby and that there are other schemes of flats in the locality which do not have access to private gardens. Whilst I understand that argument, in this particular case the key area of concern is the effect of the loss of a unit of family accommodation and the effect on the overall character of the area. In my judgement that includes the overall quality of accommodation, including the provision of amenity space.
24. Given the issues that arise with respect to the provision of amenity space I consider that there are likely harmful consequences to the living conditions of residential occupants with particular reference to amenity space. Therefore, the development conflicts with Policies DM1 of the CS, saved Policy DC5 of the UDP and the Framework.

Other Matters

25. I have noted that there are a number of areas of conflict between the main parties that have been raised through the appeal process. I address each of these briefly, below. Core Strategy Policies H1 and C6 relate to the provision of additional homes and there is a clear emphasis on family housing. A key way in which the City Council can achieve its objectives is to preserve the

existing supply of family housing and to resist conversions to provide smaller, lower quality accommodation which is not capable to accommodating families in an acceptable way. Indeed, the evidence before me shows that there is a high demand for three bedroom dwellings and the demand for three bedroom family accommodation significantly exceeds supply. The development has resulted in the loss of a three bedroom family. I also appreciate that the new residential property at No 499A is a three bedroom house capable of accommodating a family. That does not mean to say that the accommodation is satisfactory to fully meet the needs of families.

26. As a result of the arrangement of the properties and their very close proximity to one another, I do not consider that the development has resulted in the provision of high quality family housing accommodation, but instead cramped residential accommodation that is likely to result in unsatisfactory living conditions with respect to amenity space, noise and general disturbance.
27. It is my understanding that Manchester has over five years supply of deliverable housing sites. Indeed, the appellant does not appear to be advancing any argument that there is no such supply or that the development will make a contribution to achieving a deliverable five year supply.
28. The Council is concerned about the standard of accommodation provided. The evidence before me indicates that the accommodation provided does not meet all of the space requirements and the internal layout gives rise to concerns regarding noise and disturbance between rooms and different properties. Consequently, I find that the accommodation does not provide adequate living conditions for occupants.
29. The Council has also expressed concerns regarding parking provision. There is some parking provision on-site and the site is situated close to public transport facilities and there is unrestricted car parking available on Burnage Lane. At the time of my mid-morning mid-week site visit there was adequate on-street parking available. Whilst I acknowledge this is a snapshot in time, I do not consider it likely that the development results in unacceptable parking problems or is likely to cause harm to the efficient movement of traffic in the locality.
30. There is insufficient evidence before me to show that the ground floor flat has been designed to accommodate a disabled occupant. However, the original house did not make such provision.
31. Finally, as a result of the arrangement of the residential properties provided it is likely that refuse collection and storage facilities would be stored to the front of the property. Given the number of receptacles that would be required to serve the three properties, such provision would further erode the visual appearance of the site. I recognise that there is landscape screening to the front boundary, but that is insufficient to ensure no visual detriment as a consequence of the bin storage required.
32. I have taken account of concerns regarding the precedent that may be set should the current development be approved. However, I give limited weight to this argument since each case would be dealt with on its own merits and in the light of the Development Plan and other material considerations.

33. With respect to these other matters I find that the development conflicts with Policies SP1, DM1, H1, H6 and EN1 of the UDP, Policy DC5 of the UDP, Manchester Residential Quality Guidance (2017) and the Framework. Therefore, I conclude that the development is contrary to the provisions of the Development Plan as a whole and the deemed planning application should be refused.

Conclusion

34. I have taken account of all the evidence before me and for the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant permission on the deemed application.

Formal decision

35. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

A A Phillips

INSPECTOR