



## Appeal Decisions

Site visit made on 5 January 2022

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

**an Inspector appointed by the Secretary of State**

**Decision date: 24 January 2022**

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### **Appeal A: APP/B4215/C/21/3284464**

#### **2 Peterchurch Walk, Manchester M11 2LQ**

- 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 Mrs Daria Dorocinska against an enforcement notice issued by Manchester City Council.
- The enforcement notice was issued on 7 September 2021.
- The breach of planning control as alleged in the notice is:
  1. The erection of a single-storey side extension fronting a highway, as highlighted in the attached photo ENF01.
  2. The installation of roller shutters, housing boxes and guides to the rear ground floor elevation, as highlighted in the attached photo ENF01.
- The requirements of the notice are:
  1. Remove the single-storey extension to the side elevation, as highlighted in the attached photo ENF01.
  2. Remove the roller shutters, housing boxes and guides to the rear ground floor elevation, as highlighted in the attached photo ENF01.
  3. Remove from the land all building materials, rubble and waste resulting from carrying out the above steps, return the land to its condition prior to the breach taking place.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed.**

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### **Appeal B: APP/B4215/X/21/3283509**

#### **2 Peterchurch Walk, Manchester M11 2LQ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Daria Dorocinska against the decision of Manchester City Council.
- The application Ref 131099/LE/2021 dated 15 July 2021, was refused by notice dated 8 September 2021.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is external roller shutters at the back of the dwellinghouse.

**Summary of Decision: The appeal is dismissed.**

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### **Appeal A on Ground (c)**

1. The appeal on ground (c) relates to the single storey extension. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The extension comprises operational development within the meaning

of s55 of the Act which, s57 indicates, planning permission is required. The appellant contends that the development in question is an outbuilding rather than an extension as it is not attached to the dwellinghouse. Ground (c) is worded in the present tense '...do not constitute a breach...' and under ground (c) an appellant may rely on matters that have occurred since the date of the issue of an enforcement notice to show that, at the time of the decision, what was alleged in the notice does not amount to a breach of planning control. It is crucial in such cases that the development is that which was alleged when the enforcement notice was issued and not some subsequent altered development.

2. The wording of ground (c) does not help an appellant where it is claimed that what is alleged is permitted development. Since the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) does not grant planning permission retrospectively, the development would need to have been permitted by the GPDO in force at the time the development was begun. At the time the development was begun it failed to meet the conditions of Schedule 2, Part 1, Class A of the GPDO which relates to the enlargement, improvement or alteration of a dwellinghouse. Since the date the enforcement notice was served the building has been substantially altered and is therefore not the extension to which the enforcement notice relates. Therefore, the development the subject of the enforcement notice did not benefit from planning permission by virtue of the GPDO and the appeal on ground (c) fails.

### **Appeal A on Ground (d) and Appeal B**

3. These appeals relate to the roller shutters. Ground (d) is that at the date when the enforcement notice was served no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. In order to succeed on ground (d) it would need to be shown that the roller shutters, housing boxes and guides to the rear ground floor elevation had been substantially completed four years before the notice was served – that material date is therefore 7 September 2017.
4. With reference to Appeal B the main issue is whether the Council's decision to refuse to grant a certificate of lawful development was well-founded. For Appeal B to succeed it would be necessary to demonstrate the shutters were substantially completed four years before the application for a LDC was submitted; that date is therefore 15 July 2017.
5. In support of her appeals the appellant has submitted a series of photographs and two invoices. The appellant has stated that the shutters were purchased in May 2015, but the receipt referred to 'Faktura VAT' is dated 15 May 2017. There is another invoice which is stated to be for the installation of the shutters and is dated 9 June 2017. In effect, this is claimed to be the first date the shutters were displayed, but the invoice itself provides little evidence of that.
6. The first set of photographs show a family member with the roller shutters in the background in order to demonstrate the passage of time. However, it is not possible to establish a firm timeframe and no additional data such as evidence of the dates the photographs were taken has been presented.
7. Additional photographic evidence shows that in July 2017 the shutters had not been installed to the rear of the property, but in July 2019 the rollers can clearly be seen fixed to the rear elevation. Therefore, it is reasonable to

conclude that the shutters were installed some time between July 2017 and July 2019. An additional Google Earth image dated 19 April 2018 appears to show no solid white shutter housing and a canopy can also be seen to the rear elevation as confirmed by Google Street View image dated 17 July 2017 where the same structure can be seen. This has been removed by July 2019 and it has also been removed at the time an undated photograph was taken by the appellant which is likely to be after 19 April 2018. The final Google Earth image dated 14 May 2019 clearly shows white frames to the shutters on the rear doors and window.

8. Therefore, I conclude that the appellant's evidence is insufficiently clear and unambiguous to show that the development was substantially completed four years before the enforcement notice was served. The Council has presented evidence the contradicts the appellant's version of events and makes it unlikely. As such, Appeal A on ground (d) must fail. In addition for the reasons given above I conclude that the Council's decision to refuse to grant a LDC was well-founded and Appeal B should fail.

### **Formal Decisions**

Appeal A

9. The appeal is dismissed and the enforcement notice upheld.

Appeal B

10. The appeal is dismissed.

*A A Phillips*

INSPECTOR