



Appeal Decision

Site visit made on 20 April 2022

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 09 May 2022

Appeal Ref: APP/C4235/C/21/3289351

2 Houldsworth Square, North Reddish, Stockport SK5 7AG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Dr Usman M Choudry of Fuse Investments Ltd against an enforcement notice issued by Stockport Metropolitan Borough Council.
- The enforcement notice was issued on 22 November 2021.
- The breach of planning control as alleged in the notice is unauthorised development by way of an enlarged roof terrace that has been created including the erection of metal railings around the perimeter of it.
- The requirements of the notice are:
 1. Remove the railings and all support brackets from the perimeter of the rear elevation of the property;
 2. Repair any damage caused to the fabric of the building, including any drilled holes caused by the installation or removal of the railings using materials that are an exact match for those used on the existing building;
 3. Complete the rooftop amenity space so that it is in full accordance with the drawing Existing and Proposed Plans dated 8 August 2017 and approved by planning permission DC/066827 granted on 25 September 2017 ensuring that the railings used to enclose the amenity space are in full accordance with the schedule of materials of external construction approved by discharge of conditions approval DC/067542 issued on 30 November 2017.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

The Enforcement Notice

1. The breach of planning control is a roof terrace that has been constructed larger than that approved by planning permission Ref DC/066827, conversion of a former bank to form six apartments. A condition (condition 1) was imposed on the grant of planning permission requiring the development to be carried out in accordance with the approved plans.
2. It is clear from the notice that its purpose is to remedy the breach of planning control by making the development comply with the terms, including the conditions, of the planning permission. As such, it is directed at a breach of condition 1. However, paragraph 1 of the notice refers to Section 171A(1)(a) of the 1990 Act, carrying out development without the required planning permission, rather than (b) failing to comply with a condition subject to which planning permission has been granted. This should be corrected to avoid any

ambiguity. It follows that the allegation should detail the relevant planning permission and the condition which has been breached.

3. The requirements specify that the roof terrace should be altered so as to comply with the approved plans. This would mean that, once the requirements are complied with, the whole building will have a deemed planning permission under Section 173(11) of the 1990 Act and the conditions imposed on the original planning permission will cease to have effect. To rectify this, I consider that the notice should be corrected to require that the development to be modified in accordance with the terms and conditions of the planning permission, since this is what the Council intended.
4. I am satisfied that I can make these corrections without injustice because the purpose and effect of the notice would be unchanged.

The ground (a) appeal and the deemed planning application

Background and Main Issues

5. The terms of the deemed planning application are derived from the corrected allegation. Hence, planning permission is sought for carrying out development without compliance with condition 1, which requires the development to be carried out in accordance with the approved plans, by way of an enlarged roof terrace with metal railings.
6. The main issues are the effect of the development on (i) the living conditions of neighbouring occupiers with regard to privacy and (ii) the character and appearance of the area, in particular, the Houldsworth Conservation Area.

Living Conditions

7. The appeal property is a former bank located in a prominent corner position in Houldsworth Square. It has been converted into six apartments. The apartment on the second floor has access to a roof terrace, which faces towards the rear elevations of residential properties in the vicinity. One of these properties, No 6 Houldsworth Square, comprises a maisonette over a ground floor retail premises. I saw that the maisonette has several rear windows on the first floor which serve a hall, a WC and a kitchen. There is also a second floor window serving a bathroom.
8. The approved terrace would have allowed views into the rear yards and towards the rear elevations of many of the neighbouring properties, including No 6. However, the extended terrace allows more direct views into the bathroom of No 6 due to the way the properties are orientated and the height of the terrace in relation to the bathroom window. The bathroom in question has obscure glazing but no apparent mechanical ventilation and it is not unreasonable for this window to be open when the bathroom is in use. Thus, I consider that the extended terrace would lead to a material increase in overlooking that would have an unacceptable impact on the living conditions of the occupants of No 6. I do not consider that this could be mitigated by the addition of side screening on the terrace as this would have to be relatively high to have any effect, which would result in a negative visual impact.
9. I conclude on this issue, that the development would have an adverse impact on the living conditions of neighbouring occupiers with regard to privacy. It would not, therefore, accord with policies H-1 and SIE-1 of the Council's Core

Strategy Development Plan Document (March 2011), which seek to secure high quality development that respects residential amenity. The development would not accord with the National Planning Policy Framework (the Framework) insofar as it seeks to preserve residential amenity.

Character and Appearance

10. The appeal property is located within the Houldsworth Conservation Area, which is comprised of a mix of late 19th and early 20th century industrial, residential and community buildings. Houldsworth Square is sited at a relatively busy intersection of roads with a pedestrianised and landscaped area around the memorial¹. The significance of this part of the Conservation Area can be attributed to its commercial character and associated activity, the architecture and design of the buildings and the use of traditional building materials. The appeal building is constructed from red brick with stone dressings and it has a steeply pitched slate roof. It is a striking building which displays architectural features typical of the period in which it was built. As such, it makes a positive contribution to the Conservation Area.
11. The unauthorised roof terrace is at the rear of the building at second floor level. The railings and fixings are visible from neighbouring properties, the alleyways, and from Leamington Road but they are not overly prominent. The railings are not a solid structure and allow views through. I have compared the approved scheme with that built. There is an increase in height, the railings extend further to the rear to enclose a larger terrace and their design differs, particularly, the method of fixing. However, I do not consider these differences to be material given the extent of the change, the siting and the relatively small scale of the development. I find that the unauthorised development is not detrimental to the Conservation Area and thus preserves its significance.
12. Given the above I conclude that, on balance, the proposal would preserve the character and appearance of the Houldsworth Conservation Area. This would satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990, paragraph 197 of the Framework and would not conflict with Policies SIE-1, H-1 and SIE-3 of the Core Strategy and saved policy HC1.3 of the Unitary Development Plan (2006), that seek, among other things, to preserve the significance of heritage assets and ensure development is sympathetic to the site and its surroundings.
13. However, the harm resulting from the loss of residential amenity remains and the proposal would not be in accordance with the development plan as a whole.

The ground (g) appeal

14. The ground (g) appeal is that the period for compliance falls short of what should reasonably be allowed. The appellant is seeking 12 months given the bespoke nature of the railings, their installation at a high level and the potential disruption to the tenants. I am also aware that the approved railings may need some modification to comply with Building Regulations, which would require further liaison with the Council. On the other hand, the occupants of No 6 are experiencing a loss of privacy, which needs to be rectified.
15. I consider that a six month compliance period, as suggested by the Council, would be appropriate. The works are not complex and it should be possible to

¹ Houldsworth Conservation Area Character Appraisal 2007 (updated 2013).

reach agreement with the Council and carry out the alterations within that timeframe. I shall vary the notice accordingly. To this extent, the appeal on ground (g) succeeds.

Conclusion

16. For the reasons given above, I conclude that the appeal should succeed on ground (g) only. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Formal Decision

17. It is directed that the enforcement notice is corrected by:

- i The replacement of the words paragraph (a) with paragraph (b) before of Section 171A(1) in paragraph 1 of the notice.
- ii The deletion of the allegation in paragraph 3 of the notice and its replacement with "Breach of condition 1 of planning permission reference DC/066827, dated 25 September 2017, which requires the development to be carried out in accordance with the approved plans, by way of an enlarged roof terrace with metal railings".
- iii The deletion of requirements 1 and 3 in paragraph 5 and their replacement with "Alter the development, specifically the roof terrace and metal railings, so that it complies with the terms of the planning permission reference DC/066827, dated 25 September 2017, including the conditions subject to which that permission was granted".

18. And varied by:

- i The replacement of 2 months with 6 months as the period for compliance in paragraph 6 of the notice.

19. Subject to the corrections and variation, the appeal is dismissed, 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.

Debbie Moore

Inspector