



Appeal Decision

Site visit made on 4 November 2022

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

an Inspector appointed by the Secretary of State

Decision date: 11 November 2022

Appeal Ref: APP/B4215/C/22/3303069

31 Elsdon Road, Manchester M13 0TQ

- 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 Mrs Michelle Sharif of Alvisual UK Ltd against an enforcement notice issued by Manchester City Council.
- The enforcement notice was issued on 21 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a two-storey side extension and a single-storey rear extension.
- The requirements of the notice are:
 - 1) Demolish the two-storey side extension and the single-storey rear extension and return the front, side, rear elevations and roof of the property to their condition before the breach took place as shown in the attached images ENF/01 and drawing no. 1905/03, using materials that are similar in appearance to the original building; OR
Make alterations to the extensions so that they fully accord with planning permission 123046/FH/2019, as set out in the attached decision letter of 12 July 2019 and as shown in the attached drawing nos. 1905/04, 1905/05 and 1905/06.
 - 2) 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 nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the 1990 Act as amended.

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

Costs

1. An application for costs was made by Manchester City Council against Alvisual UK Ltd. This is the subject of a separate Decision.

Preliminary Matters

2. The appeal property is a semi-detached house. Planning permission was granted for a two-storey side and single-storey rear extension (Ref 123046/FH/2019 dated 12 July 2019, the 2019 permission). However, the Council considers the development as built differs materially from the approved plans. Therefore, the allegation is the construction of extensions without planning permission and the requirements are that the building is either demolished or altered to comply with the terms of the 2019 permission. The requirement refers to the attached decision letter, however, for completeness, it should also refer to the conditions subject to which that permission was granted. I am satisfied I can make this correction without injustice since the effect of the notice would be unchanged.

3. A further planning application for the erection of a part single, part two-storey side extension and single-storey rear extension was approved on 18 August 2022 (Ref 134252/FH/2022 – the 2022 permission). Section 180(1) of the 1990 Act provides that where planning permission is granted after the service of an enforcement notice for any development already carried out, the notice shall cease to have effect insofar as it is inconsistent with the planning permission. This means that the planning permission overrides the notice to the extent that the planning permission authorises what is being enforced against. However, the notice is not quashed and does not cease to have effect altogether.

The ground (c) appeal

4. In order to succeed on an appeal on ground (c), the appellant must show on the balance of probabilities that the matters alleged do not constitute a breach of planning control. The appellant argues the development would accord with the planning permission granted, taking account of 'permitted development' rights.
5. The 2019 permission included side and rear extensions, the two-storey part having a hipped roof to reflect that of the host building. However, the two-storey side extension has been constructed with a flat roof, the single-storey rear extension is significantly larger than that approved and the roof to the front ground floor element of the side extension projects further forward than shown on the plans. This is materially different to the approved scheme in terms of scale, design and footprint. In addition, the 2019 permission was subject to a condition requiring the development to be carried out in accordance with the approved plans. The departure from the approved plans is significant and the Council has chosen to allege development without planning permission, as opposed to a breach of condition, which is appropriate in this case.
6. The appellant indicates that permitted development should be taken into account. It is not clear what part of the Town and Country Planning (General Permitted Development) (England) Order 2015 the departures from the approved scheme are claimed to fall within. In any event, it is apparent that the extensions have been built as a single operation which, as explained, does not accord with the 2019 permission. Permitted development rights cannot be applied retrospectively.
7. I conclude on this issue that the development differs materially from the 2019 permission and, as such, it constitutes a breach of planning control. The appeal on ground (c) must fail, therefore.

The ground (a) appeal and the deemed planning application

Main Issue

8. The ground (a) appeal is that planning permission ought to be granted for the matters alleged. The terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for the erection of a two-storey side extension and a single-storey rear extension.
9. The main issue is the effect of the development on the character and appearance of the host property and the wider area.

Reasons

10. The appeal property is a semi-detached house located on a road of similar residential development. The unauthorised extensions were substantially complete at the time of my site visit.
11. The two-storey extension has been constructed with a flat roof, which is not reflective of the hipped roof form of the host property. In addition, a mix of brick types have been used, with those used in the side and rear elevations not matching the host property. The development represents poor design, which is out of character with the prevailing type of development in the vicinity. The two-storey extension stands out as an obtrusive addition to the house, which has a detrimental impact on the character of the area by virtue of its design, form and materials.
12. The appellant suggests there are several other properties on the street with similar extensions but I did not see these during my site visit. Other side extensions have been constructed with hipped roofs. Also, it is argued that the extensions do not affect the neighbouring occupiers. Lack of harm to living conditions has a neutral effect and does not mean the effect on character and appearance is acceptable. The telegraph pole, to which the appellant refers, is a common feature of the street scene and cannot justify the unauthorised development. While there may be demand for larger properties, there is an extant planning permission which would provide additional living space.
13. I find that the development has an adverse impact on the character and appearance of the host property and the wider area. It does not accord with the development plan Policies SP1 and DM1 of the Core Strategy and saved policy DC1 of the Unitary Development Plan which, among other things, seek to ensure development protects the built environment and reflects the character of the street scene in terms of scale, form, massing, materials and detail. The ground (a) appeal fails, therefore.

The ground (f) appeal

14. The ground (f) appeal is that the steps required by the notice to be taken, or the activities required to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. While the connection is not explicit, the wording of Section 174(2)(f) of the 1990 Act links back to Section 173 which provides that an enforcement notice shall specify the steps to be taken, or activities to cease, in order to achieve, wholly or partly, remedying the breach or remedying any injury to amenity. In this case, the purpose of the notice is to remedy the breach of planning control by either removing the development altogether or making it comply with the terms (including conditions and limitations) of the 2019 permission.
15. The appellant has not offered any lesser steps that would remedy the breach of planning control. Instead, it is argued that the Council has failed to engage with the appellant. It is not apparent that the issues could have been addressed via dialogue, as the appellant suggests, since the departures from the approved scheme are significant. The Council has since determined a further planning application for an acceptable design which may be implemented.

16. Further, the appellant claims there is no expediency to take action. The Council's reasons for issuing the notice are clear and logical with appropriate reference to the development plan.
17. Overall, I find that the requirements are not excessive to achieve the statutory purpose behind the enforcement notice. The ground (f) appeal fails, therefore.

The ground (g) appeal

18. The ground (g) appeal is that the period for compliance falls short of what should reasonably be allowed. The appellant explains that the property is occupied by tenants and it would not be feasible to carry out the works. I appreciate that the tenants may have to find alternative accommodation, which would be especially difficult due to their personal circumstances and would affect their rights to home and family life. However, the nine month compliance period required by the Council takes account of this impact and is a relatively long period. I consider that nine months is proportionate and reasonable in the circumstances. The ground (g) appeal fails, therefore.

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction 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

20. It is directed that the enforcement notice is corrected by the inclusion of the words "including the conditions subject to which that permission was granted" after the words "planning permission 123046/FH/2019" in paragraph 5.1. Subject to the correction, 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