



Appeal Decision

Site visit made on 23 August 2023

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

an Inspector appointed by the Secretary of State

Decision date: 4/09/2023

Appeal Ref: APP/B4215/C/22/3312428

13 Olney Avenue, Manchester M22 8AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr Mohammed Sharif against an enforcement notice issued by Manchester City Council.
- The notice was issued on 16 November 2022.
- The breach of planning control as alleged in the notice is without planning permission, erection of a part single, part two-storey rear extension and a part single, part two-storey side extension.
- The requirements of the notice are:
 - 1) Demolish, in its entirety, the part single, part two-storey rear extension and the part single, part two-storey side extension, the approximate extent of which is hatched blue on the attached plan ENF1.
 - 2) Reinstate the dwellinghouse and the land occupied by the extension, the approximate extent of which is hatched blue on the attached plan ENF1, to their condition before the breach took place.
 - 3) 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 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), (g) of the 1990 Act 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.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Applications for costs

1. Applications for costs have been made by the Appellant and the Council against each other. These applications are the subject of separate Decisions.

The ground (c) appeal

2. The ground (c) appeal is that the matters alleged do not constitute a breach of planning control. In this ground of appeal, the onus of proof is on the appellant with the test of the evidence being on the balance of probabilities. The dispute between the parties concerns whether the development benefits from previously approved planning permissions and a Lawful Development Certificate (LDC).
3. Planning permission was granted on 18 March 2020 for a part single, part two-storey rear extension and a part single part two-storey side extension (Ref 125485/FH/2019 – 'the 2020 permission'). I saw that the two-storey side extension and the single-storey rear extension, that were under construction at the time of my site visit, were larger than the approved development. This represents a breach of planning control.

4. An LDC was issued on 13 July 2021 for a single-storey side extension (Ref 130330/LE/2021). The development under construction does not accord with the details of the LDC and it cannot be considered lawful. A further planning permission was granted on 10 November 2021 for a single-storey rear extension (Ref 130488/FH/2021 – ‘the 2021 permission’). I saw that the development being built had a larger footprint and extended to two-storeys in part. This is a breach of planning control. Planning permission was granted subsequently, on 7 June 2022, for single-storey side and rear extensions (Ref 133448/FH/2022 – ‘the 2022 permission’). The development under construction is two-storey in part and represents a breach of planning control.
5. The appellant argues the different elements of the extensions have planning permission. While successive permissions have been granted, none of these have been implemented in accordance with the approved plans and, consequently, the whole of the development under construction is a breach of planning control.
6. Caselaw¹ has held that there may be any number of planning permissions covering the same area, but if the implementation of ‘permission 1’ in accordance with its terms and conditions would make it physically impossible to implement ‘permission 2’ in accordance with its terms and conditions, then permission 2 cannot be lawfully implemented. In this case, the three planning permissions concern the same site but are so inconsistent in design and size that it is not physically possible to implement the 2020 permission along with the 2021 permission and/or the 2022 permission. Even if I were to accept the appellant’s argument, the totality of the planning permissions would not add up to what was being built at the time of my visit.
7. For the reasons given above, I find that the appellant has not shown, on the balance of probabilities, that the matters alleged do not constitute a breach of planning control.
8. The appeal on ground (c) fails, therefore.

The ground (a) appeal

Background and Main Issues

9. The ground (a) appeal is that planning permission should be granted for the matters alleged. The terms of the deemed planning application are derived from the allegation and, hence, planning permission is sought for the erection of a part single, part two-storey rear extension and a part single, part two-storey side extension.
10. The development was under construction at the time of my site visit and comprised a part single-storey, part two-storey rear extension, and a part single-storey, part two-storey side extension, as alleged. Although not completed, the works were well advanced, and I was able to make an assessment of the planning merits of the scheme for the purposes of the deemed planning application.
11. The main issues are the effect of the development on the character and appearance of the host dwelling and the wider area, and the effect on the living conditions of neighbouring occupiers with regard to outlook.

¹ *Pilkington v SSE* [1973] 26 P&CR 508.

Reasons

12. The appeal relates to an end-of-terrace house located at the head of a cul-de-sac within a residential area. The house is modest in size but the gardens to the front, side and rear are relatively spacious.
13. The totality of the extensions for which permission is sought are extensive and do not reflect the scale of the host dwelling. The two-storey side and rear extension would be set back from the original front wall of the house, but it would project a considerable distance to the side. This would unbalance the appearance of the host dwelling to the detriment of the wider area. The extensions to the rear are also relatively large. The development as a whole would occupy a large proportion of the side and rear gardens and would result in a bulky and obtrusive addition to the terraced house. The development would not complement the host terrace and would be incongruous in views from the adjoining properties.
14. The neighbouring house at No 11 is sited at right angles to the appeal site and its gable faces the side extensions. The development would be visible from the rear garden of No 11 but I do not consider it would have a harmful impact due to the orientation and relative siting of the properties, and the relatively large rear garden to No 11. The extension would be close to the gable of the neighbouring house, but it was not apparent that any windows to main habitable rooms would be affected.
15. The appellant indicates that the different elements of the development have the benefit of separate permissions. However, it does not follow that permission should then be granted for the entirety of the works covered by the successive permissions. The development must be determined on its planning merits. It is also argued that there is a need for larger houses in the area, but no supporting evidence has been provided. In any event, the Council has granted planning permission for extensions to the property, and I shall consider whether these can still be built as part of the ground (f) appeal.
16. I conclude on this matter that the development would have an adverse effect on the character and appearance of the host dwelling and the surrounding area. Although I have found there would be no harm to the living conditions of neighbouring occupiers with regard to outlook, this has a neutral effect and does not address the other harm identified. The other considerations advanced by the appellant carry limited weight. The development would be contrary to Policies SP1 and DM1 of the Core Strategy (2012) and saved Unitary Development Plan Policy DC1 which seek, among other things, to secure high quality development that is compatible with existing development and complements its surroundings. The development would not accord with the development plan taken as a whole, therefore, and there are no other considerations that would justify a decision to the contrary. In addition, the development would not accord with the National Planning Policy Framework insofar as it seeks to secure high quality design.
17. The ground (a) appeal must fail, therefore.

The ground (f) appeal

18. Section 173(4) of the 1990 Act sets out the two purposes of an enforcement notice – (a) to remedy the breach of planning control that has occurred and (b)

to remedy any injury caused by the breach. The notice requires the removal of the unauthorised development. Its purpose is to remedy the breach of planning control. What must be considered is whether the steps required exceed what is necessary to achieve that purpose.

19. Section 173(4)(a) provides that remedying the breach includes making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. Consequently, I must consider whether it is possible to vary the notice, so it allows for what is alleged to be modified in accordance with a planning permission. The relevant planning permission must be extant, however, and not lapsed. This consideration includes whether the planning permission is capable of implementation in accordance with its conditions.
20. I have already concluded that it would not be physically possible to implement the three previous permissions together. However, it may be possible to implement any one of those permissions if they are extant. The 2020 permission expired on 18 March 2023, which was after the date the notice was issued. The question is, therefore, whether that development was begun within the statutory period. Sections 56(2) and (3) of the 1990 Act provide that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. 'Material operations' are defined in Section 56(4) as including any work of construction and the digging of a trench which is to contain foundations or part of the foundations of a building.
21. I saw that the development under construction included a single-storey rear extension that was positioned close to the boundary with the neighbouring property. This side wall was erected in the same position at the rear extension approved under the 2020 permission, despite projecting further than shown on the approved plans. Nonetheless, the erection of the side wall of the rear extension is a material operation and it is positioned in accordance with the approved plans. Caselaw² has held that it is possible to commence a development for the purposes of s56 and thereby meet a deadline forming a condition of the planning permission, and then later deviate from the permitted works in a manner that later became an enforcement issue without retrospectively altering the fact that the commencement occurred. I consider that the works had commenced but subsequently did not match the plans relevant to the 2020 permission.
22. I find that, as a matter of fact and degree, the development was begun within the statutory period and, as such, the 2020 permission is extant. Despite the subsequent deviations from the approved plans, it would be possible to alter the development to make it comply with the terms of the 2020 permission, including its four conditions. The Council considers that the works necessary to alter the development would be so significant that it would result in the demolition of the works to date. I agree that the works would be extensive but total demolition would not be necessary.
23. The 2021 and 2022 permissions remain extant. However, those permissions are both subject to a condition (No 4 in each case) requiring details of updated flood risk assessments prior to the commencement of development. There is no evidence that the 'pre-commencement' conditions were complied with. The

² *Hussain v SSCLG* [2017] EWHC 687 (Admin).

relevant conditions require details of finished floor levels and/or flood resilience measures as part of the design. In my judgement, the conditions go to heart of the planning permissions. Consequently, in the absence of any evidence to the contrary, or any substantiated exceptions, I conclude that these permissions cannot be implemented in accordance with the relevant conditions.

24. I have not included the LDC as part of this consideration as that concerns development permitted under the Town and Country Planning (General Permitted Development) (England) Order 2015. Such rights cannot be applied retrospectively.
25. I have found that the 2020 permission is extant and capable of implementation. As such, the appellant should be given the option to alter the extensions to make the development comply with the planning permission. In the absence of this step within the notice, I consider the requirements are excessive to remedy the breach. I shall, therefore, vary the steps to include the option to alter the development.
26. The ground (f) appeal succeeds to this extent.

The ground (g) appeal

27. The ground (g) appeal is that the compliance period falls short of what should reasonably be allowed. I have altered the requirements to allow for alterations to the development under construction. On this basis, I consider it appropriate to allow a longer compliance period as alteration is likely to take longer than demolition. I consider six months to be reasonable and proportionate in this instance. I shall vary the notice accordingly.
28. The ground (g) appeal succeeds to this extent.

Conclusion

29. For the reasons given above, I conclude that the appeal should succeed on grounds (f) and (g) only. I shall uphold the enforcement notice with variations 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

30. It is directed that the enforcement notice be varied by (1) the addition of the following requirement in paragraph 5:

OR - Alter the extensions to comply with the terms of the planning permission Ref 125485/FH/2019, dated 18 March 2020, including the conditions subject to which that permission was granted.

And (2) by the substitution of six months rather than three months in paragraph 6 as the period for compliance.

Subject to the variations, 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.

D Moore

Inspector