



Appeal Decisions

Site visit made on 6 December 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2024

Appeal A Ref: APP/B4215/C/23/3324015

Appeal B Ref: APP/B4215/C/23/3324016

180 Moseley Road, Manchester M14 6PB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Miss Margaret Maguire and Appeal B by Mr Anthony Pitts against an enforcement notice issued by Manchester City Council.
 - The notice was issued on 12 May 2023.
 - The breach of planning control as alleged in the notice is the erection of a third storey extension to the rear.
 - The requirements of the notice are:
 1. Demolish the third storey rear extension, as shown edged in yellow in the attached photograph ENF/01.
 2. Reinstate the roof of the property to its condition before the breach took place, as shown edged in green on the attached photograph ENF/02.
 3. Remove from the land all building materials, rubble and waste from carrying out the above.
 - The period for compliance with the requirements is: Six months.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Ground (c)

2. For the appeals to succeed on ground (c) the onus is on the appellants to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
3. In this case the appellants submit that the development is permitted under Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO"). The Council however says that the development does not accord with the requirements of either Class B or Class A of Part 1 of Schedule 2 of the GPDO.
4. Class A relates to the enlargement, improvement, or other alteration of a dwelling. Development not permitted by Class A includes (h)(ii) *'if the enlarged part of the dwellinghouse would have more than a single storey and be within 7 metres of any boundary of the curtilage of the dwellinghouse being enlarged which is opposite the rear wall of that dwellinghouse'*, (i) *'if the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres'*, and (k)(iv) *'if it would consist of or include an alteration to any part of the roof of the dwellinghouse'*.

5. The appellants do not seek to rely on Class A in demonstrating that the development is not a breach of planning control. Nevertheless, for completeness, given that the development clearly involves an alteration to the roof of the dwellinghouse and given the proximity of those works to the boundary of the curtilage, the development is not permitted by Class A.
6. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to meeting various conditions and limitations. The development carried out has been constructed in an "L" shape across the rear roof slope of the main house and the side facing roof slope of the two-storey outrigger. Although the gable ends of the respective roof slopes have been built up to in effect create parapet walls, the remainder of the extension is set back from the eaves and walls. In my view, the development is therefore contained within the existing roof and falls to be considered under Class B.
7. The case for the appellants is largely focused on compliance with condition B.2(b)(ii) of Class B, which requires that the development does not extend beyond the outside face of any external wall of the original dwellinghouse. I agree with the appellants that the development complies with condition B.2(b)(ii). However, the development is required to comply with all conditions and limitations set out under paragraphs B.1 and B.2 of Class B to be permitted development.
8. The Council allege that the development fails to comply with condition B.2(b)(i) which states '*the enlargement must be constructed so that, other than in the case of a hip-to-gable enlargement which joins the original roof to the roof of a rear or side extension, (aa) the eaves of the original roof are maintained and reinstated and (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves*'.
9. In particular, the Council consider that the eaves of the original roof have not been maintained or reinstated. Although the evidence provided is limited, it appears to me that small parts of the original eaves have been removed at either end of the development to facilitate the brickwork side walls of the enlargement which have been built up off the gable ends. These side walls, which clearly form part of the enlargement, also appear to be less than 0.2 metres from the eaves. I am therefore satisfied that the development fails to meet condition B.2(b)(i).
10. In addition, condition B.2(c) requires that '*any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be (i) obscure glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed*'. I saw on my visit that the window installed in the part of the development constructed across the roof slope of the side elevation of the outrigger comprised clear glass and was openable.
11. The development therefore fails to meet the requirements set out in conditions B.2(b)(i) and B.2(c). The conditions set out by the GPDO are not 'negotiable' and if they are not all met then what has been constructed is not permitted development and planning permission is required.
12. To conclude, the works subject of the enforcement notice is not permitted development under Class B or any other Class of the GPDO. It is therefore

development which has been carried out without planning permission and hence constitutes a breach of planning control. Accordingly, the appeals on ground (c) fail.

Other Matters

13. The appellants have drawn attention to the Council's reference to local and national planning policy in section 4 of the enforcement notice. The appellants correctly point out that these policies do not supersede the permitted development rights provided in the GPDO. Nevertheless, it is necessary for the Council to outline in the notice why, in their view, the development is inappropriate and contrary to policy. Whilst not relevant in the context of the ground (c) appeal, these reasons would have formed the basis of the Council's case had an appeal been made under ground (a) and the planning merits of the development were under consideration.

Conclusion

14. For the reasons given above I conclude that the appeals fail. I have therefore upheld the enforcement notice.

David Jones

INSPECTOR