



Appeal Decision

Site visit made on 24 February 2025

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2025

Appeal Ref: APP/B4215/C/24/3339250

Land at rear 14 to 38 Shaftesbury Road, Cheetham Hill, Manchester, M8 0N

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mrs Zabeer Akhtar against an enforcement notice issued by Manchester City Council.
- The notice was issued on 25 January 2024.
- The breach of planning control as alleged in the notice is: without planning permission, the material change of use of the land as an extension to residential curtilage, together with:
 - the formation of a garden area by the laying of concrete blocks and paving flags to form a hardstanding, together with a partial means of enclosure formed by wooden pallets;
 - a means of enclosure over 2 meters in height;
 - the erection of brick garage buildings on the land, in use for domestic storage;
 - the placement of other household and garden paraphernalia.
- The requirements of the notice are to: cease the use of the land as an extension to residential curtilage and remove in their entirety:
 - the garden area formed by the hardstanding and the wooden pallets forming a partial means of enclosure;
 - the means of enclosure over 2 metres in height;
 - the brick garage building on the land, in use for domestic storage;
 - all other household and garden paraphernalia stored or placed on the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (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.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 14 March 2025.

Decision

1. It is directed that the enforcement notice is corrected by:
 - (i) In Section 3 of the notice, deletion of the words *“as an extension to residential curtilage, together with:”* and substitution with the words *“to use of the land for purposes incidental to use as a dwelling, including:”*; and,
 - (ii) In Section 5 of the notice, deletion of the words *“as an extension to residential curtilage”* and substitution with the words *“for purposes incidental to use as a dwelling”*.
2. Subject to these corrections, 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.

Preliminary Matters

3. The appellant has notified me of their application for adverse possession made to the Land Registry, dated 7 February 2024, but I have not been provided with the full details of the outcome of this application. Nevertheless, I have been provided with an official copy of the register of title¹ in relation to a rectangular area of land to the rear of 30 Shaftesbury Road, and which forms part of the land to which the enforcement notice relates. Whilst the appellant's status is only possessory title for this land, meaning that legal ownership is open to dispute, the register of title, dated 16 February 2024, demonstrates that the appellant had an interest in the land when the appeal was made on 22 February 2024.
4. I am therefore satisfied that the appellant had a right of appeal pursuant to the provisions set out at Section 174(1) of the Town and Country Planning Act 1990, as amended, (the 1990 Act).
5. The alleged material change of use, as set out in the notice, is described as an extension to residential curtilage. However, residential curtilage is a legal term and does not amount to a use of land. I will therefore correct the allegation to better reflect what is alleged, that being the use of the land for a purpose incidental to the use of a dwelling. I will also correct the associated requirement accordingly. I am satisfied that no party would be prejudiced by these corrections.
6. The Places for Everyone Joint Development Plan Document for Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Tameside, Trafford and Wigan (2022 to 2039) (the PfEJDPD) was adopted by the Local Planning Authority (LPA) on 21 March 2024 and this post-dates the issuing of the enforcement notice. This now forms part of the local development plan for the area and so I have had due regard to the policies of the PfEJDPD as part of my consideration of this appeal. The appellant had the opportunity to comment on any implications of this during the course of the appeal proceedings.

The appeal on ground (a)

7. The appeal on ground (a) is that planning permission should be granted.
8. In relation to the ground (a) appeal, I may consider whether to grant planning permission for the whole or any part of the development described as the breach of planning control, or in relation to the whole or any part of the land to which the notice relates. In other words, that is the whole of the development as carried out, or any part of it. It is not open to me to grant planning permission for a different form of development.
9. As part of their ground (a) appeal the appellant has set out that the appeal is made only insofar as it relates to a rectangular area of land to the rear of No.30 Shaftesbury Road. To this end, planning permission is sought only for the development of a brick garage building within this area of land, with an approximate footprint of 4.6 meters by 6.7 metres and rising to a height of approximately 4.5 metres.
10. I am satisfied that this development forms part of the matters alleged as the breach of planning control. Therefore, my consideration of the ground (a) appeal

¹ Title No. MAN434899

will largely be limited to an assessment of whether planning permission should be granted for this part of the development at this part of the appeal site.

11. From a review of the evidence before me, I consider the main issues to be the effect of the development on:
 - The character and appearance of the surrounding area;
 - Public open space; and,
 - The living conditions of neighbouring residents, with particular regard to noise, disturbance and safety, and crime and security.

Character and appearance

12. The surrounding area is characterised by a mix of terrace and semi-detached residential properties, interspersed with pockets of green spaces and bands of trees. The land that is the subject of the enforcement notice is a long strip of largely undeveloped land to the rear of Shaftesbury Road with a ribbon of trees along its southern boundary. The land rises from north up to south with varying gradients throughout. Its undeveloped character provides some relief from the otherwise continuous built form of the area, and thereby making a positive contribution to the character and appearance of the surrounding area.
13. The development has resulted in the construction of a sizable garage building on an area of land that was previously absent of built form. The introduction of a building into this area has, harmfully eroded the undeveloped, open, and green character and appearance of the site.
14. I acknowledge that the materials used in the building's construction do not conflict with those predominantly used in the surrounding area, and the building is generally of an appropriate subordinate scale to the adjacent terrace. Therefore, its design, scale and massing, in isolation, do not raise any concerns. However, it is the building's presence within an area of previously undeveloped land that harmfully diminishes the character and appearance of the area, resulting in a discordant feature that is visible in a number of private views from neighbouring properties which overlook the area.
15. For these reasons, I find that the development is harmful to the character and appearance of the surrounding area. The development is therefore contrary to policies DM1 and SP1 of the Manchester Core Strategy Development Plan Document (the Core Strategy), adopted 11 July 2012, policy JP-S1 of the PfEJDPD, and the associated provisions of the National Planning Policy Framework (the Framework). Together these policies seek to achieve sustainable development that make a positive contribution to neighbourhoods by creating well designed places that enhance or create character, and which protect and enhance the built and natural environment.

Public open space

16. The appellant has suggested that the appeal site is poorly maintained, overgrown and was therefore of low quality and value as an area of open space.
17. Whilst it is not clear as to whether the land is within public ownership or maintained by the local authority, representations from neighbouring residents indicate that the

area is valued as an informal area of open space with a degree of public access. I agree that, as an area of undeveloped land in a densely built-up residential area, the land provides an informal open space that has recreational as well as aesthetic value to the local community. Furthermore, while the area is secured by alley gates, it appears to be accessible by all of the residents along this part of Shaftesbury Road. Accordingly, in the absence of a strict definition or evidence that might suggest otherwise, the land is considered to be public open space, and is valued amenity land.

18. The development has introduced a garage building that has resulted in the loss of some open space. This is coupled with the further loss of open space as a result of the entirety of the unauthorised development, which has introduced other structures and domestic features. In the context of the entire site, the garage has resulted in the loss of a relatively small area of open space. Nevertheless, the presence of even a small building within this area has significantly interrupted and diminished the character and quality of this area of open space, reducing its recreational and aesthetic value.
19. Consequently, the development has resulted in a harmful loss of public open space. This is contrary to policies DM1 and SP1 of the Core Strategy, and policy JP-S1 of the PfEJDPD, which together seek to secure sustainable development that makes a positive contribution to the health, safety and wellbeing of residents and to have regard to green infrastructure, including both public and private open space. It is also in conflict with Section 8 of the Framework, which requires planning decisions to plan positively for the provision and use of shared spaces, including open space, in order to enhance the sustainability of communities and residential environments.

Living conditions of neighbouring residents

Noise, disturbance and safety

20. Located to the rear of residential properties in an area of public open space, the appeal site is an area where residents could reasonably expect lower levels of background noise and disturbance, and a safe environment to facilitate social interactions, including children playing.
21. The provision of a garage building to the rear of the terrace and has introduced the likelihood of, and opportunity for, increased vehicular movements into this area. This gives rise to associated noise and disturbance to neighbouring residents in the form of noise from passing vehicles and the general use of the garage as a domestic storage facility and/or workshop associated with a residential use, by increased comings and goings to the building, and the opening and closing of the metal roller shutter door.
22. This increased noise and disruption would diminish the living conditions of the neighbouring residents and conflicts with the use of the area as open space. In addition, increased vehicular movements present a potential safety issue in an area where families and young children should reasonably be able to enjoy the open space without the fear of passing vehicles in close proximity.

Crime and security

23. The LPA and local residents have raised concerns in relation to the potential for increased crime and anti-social behaviour as a result of the development. However, the area to the rear of the terrace is secured by lockable ally gates. From my own experience, all residents will have been issued with a set of keys for these gates and the local authority will retain a master key. It should therefore be easy for residents or the local authority to secure the area, limiting public access, and thereby minimising the potential for crime or anti-social behaviour. I also note that the area is overlooked by the rear facing windows of the properties along Shaftesbury Road, and therefore there is good level of natural surveillance.
24. Consequently, there is limited evidence before me to demonstrate that the development has an adverse effect on crime or security.
25. Bringing these points together, I find that the development is harmful to the living conditions of neighbouring residents, with regard to noise, disturbance and safety. However, it has not been demonstrated that the development has resulted in the potential for increased crime or poor levels of security.
26. The development is therefore contrary to saved policy DC26 of the Unitary Development Plan for the City of Manchester (the UDP), adopted 21 July 1995, and policies DM1 and SP1 of the Core Strategy, policy JP-S1 of the PfEJDPD, and the associated provision of the Framework. Together, amongst other things, these policies seek to achieve sustainable development that makes a positive contribution to the health, safety and wellbeing of residents and to have regard to the effects of development on amenity, including noise, and community safety.

Other Matters

27. A condition restricting the occupation or use of the garage only to the occupants of No.30 would not overcome the harmful effects I have found, because this would not change the character of the use or its physical presence, which together give rise to the adverse effects that I have found.

Conclusion

28. I have found the development to be causing harm to the character and appearance of the area. It has also resulted in a harmful loss of public open space and there is also harm to the living conditions of neighbouring residents in relation to noise, disturbance and safety. As a result, the development is contrary to the above cited policies of the development plan and no material considerations of sufficient weight have been advanced to overcome this.
29. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

J M Tweddle

INSPECTOR