The Planning Inspectorate

Appeal Decision

Site visit made on 19 March 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2019

Appeal Ref: APP/B4215/C/18/3211024
Land at 481 Cheetham Hill Road, Manchester M8 9LR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by David Pluck (North West) Limited against an enforcement notice issued by Manchester City Council.
- The enforcement notice was issued on 15 August 2018.
- The breach of planning control as alleged in the notice is Without planning permission, alterations to the ground floor Cheetham Hill Road elevation, erection of a single storey extension at front and side incorporating an access ramp and steps, the erection of two wall mounted air conditioning units, one wall mounted and one roof mounted satellite dish, the installation of cladding to windows at first floor and the installation of roller shutters to ground floor commercial windows and door openings.
- The requirements of the notice are 1. Remove the single storey extension to the front and side, together with the roller shutters, steps and access ramp shown edged in blue on the attached photograph ENF/01 and make good the hard surface of the forecourt using a porous material; 2. Reinstate the ground floor front and side elevations to their previous condition as shown in the attached drawing no. CPS 13 097 005 as "EXISTING ELEVATION TO CHEETHAM HILL ROAD" and "EXISTING ELEVATION TO WATERLOO ROAD" and in the attached drawing no. CPS 13 097 002 as "EXISTING GROUND FLOOR PLAN"; 3. Reinstate the boundary wall, to a height not exceeding 1.5m, between points "A", "B" and "C" shown in the attached plan ENF/PLAN, using materials similar in appearance to those used in the original boundary wall. The boundary wall shall remain in place in perpetuity; 4. Remove the wall mounted air conditioning units edged green in the attached photograph ENF/02; 5. Remove the wall mounted satellite dish and roof mounted satellite dish edged yellow in the attached photograph ENF/03; 6. Remove the PVCu cladding from the windows at first floor, replacing or making good any damaged or missing window frames and glazing; 7. 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 four months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice is upheld as set out below in the formal decision.

Applications for costs

1. An application for costs was made by David Pluck (North West) Limited against Manchester City Council. A counter claim for costs was made by Manchester City Council against the appellant. These applications are the subject of separate Decisions.

The appeal on ground (c)

2. The ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission.

3. The appellant's ground (c) argument relates to the extension, in particular, and is essentially that planning permission was previously granted for it following appeal[1]. By way of background the unauthorised extension, as-built, was the subject of an unrelated retrospective application for planning permission[2]. This was refused by the Council on 16 December 2016, although that decision was not appealed.

4. To be successful on this ground it would need to be demonstrated that the development was built in accordance with the previously granted planning permission, which arose from the appeal. There is no dispute between the parties that the footprint of the scheme allowed on appeal and the development as-built are identical. However the Council has identified differences between these extensions. In particular it seems to me, from measurements agreed by the parties on site, that the as-built extension would be noticeably taller than the extension that was approved, as indicated by scaled drawings; that it includes an external door to the side instead of an approved window, and also steps and a ramp to the main entrance which were previously absent. I therefore conclude that there are material differences between the two extensions; that what has been constructed does not have planning permission and accordingly the ground (c) appeal must fail.

The appeal on ground (a)

Main Issue

5. The main issue is the effect of the development on the character and appearance of the host building and surrounding area.

Reasons

6. The appeal site is at the end of a two-storey, red-brick terraced building, incorporating gable fronted attic rooms. The terrace is immediately adjacent to a busy transport intersection between Cheetham Hill Road and Waterloo Road and is therefore in a very prominent position. In the immediate vicinity of the appeal site, enclosing the road intersection, are buildings of varying architecture, including the substantial mass and tall tower of the Trinity United Church, constructed in red brick, and a terrace of properties constructed in decorative buff brick, diagonally opposite the appeal site across the road intersection. The area comprises a busy commercial local centre, with ground floor units characterised by a variety of colourful signage. The commercial character of Cheetham Hill Road gives way to predominantly residential terraced properties along Waterloo Road.

7. When viewed from various positions along Cheetham Hill Road, the single storey extension is substantially absorbed by and proportionate to the two-storey mass of the main building. Due to the change in gradient of Waterloo Road, which slopes markedly southwards, when viewed from this direction, the

[1] Ref APP/B4215/A/14/2228922
[2] Ref 113660/FO/2016

rectangular, single storey form of the extension with flat roof stands out more distinctively, appearing relatively elevated against the skyline and next to the two-storey height of the main building. The distinction is further exacerbated by the predominant treatment of the facade with white coloured rendered blocks, which contrasts sharply with the traditional red brickwork of the host building and many of the buildings in the immediately surrounding area.

8. As set out above, planning permission was previously granted, following a successful appeal, for a single storey extension on the same footprint as the development subject to this case. Whilst there is no dispute that the scheme, as built, measures taller than that approved under the previous planning permission, I note from drawings submitted and my visit that both developments appear to extend to the same maximum height, just below first floor window level on the original building. The discrepancy in overall height appears to be explained by the depth of the brickwork plinth when taking into account the gradient of Waterloo Road.

9. Notwithstanding this, I am satisfied that the previous Inspector, following his site visit, would have been able to understand the proposed height of the extension in relation to the existing building and adjacent highway. In his decision letter he recognised that the expanse of highway and adjacent public open space on the opposite side of Waterloo Road created a reasonably spacious setting for the appeal property, such that the projection of the extension to the back of the pavement would not be unduly visually dominant in the street scene. He also found that, in the context of its commercial surroundings, the proposed elevational treatment would be appropriately bold and confident and would add to the visual coherence and unity of the building as part of the local centre; that the proportions and rhythm of the windows and door would reflect the verticality of the first floor and that in principle the rendered stonework would improve the previous tired, tiled finish.

10. I have no reason to take issue with the Inspector's findings in this regard. Whilst the elevational treatment has in practice, varied from the approved drawings, to include a side door in place of a window panel and steps and a short ramp to the main entrance, this has not resulted in relative harm to the appearance or proportions of the building. The previous permission granted on appeal included a condition requiring details of the materials, including the colour of external surfaces of the extension to be agreed by the Local Planning Authority. There is no dispute that this condition was not discharged. The white colouring of the render is inconsistent with the predominantly darker materials used in the surrounding buildings. This gives the extension a strident appearance when viewed from Waterloo Road. It would be possible to impose a condition requiring this to be altered, and to allow for a softer darker external treatment. With this alteration in place and taking into account physical separation, I am satisfied that the extension would not appear to dominate or harm the character of the adjacent terrace on Waterloo Road.

11. I have not been made aware of any significant material change to the policy context or to the physical circumstances of the site and its surroundings since the previous appeal decision was made. Therefore, whilst I understand that the Council consider that this appeal decision has now lapsed, on the grounds that it was not lawfully implemented, under the circumstances and given the relative similarity between this permission and what has been constructed, albeit that there are material differences to distinguish the two, it nevertheless

constitutes a significant material consideration weighing in support of the grant of planning permission in this case.

12. At the time, the previous Inspector was not considering other aspects of development, now included within the alleged breach of planning control specified in the notice, namely external roller shutters to the windows and doors; air conditioning units; satellite dishes and the first-floor window cladding.

13. With regard to the roller shutters, whilst the housing within which they are accommodated projects from the elevation of the building, I consider that their visibility is substantially mitigated by the red colouring of the corporate signage present on the front and side elevations. I consider that the shutters are consistent with other cases on Cheetham Hill Road, acknowledged by the Council to exist, and the variation of brightly coloured commercial signage within the wider local centre.

14. The air conditioning units and satellite dishes installed are not uncommon features within the wider local centre. They are limited in scale, with most of the equipment attached to and therefore substantially visually absorbed by the existing building. I am not therefore persuaded that the equipment adds materially to the existing clutter of the street scene.

15. By contrast the first-floor window cladding comprises of white plastic panels that have been installed to blank out the detail of the respective apertures. At first floor level, the cladding panels appear as a particularly prominent and contrived feature, which are alien to their surroundings.

16. For the aforementioned reasons I conclude that, subject to a condition to agree the external surface colouring of the extension, the extension, including steps, ramp and roller shutters and the air conditioning units and satellite dishes do not result in harm to the character and appearance of the host building and wider area. Accordingly, there is no conflict with Policies SP1, EN1, EN3 and DM1 of Manchester's Core Strategy 2012 or with the National Planning Policy Framework insofar as they seek to promote good design and regard for the local character of the area. However, for the reasons set out above, the first-floor window cladding is in conflict with these policies.

Other matters

17. The Council, within its officer report, has also raised the issue of the side entrance door to the premises being too close to properties on Waterloo Road, therefore resulting in detriment to residential amenity from increased comings and goings associated with activity at the appeal site.

18. However I am satisfied that when considering the degree of separation between the side door of the premises and the nearest dwelling; the likelihood of relatively intermittent comings and goings to and from the site; the generally busy commercial setting of the premises and the absence of any evidence of complaints to the Council in relation to this specific issue, that the development would be unlikely to give rise to any undue disturbance in this regard.

Conditions

19. A condition is required to ensure that the render applied to the surface of the extension is finished in a satisfactory colour in order to protect the character and appearance of the area.

20. The purpose of this condition, against which no objection has been raised by the appellant, is to require the appellant to comply with a strict timetable for dealing with external colouring which needs to be addressed in order to make the development acceptable.

21. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved either by the local planning authority or by the Secretary of State on appeal, and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the extension would have to be demolished.

22. The Council question the enforceability of the condition and that it may give rise to the need for a further enforcement notice. However the requirements set out in the condition are clear and the principle of achieving acceptable external finishing materials, through agreement with the Council, is consistent with the approach taken by the previous Inspector.

The appeal on ground (f)

23. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. Specifically the appellant says in this regard that the requirements of the notice ignore what has already been approved by the previous planning Inspector.

24. However because I am allowing the extension which encompasses the elements of development that were considered previously, and the ground (f) appeal does not relate to the window cladding at first floor level, there is no need for me to consider this ground further.

The appeal on ground (g)

25. This ground of appeal is that the time given to comply with the requirements of the notice is too short. Because I am only upholding the notice with regard to the first-floor window cladding, I consider that the time given to comply with this element of the notice is sufficient and proportionate. The ground (g) appeal therefore fails.

Conclusion

26. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld

notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Formal Decision

27. It is directed that the appeal is allowed insofar as it relates to the land shown edged red on the plan annexed to the notice, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, insofar as it relates to alterations to the ground floor Cheetham Hill Road elevation, erection of a single storey extension at front and side incorporating an access ramp and steps, the erection of two wall mounted air conditioning units, one wall mounted and one roof mounted satellite dish, and the installation of roller shutters to ground floor commercial windows and door openings at 481 Cheetham Hill Road, Manchester M8 9LR subject to the conditions below.

28. 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, in respect of the installation of cladding to windows at first floor at 481 Cheetham Hill Road, Manchester M8 9LR.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

1) The extension hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within **four months** of the date of failure to meet any one of the requirements set out in i) to iv) below:

   i) Within **one month** of the date of this decision details of the colouring of the external surface of the extension render hereby permitted shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

   ii) If within **nine months** of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State.

   iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

   iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

   In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

END OF SCHEDULE OF CONDITIONS