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: 15 April 2019

Appeal Ref: APP/B4215/C/18/3210198
Land at 609 Wilbraham Road, Manchester M21 9AN

- 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 Mrs Asiye Senturk, Cafe Turka Ltd, against an enforcement notice issued by Manchester City Council.
- The enforcement notice was issued on 30 July 2018.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a single storey glazed front extension to enclose the forecourt.
- The requirements of the notice are i. Remove the single storey glazed front extension shown edged in red in the attached photograph ENF/01, making good any damage to the forecourt following its removal; ii. Remove from the land all building materials, rubble and waste resulting from carrying out the above step.
- 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.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Manchester City Council against Mrs Asiye Senturk, Cafe Turka Ltd. This application is the subject of a separate Decision.

The appeal on ground (a)

Main Issue

2. The main issue is the effect of the extension on the character and appearance of the street scene.

Reasons

3. The appeal site is part of a three-storey terraced building, which accommodates shops and commercial properties at ground floor level, part of a wider local centre. The area, characterised by a long linear street with wide footpaths and street trees, has a busy and vibrant feel. There are several restaurants and cafes within the wider area which provide covered seating within the forecourt area, with varying degrees of enclosure ranging from retractable canopies to extensions with bespoke frameworks.

4. The extension subject to this notice constitutes a significant forward projection over the forecourt area. However, whilst the extension interrupts the

otherwise strongly uniform forward building line of the terrace, I consider that there are several mitigating factors in this case. A large proportion of the sides and front of the extension are either open or glazed. This serves to give the extension a light-weight and recessive appearance, particularly when viewed from further along the adjacent highway in either direction against the taller terrace behind and in relation to the four-storey Chorlton Heights building situated at the corner of Whitelow Road, further to the west.

5. The substantial width of the pavement means that the extension, despite its projection, does not appear cramped in its surroundings. In addition, the linear orientation of Wilbraham Road, punctuated with trees and other street furniture tends to draw the eye towards the alignment of the road, rather than specific buildings and structures along it.

6. Furthermore, although there are no other similar structures within the terrace itself, the presence of a projecting portico entrance, a little further along the street to the west and other covered forecourt seating areas relatively nearby, means that the extension, though relatively large, does not appear as an alien feature within its wider surroundings.

7. The Council raises the concern that the central position of the extension within the terrace adds to its sense of isolation and prominence. For the above reasons I do not concur with this view. Furthermore the terrace building is relatively functional in appearance and is lacking in detailed architectural refinement, such that the form of the extension does not result in any material harm to visual cohesion. Notwithstanding this, the light brown colouring of the frame is at odds with the darker brown brick of the terraced building and the darker brown colour scheme of fascia signage for the premises. However I note that the appellant would be agreeable to painting the structure in a darker brown colour, which could be secured through the imposition of a condition.

8. Aside from the physical appearance of the development, it seems to me that its presence adds to the vibrancy of an otherwise relatively ordinary shopping parade.

9. I therefore conclude, subject to a condition requiring the frame to be painted, that the extension does not result in harm to the character and appearance of the street scene, by way of appearing strident, dominant or incongruous. Accordingly there would not be conflict with Policies DM1 and EN1 of the Manchester Core Strategy Development Plan Document 2012 and the National Planning Policy Framework which seek to promote high quality design, having regard to the character of the local area.

Conditions

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

11. 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. 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 requirements are not met by the time set by the condition. Should the requirements of the condition not be met in line with the strict timetable, then the extension would have to be demolished and removed.

12. The Council question the enforceability of the condition and that it may give rise to the need for a further enforcement notice. It also considers that this matter should have been raised in the context of a ground (f) appeal. However the requirements set out in the condition are clear and the principle of including a condition, specifically one dealing with external finishing materials, is nothing unusual in the context of a successful deemed planning application. Although the Council say that the colouring would need to be more precisely defined by reference to a standard colour code, I am satisfied that wording as given below is sufficiently precise.

13. The Council also suggests that weight should not be given to the drawing provided by the appellant, as referred to in the condition below, as it amounts to new evidence being provided at the final comments stage of the appeal procedure, and is therefore a late representation. However I am satisfied that the drawing falls within the remit of final comments, responding to the Council's objections to the scheme as set out in its statement, rather than new evidence. Furthermore it would reasonably have been expected that the Council would have considered the merits of altering the external materials of the structure before deciding on the requirement, within the enforcement notice, for the structure to be demolished. I am not therefore persuaded that the imposition of a condition relating to this matter would come as a complete surprise to the Council.

Conclusion

14. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Formal Decision

15. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a single storey glazed front extension to enclose the forecourt on land at 609 Wilbraham Road, Manchester M21 9AN referred to in the notice, subject to the conditions in the schedule below.

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 **three months** of the date of failure to meet the requirement set out in i) below:

   i) Within **two months** of the date of this decision the external surface of the extension frame hereby permitted, shall be painted dark brown in accordance with the following drawing provided by the appellant: NR679-PL-04 Option A dated 15.02.2019. The dark brown colouring of the frame shall thereafter be retained.

END OF SCHEDULE OF CONDITIONS