



Appeal Decision

Site visit made on 13 August 2012

by John Murray LLB, Dip.Plan.Env, DMS, Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 September 2012

**Appeal Ref: APP/B4215/C/11/2167651
62 Braemar Road, Manchester, M14 6PS**

- 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 Mr C Seddon against an enforcement notice issued by Manchester City Council.
- The Council's reference is ENF/11306/11.
- The notice was issued on 1 December 2011.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a first floor rear bay window extension.
- The requirements of the notice are:
 - Remove the first floor rear bay window extension (boxed red on the attached photograph ENF/01).
 - Reinstate a window to match the original (boxed green on the attached photograph ENF/02) in terms of size and position on the rear elevation, making good the surrounding brickwork using bricks and a bonding pattern to tie into and match the existing rear elevation.
 - Remove from the land all building materials, rubble and waste arising from the removal of the extension and making good the rear elevation.
- The period for compliance with the requirements is specified in the notice as by 30 September 2012 or six months after the notice takes effect, whichever is the later.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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 Decision.

Applications for costs

1. Applications for costs were made by Mr C Seddon and Manchester City Council against each other. These applications are the subject of separate Decisions.

Ground (a)/the deemed application for planning permission

Main Issues

2. There are 3 main issues, namely:
 - The effect of the development on the character and appearance of the area;
 - The effect on neighbours' living conditions, in terms of overlooking and privacy; and
 - Whether the development is acceptable having regard to development plan policy concerning the extension of Houses in Multiple Occupation (HMOs) in areas of high concentration of such properties.

Reasons

3. The area is characterised by typical late Victorian or Edwardian terraced houses. The front elevations of the terraces are largely unaltered, other than by the widespread replacement of timber sash windows with upvc. Most of the rear elevations of the surrounding terraces are hidden from public view. However, some rear extensions are under investigation by the Council and a few properties, such as Nos 35 and 70 Braemar Road and No 156 Moseley Road, have been altered with the benefit of planning permission, by the addition of ground and first floor brick and tile extensions to the rear outriggers. There are also a number of single-storey rear extensions and, where any of these single or 2-storey additions are visible from the public domain, they diminish the simple uniformity of the terraces to some extent. However, by virtue of their design and the materials used, the permitted schemes integrate with the original buildings without causing significant harm to the overall character.
4. Having regard to a plan and photographs submitted by the Council, the appeal scheme is one of about 28 similar developments in the locality involving the addition of a floating box bay, hanging at first floor level on the rear elevation of the property's outrigger. I am told that 20 of these similar extensions have been the subject of enforcement notices requiring removal of the bays and, of these, 18 have resulted in appeals, which I am now considering. A few more of these bays are under investigation and the remainder have been in place for more than 4 years and are immune from enforcement action. In assessing the established character of the area, I have taken account of those developments which are clearly lawful.
5. Some of the existing floating bays are angled, relatively shallow and have tile-hung finishes. However, like all of those which are currently subject to appeal, the addition at No 62 Braemar Road, is large, box-like and finished in white upvc. There are views of this bay from the rear windows and yards of a limited number of nearby houses, and it can be glimpsed from the point where the gated rear passageway meets Lindleywood Road. However, this bay is not prominent in any public views. Furthermore, where this development is visible from Lindleywood Road, it is seen together with the tile-hung floating bay at No 63 Brailsford Road. That is almost opposite the rear of the appeal property and the Council says it is more than 4 years old and therefore immune from enforcement action. It is also seen in the context of the lawful white upvc clad first floor extension at No 66 Braemar Road. In these particular circumstances, the appeal scheme does not have a significant impact on the street scene.
6. Accordingly, I conclude on the first main issue that the development does not harm the character and appearance of the area and I find no conflict with the relevant parts of saved Policy DC1 of the Unitary Development Plan for the City of Manchester (UDP), adopted 21 July 1995 or Policies SP1 and DM1 of Manchester City Council's Local Development Framework Core Strategy (CS), adopted 11 July 2012.
7. Turning to the second main issue, the rearward projection of the bay, beyond the original first floor window, makes no significant difference to the privacy enjoyed in the houses to the rear, on the other side of the gated passageway. As far as the adjoining properties are concerned, No 64 Braemar Road has a shelter in its rear yard, such that the remaining area is not likely to be used as a significant outdoor living or amenity area. The yard at No 60 is largely

covered by a single-storey extension. However, there is a side window in that extension, which is overlooked by the appellant's bay window. Furthermore, the Council says that the extension at No 60 is under investigation and may be subject to enforcement action. I cannot therefore assume that it will remain, even though it is similar to other permitted schemes in the area. If that extension is removed then the whole yard will be overlooked from this bay and, even if it is not, what currently remains of the yard is overlooked, together with the side window in the extension.

8. Nevertheless, the issue of overlooking can be adequately addressed by a condition requiring the provision of obscure glazing in the western side window. I attach little weight to the Council's fear that this would create the appearance of a "floating toilet", as first floor toilets and bathrooms are neither uncommon nor unacceptable. For these reasons, whilst acknowledging that the perception of overlooking can impact on living conditions, I conclude that additional overlooking and loss of privacy are not sufficient on their own to justify dismissal of the appeal. These factors do not give rise to unavoidable material conflict with those parts of saved UDP Policy DC1 and CS Policy DM1, which seek to safeguard neighbours' living conditions.
9. In relation to the third main issue, although this was not part of the reasons for issuing the notice, recently adopted CS Policy H11 provides that, in areas of high concentration, extensions to HMOs (as defined in the Housing Act 2004) would not be permitted where this could reasonably be expected to lead to an increase in the level of occupation. There seems to be no dispute that this is an area of high concentration and the Council says it appears to it that the room at the back of the 2-storey outrigger has been deemed too small by the private rented sector. Without the bay, this room would certainly be a small bedroom, but the appellant states that the house has been occupied by 4 students for over 10 years. He says that this development has not increased the number of occupants, but merely improves the accommodation and enables the provision of a desk or workstation in the back bedroom. I have no good reason to doubt that evidence and this is not a clear case of an extension providing an additional room.
10. Accordingly, I conclude that the development is acceptable, having regard to development plan policy concerning the extension of Houses in Multiple Occupation (HMOs) in areas of high concentration of such properties.
11. On the basis of my conclusions on the main issues and in the light of all other matters raised, I am satisfied that the appeal should be allowed and planning permission granted, subject to a condition requiring obscure glazing in the western side window, in order to safeguard the neighbours' living conditions. As suggested by the appellant, I will base the condition on the one in the General Permitted Development Order¹, which also provides that the window should be non-opening below a certain level. I will adapt it to ensure that the window is permanently maintained in that condition. I am satisfied that a period of 3 months would be sufficient to enable that work to be undertaken. However, given that the development has already been carried out, in order to ensure that this condition is enforceable, I will need to state that the bay must be removed and the property reinstated, as per the enforcement notice, if the obscure glazing is not fitted as required. In that event, I will allow a further

¹ See the Town and Country Planning (General Permitted Development) Order 1995, Schedule 2, Part 1, Class B, paragraph B.2(c)

period of 6 months for removal, this being the stated period for compliance with the enforcement notice. No other conditions have been suggested and none are needed.

12. As I am granting planning permission, ground (f) does not fall to be considered.

Decision

13. 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 first floor rear bay window extension on land at 62 Braemar Road, Manchester, M14 6PS referred to in the notice, subject to the following conditions:

- 1) Within 3 months of the date of this permission, the window in the west side elevation of the first floor rear bay window extension hereby permitted shall be:
 - (i) fitted with obscure glazing; and
 - (ii) fixed shut at least up to a level of 1.7 metres above floor level.That side window shall thereafter be maintained in that condition.
- 2) If condition 1 above is not complied with then, within a further period of 6 months:
 - (i) the first floor rear bay window extension shall be removed;
 - (ii) a window shall be reinstated to match the original (shown boxed in green on the photograph ENF/02 attached to the enforcement notice Ref. ENF/11306/11, dated 1 December 2011) in terms of its size and position on the rear elevation and the surrounding brickwork shall be made good using bricks and a bonding pattern to tie into and match the existing rear elevation; and
 - (iii) all building materials, rubble and waste arising from removing the extension and making good the rear elevation shall be removed from the land.

J A Murray

INSPECTOR