

REPORT FOR DECISION

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	26 July 2016
SUBJECT:	PLANNING APPEALS
REPORT FROM:	HEAD OF DEVELOPMENT MANAGEMENT
CONTACT OFFICER:	DAVID MARNO
TYPE OF DECISION:	COUNCIL
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	<p>Planning Appeals:</p> <ul style="list-style-type: none"> - Lodged - Determined <p>Enforcement Appeals</p> <ul style="list-style-type: none"> - Lodged - Determined
OPTIONS & RECOMMENDED OPTION	The Committee is recommended to the note the report and appendices
IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	Executive Director of Resources to advise regarding risk management
Statement by Executive Director of Resources:	N/A
Equality/Diversity implications:	No
Considered by Monitoring Officer:	N/A

Wards Affected:	All listed
Scrutiny Interest:	N/A

TRACKING/PROCESS

DIRECTOR:

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

This is a monthly report to the Committee of the Planning Appeals lodged against decisions of the authority and against Enforcement Notices served and those that have been subsequently determined by the Planning Inspectorate.

Attached to the report are the Inspectors Decisions and a verbal report will be presented to the Committee on the implications of the decisions on the Appeals that were upheld.

2.0 CONCLUSION

That the item be noted.

List of Background Papers:-

Contact Details:-

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**Planning Appeals Lodged
between 20/06/2016 and 17/07/2016**



Application No.: 59337/FUL

Appeal lodged: 14/07/2016

Decision level: DEL

Appeal Type: Written Representations

Recommended Decision: Refuse

Applicant: Mr Darren Galliano

Location Land at rear of 3 Stephen Street South, Bury, BL8 2NT

Proposal Change of use of land to residential with boundary fence/gate (retrospective)

Total Number of Appeals Lodged: 1

**Planning Appeals Decided
between 20/06/2016 and 17/07/2016**



Application No.: 58751/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: Mrs Nichola Wood

Location: 62 Market Street, Tottington, Bury, BL8 3LJ

Proposal: New first floor level door at rear with balcony and accessway/steps (retrospective)

Appeal Decision: Dismissed

Date: 13/07/2016

Appeal type: Written Representations

Application No.: 59698/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: Mr Aaron Grossberger

Location: 3 Cranbrook Drive, Prestwich, Manchester, M25 0JZ

Proposal: Raising of roof ridge height by 955mm with roof extension and dormer at rear (resubmission)

Appeal Decision: Dismissed

Date: 27/06/2016

Appeal type: Written Representations

Appeal Decisions

Site visit made on 13 June 2016

by C Sherratt DipURP MRTPI

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

Decision date: 13 July 2016

Appeal A - Ref: APP/T4210/C/15/3137702

Land and property at 62 Market Street, Tottingon BL8 3LJ

- 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 Nicola Jane Wood against an enforcement notice issued by Bury Metropolitan Borough Council.
 - The notice was issued on 26 October 2015.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a metal balcony and access steps to the rear of the property, at first floor level.
 - The requirements of the notice are (a) dismantle and permanently remove the metal balcony and access steps located at the rear of the property at first floor level.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B - Ref: APP/T4210/W/15/3133985

Land and property at 62 Market Street, Tottingon BL8 3LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Michael Wood Homes against the decision of Bury Metropolitan Borough Council.
 - The application Ref 58751, dated 19 May 2015, was refused by notice dated 2 July 2015.
 - The development proposed is provision of rear access way.
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Decisions

Appeal A - Ref: APP/T4210/C/15/3137702

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

Appeal B - Ref: APP/T4210/W/15/3133985

2. The appeal is dismissed.

Reasons

Ground (f)

3. The requirements of a notice may seek to (a) remedy the breach of planning control or (b) remedy and injury to amenity (s173(4)(a) and (b) of the Town and Country Planning Act 1990). In this case, it is clear from the requirements
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of the notice that its purpose is to remedy the breach of planning control. Alterations to the design and structure of the balcony and access steps, as suggested by the appellant, would not remedy the breach and no lesser steps have been suggested that would. In the absence of an appeal under ground (a), I am unable to consider the planning merits of any alternative scheme. In any event, no precise details of what those alterations might entail are provided. The appeal on ground (f) fails.

Ground (g)

4. Ground (g) is simply concerned with the period for compliance and whether it is too short to carry out the works. No evidence is submitted to demonstrate that 60 days is not sufficient to physically carry out the work to remove the development. The appeal on ground (g) fails.
5. As the enforcement appeal is being considered concurrently with the planning appeal (Appeal B) the notice would not take effect prior to the determination of that appeal. If Appeal B should succeed then, by virtue of s180 of the Act, the notice would cease to have effect in so far as it is inconsistent with any planning permission.

Overall Conclusions

6. For the reasons given above I consider that Appeal A should not succeed.

Appeal B

7. The main issues are the effect of the development on the living conditions of the occupiers of the neighbouring property (60 Market Street). The host property is a two storey mid terraced property comprising a shop with flat above. There is a small enclosed yard at the rear. Whilst the property to the south also has a commercial use at ground floor with residential above, the neighbouring property to the north, number 60, is a two storey dwelling.
8. The development comprises a steel, black covered walkway with railings that provides access from the flat to the rear. A number of other premises have similar walkways providing direct access to flats.
9. From the walkway, direct views are available into the amenity space of the dwelling to the north. Even its use solely as a pedestrian access would unacceptably impact on the living conditions that the occupiers of the neighbouring residential property might reasonably expect to enjoy due to the level of overlooking that can occur in such close proximity. It could also provide a convenient outdoor area for people to use to some extent for periods longer than simply walking across it, even if not conducive to providing a seating area. Added to the loss of privacy is the overbearing nature that the walkway will have from the rear amenity space of the neighbouring property by reason of its height.
10. I saw other examples of similar walkways that have been provided to access flats above the shop units. In these cases the same loss of amenity does not appear to arise as the ground floor of adjacent properties appears to be in retail use. Even if that is not the case, these examples do not justify the grant of planning permission for a development that causes undue harm.

11. The development is contrary to Policy H2/3 of the Bury Unitary Development which requires the amenity of adjacent residents to be considered when determining proposals for extensions and alterations. The appeal fails.

Overall Conclusions

12. For the reasons given above I conclude that Appeal B should be dismissed.

Claire Sherratt

Inspector

Appeal Decision

Site visit made on 3 May 2016

by Sarah Housden BA (Hons) BPI

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

Decision date: 27 June 2016

Appeal Ref: APP/T4210/D/16/3146311
3 Cranbrook Drive, Prestwich, Bury M25 OJZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Aaron Grossberger against the decision of Bury Metropolitan Borough Council.
 - The application Ref 59698, dated 27 January 2016, was refused by notice dated 3 March 2016.
 - The development proposed is 'raising of roof ridge height by 950mm with roof extension and dormers at rear'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - the effect of the proposed development on the character and appearance of the host property and the wider area, having particular regard to the Cranbrook Drive street scene; and
 - whether any harm is outweighed by other material considerations, including the fallback position and personal circumstances including the rights of the appellant under the Human Rights Act 1998.

Reasons

Character and appearance

3. The appeal property is located within an established residential area to the east of Prestwich centre. Cranbrook Drive is characterised by semi-detached and detached properties set back from the road. The similarity in the form and design details of the dwellings including shallow hipped roofs, white rendered walls and brick plinths, timber detailing and bay windows creates a sense of unity and cohesiveness in the street scene and contributes to the traditional and pleasant ambience of the area.
 4. The appeal property is a detached house with rendered walls under a hipped roof and within a row of four detached properties. Cranbrook Drive rises from its junction with Lichfield Drive and the appeal property is on an incline in the road, resulting in a gradual increase in eaves and ridge heights. Alterations to
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- other houses in the road reflect their original form and design features so that the similarity in their form and appearance has been maintained.
5. The proposal involves alterations to the roof and a dormer window in the rear elevation to accommodate three additional bedrooms and a bathroom at roof level. The roof would be gable ended in form and approximately 0.95 metres higher than the apex of the existing hipped roof.
 6. The Council considers that the proposals would not have an overbearing impact on adjoining occupiers and would not cause material harm to their living conditions and I have no reason to disagree with that assessment.
 7. However, the proposed gabled roof would not reflect the hipped roof form of the host property or its neighbours. The increase in the bulk of the gable wall and the height of the ridge would be visible when approaching along Cranbrook Drive from both directions. It would alter the proportion of wall to roof plane within the front elevation and would protrude above the adjoining properties, disrupting the gradual increase in the height of the dwellings along this side of Cranbrook Drive. The appeal dwelling would appear unduly prominent in relation to other properties in the road which would draw the eye and would be harmful to the existing unity and cohesiveness of the development on Cranbrook Drive which makes a positive contribution to the street scene.
 8. The appellant has drawn my attention to two semi-detached properties in the area that have been altered from a hipped roof to a gabled roof. However, these are on different roads and are located within an area where the design and appearance of the houses are more diverse. As such, they are not directly comparable with the circumstances of the appeal site.
 9. For the reasons outlined above, I conclude in relation to the first main issue in this case that the proposal would conflict with Policy H2/3 of the Bury Unitary Development Plan 1997 (UDP) and the advice in the Supplementary Planning Document 6: Alterations and Extensions to Residential Properties. Amongst other things, these indicate that extensions and alterations should be sympathetic to the original building and surrounding area and that roof alterations should reflect the dwelling's original shape and should not have a detrimental impact on the character and appearance of the street scene.

Personal Circumstances and Fallback

10. A Lawful Development Certificate (Ref 59529) (LDC) has been permitted for the construction of a flat roofed dormer to the sides and rear of the existing roof of the appeal property. Following the Gambone¹ decision, if the potential implementation of the fallback position is more than a theoretical possibility, then it is material. Given the need for the additional accommodation that has been outlined by the appellant and the existence of the LDC, I consider that there is a greater than theoretical possibility that the development proposed in the LDC would be implemented.
11. The extensions proposed as part of the LDC would have the appearance of a flat roof at second floor level which would alter the existing form and appearance of the host property. However, it would maintain a hip to the front elevation and the overall apex height would remain as existing. Accordingly, I conclude that the harm that would be caused to the character and appearance

¹ Raffaele Gambone v SSCLG v Wolverhampton City Council [2014] EWCH 952

of the host property and the Cranbrook Drive street scene as a result of the alterations and extensions authorised by the LDC would be less harmful than the appeal scheme.

12. In my view, the appeal scheme would cause greater harm to the character and appearance of the host property and the wider area than the fallback position. I acknowledge that the appeal scheme would be preferred by the appellant because it would create a better standard of accommodation, however this does not outweigh the harm to the character and appearance of the host property and wider area identified above.
13. The appellant and his wife are practising members of the Orthodox Jewish Faith which carries with it various duties and requirements. The appellant indicates that these include having large families with an extended family network, specific sleeping and eating accommodation requirements and a location which enables close and regular contact with the wider Orthodox community.
14. The appellant and his wife currently have three children and the proposed extension would enable them to have more children and meet the family's accommodation requirements. The location of the appeal property within walking distance of the synagogue, schools and community facilities also meets the requirements of the family's faith. The appellant indicates that opportunities to purchase properties in the locality with sufficient bedroom space are limited and that the proposed extensions would be the only realistic option for the family.
15. I have considered whether dismissing the appeal proposal would infringe the rights of the appellant under Article 8 of the Human Rights Act 1998 (HRA) which guarantees respect for the home, private and family life and Article 9, the right to freedom of thought conscience and religion. The appellant's submissions are required to be weighed against the public interest in this case.
16. For the reasons given above, I have found that the appeal proposal would be harmful to the character and appearance of the host property and the wider area. I am satisfied that the legitimate aims of planning policy to ensure that extensions and alterations are sympathetic to the original building and do not have a detrimental impact on the character and appearance of the street scene can only be adequately safeguarded by a refusal of permission. On balance, this course of action is necessary and would be proportionate in the circumstances. It would not lead to an unacceptable violation of the appellant's rights under Article 8 of the HRA. Article 9 is a qualified right subject to such limitations as are prescribed by law including the application of development plan policies in the wider public interest.
17. I have also considered the Equality Act 2010 and the Public Sector Equality Duty (PSED) to which I am subject. Section 149 (7) of the Act sets out the relevant protected characteristics which include a person's particular religion or belief. Since there is the potential for my decision to affect a person with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 (1) of the Act. The negative impact of dismissing the appeal on the appellant arises since he would be unable to extend and improve his home, thus limiting the amount of living space to comply with the specific living arrangements and larger family size required by his religion.

18. However, having due regard to this, and to the need to eliminate discrimination, in my view the adverse impacts of dismissing the scheme on the appellant's protected characteristics would be proportionate having regard to the legitimate and well-established planning policy aims to protect the character and appearance of the host property and the wider area. Taken alongside the other considerations forwarded by the appellant, including the fall-back position, the PSED considerations would not outweigh the harm I have identified.

Conclusion

19. I conclude that the weight to be attached to the personal circumstances of the appellant and the fallback position does not outweigh the harm identified in relation to the first main issue in this case. The absence of objections from adjoining occupiers does not alter my conclusions in relation to the main issues.

20. Having taken account of all of the matters raised and for the reasons outlined above, I conclude that the appeal should be dismissed.

Sarah Housden

INSPECTOR

Details of Enforcement Appeal Decisions
between 20/06/2016 and 17/07/2016



Location: 62 Market Street, Tottington, Bury

Case Ref:
0065 / 15

Issue: Erection of a balcony/access way

Appeal Decision: Dismissed 13/07/2016

Appeal Decisions

Site visit made on 13 June 2016

by C Sherratt DipURP MRTPI

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

Decision date: 13 July 2016

Appeal A - Ref: APP/T4210/C/15/3137702

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- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
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 - The notice was issued on 26 October 2015.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a metal balcony and access steps to the rear of the property, at first floor level.
 - The requirements of the notice are (a) dismantle and permanently remove the metal balcony and access steps located at the rear of the property at first floor level.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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 - The appeal is made by Michael Wood Homes against the decision of Bury Metropolitan Borough Council.
 - The application Ref 58751, dated 19 May 2015, was refused by notice dated 2 July 2015.
 - The development proposed is provision of rear access way.
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Decisions

Appeal A - Ref: APP/T4210/C/15/3137702

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

Appeal B - Ref: APP/T4210/W/15/3133985

2. The appeal is dismissed.

Reasons

Ground (f)

3. The requirements of a notice may seek to (a) remedy the breach of planning control or (b) remedy and injury to amenity (s173(4)(a) and (b) of the Town and Country Planning Act 1990). In this case, it is clear from the requirements
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of the notice that its purpose is to remedy the breach of planning control. Alterations to the design and structure of the balcony and access steps, as suggested by the appellant, would not remedy the breach and no lesser steps have been suggested that would. In the absence of an appeal under ground (a), I am unable to consider the planning merits of any alternative scheme. In any event, no precise details of what those alterations might entail are provided. The appeal on ground (f) fails.

Ground (g)

4. Ground (g) is simply concerned with the period for compliance and whether it is too short to carry out the works. No evidence is submitted to demonstrate that 60 days is not sufficient to physically carry out the work to remove the development. The appeal on ground (g) fails.
5. As the enforcement appeal is being considered concurrently with the planning appeal (Appeal B) the notice would not take effect prior to the determination of that appeal. If Appeal B should succeed then, by virtue of s180 of the Act, the notice would cease to have effect in so far as it is inconsistent with any planning permission.

Overall Conclusions

6. For the reasons given above I consider that Appeal A should not succeed.

Appeal B

7. The main issues are the effect of the development on the living conditions of the occupiers of the neighbouring property (60 Market Street). The host property is a two storey mid terraced property comprising a shop with flat above. There is a small enclosed yard at the rear. Whilst the property to the south also has a commercial use at ground floor with residential above, the neighbouring property to the north, number 60, is a two storey dwelling.
8. The development comprises a steel, black covered walkway with railings that provides access from the flat to the rear. A number of other premises have similar walkways providing direct access to flats.
9. From the walkway, direct views are available into the amenity space of the dwelling to the north. Even its use solely as a pedestrian access would unacceptably impact on the living conditions that the occupiers of the neighbouring residential property might reasonably expect to enjoy due to the level of overlooking that can occur in such close proximity. It could also provide a convenient outdoor area for people to use to some extent for periods longer than simply walking across it, even if not conducive to providing a seating area. Added to the loss of privacy is the overbearing nature that the walkway will have from the rear amenity space of the neighbouring property by reason of its height.
10. I saw other examples of similar walkways that have been provided to access flats above the shop units. In these cases the same loss of amenity does not appear to arise as the ground floor of adjacent properties appears to be in retail use. Even if that is not the case, these examples do not justify the grant of planning permission for a development that causes undue harm.

11. The development is contrary to Policy H2/3 of the Bury Unitary Development which requires the amenity of adjacent residents to be considered when determining proposals for extensions and alterations. The appeal fails.

Overall Conclusions

12. For the reasons given above I conclude that Appeal B should be dismissed.

Claire Sherratt

Inspector