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## Appeal Decision

Site visit made on 30 January 2024

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 February 2024**

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### **Appeal Ref: APP/G4240/C/23/3318913**

### **3 Burkitt Street, Hyde SK14 1QQ**

- 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 Mohammed Tahibur Rahman against an enforcement notice (EN) issued by Tameside Metropolitan Borough Council (the LPA).
  - The enforcement notice, reference 22/00085/ENDEV, was issued on 21 February 2023.
  - The breach of planning control as alleged in the notice is: the erection of a second storey extension (outlined in blue on the attached plan for identification purposes) to the rear of the premises in excess of the parameters set out within Article 3, Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015. (GPDO).
  - The requirements of the notice are as follows:  
Remove the second storey extension (outlined in blue on the attached plan for identification purposes) and reinstate the rear wall and roof of the single storey rear extension in materials to match the existing property.
  - The period for compliance with the requirements is Three (3) calendar months.
  - The appeal is proceeding on the ground (a) only as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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### **Decision**

1. The appeal is dismissed. See formal decision below.

### **Matter of clarification**

2. The notice refers to the unauthorised extension to the property as being a 'second storey extension'. However, the extension serves the first floor of the property and not the second floor. For the avoidance of doubt, I have dealt with the appeal on the basis that the only part of the development enforced against is that part which sits between the sloping roof of the ground floor extension and eaves line at roof level below the dormer window. However, the parties are clear about what is enforced against and I shall use the Council's wording as set out in the notice.

### **The appeal site and the surrounding area**

3. The appeal property is a traditional two-storey, red brick, mid-terraced dwellinghouse located on Burkitt Street, in this residential area to the south of Hyde town centre. It has a rear yard which backs onto a narrow pathway between the Burkitt Street houses and those of Mona Street opposite. The surrounding area largely comprises other traditional red brick terraced houses with back yards opening out into back pathways or lanes.

4. Most of the houses on the two streets remain unaltered, but I did note some small extensions and alterations to properties in the surrounding streets. The adjacent property at No 1 has a large outrigger extension and No 6 Mona Street has also been

extended. To the rear of No 3 there is a ground floor extension with a mono-pitch which extends the full width of the plot; the 'second storey extension' (serving the first floor), the subject of the notice, and a dormer extension to the roof. These are all clearly visible from the rear, as well as from Nelson Street which is to the north-east.

## **Background information**

### *Planning History*

5. In 2019 planning permission was sought (19/00231/FUL) for a part single, part double storey rear extension and rear dormer extension. The proposed ground floor element projected 5m from the rear elevation of the property and the first floor element projected 2.138m from the rear elevation. The ground floor extension was to serve a kitchen and downstairs WC; the first floor addition to serve a third bedroom with a rear facing window, and the second floor to serve 2 bedrooms including a WC. The application was refused on 10 May 2019. The reason for refusal was as follows:

*By reason of the size and siting of the proposed rear extension, the development would result in an undue loss of amenity to the occupants of the neighbouring residential properties, in particular No.1 and No.5 Burkitt Street and Nos. 2-6 Mona Street, as a result of direct overlooking causing loss of privacy, loss of light and a resultant harmful impact on outlook. The proposal was therefore contrary to the National Planning Policy Framework, UDP Policies 1.3 and H10 and the Residential Design SPD.*

6. The planning application was re-submitted (19/00464/FUL), part retrospectively, and the proposed scheme was reduced in scale. The ground floor element now only projected 3m from the rear elevation and the first floor element projected 2m from the rear elevation. The application was also refused on 27 July 2019. The reason for refusal was as follows:

*The proposed rear extension, by reason of its size and siting, would result in an undue loss of amenity to the occupants of neighbouring residential properties, in particular no.1 Burkitt Street in respect of loss of light/outlook and numbers 2-6 Mona Street in respect of loss of privacy as a result of direct overlooking. The proposal was therefore contrary to the National Planning Policy Framework, UDP Policies 1.3 and H10 and the Residential Design SPD.*

7. However, the part single, part double storey rear extension and the rear dormer extension, as seen during my site visit, were constructed. The works carried out do not correspond with the submitted plans for either application.

### *Enforcement action*

8. The Council had received enforcement enquiries after the first decision was issued. It appears that a neighbour to No 3 had been contacted with a view to removing the shared boundary wall. The neighbour had been concerned about the effect that the works would have on their living conditions and had not agreed to the proposal put forward by the appellant.

9. The Council received a further enforcement complaint stating that a two storey rear extension had been constructed at No.3 Burkitt Street without planning permission. The Council's Enforcement Officer confirmed that the whole of what had been constructed did not benefit from planning permission. However, it was accepted that the ground floor rear extension was permitted development (PD) in accordance with Schedule 2, Part 1, Class A of the General Permitted Development Order

(GPDO). It was also accepted that the rear dormer also constituted PD under Schedule 2, Part 1, Class B of the GPDO.

10. It follows that only the 'second storey' (first floor rear) extension, the subject of the EN, is unauthorised. Since the EN was issued, a further planning application (23/00195/FUL) was submitted retrospectively for this 'second storey' (first floor rear extension). This was later withdrawn. In 2023 a further planning application was submitted (23/00225/FUL) for a part single, part double storey, rear extension. However, the Council was unable to determine this due to the EN being in place.

11. Thus, the EN relates only to the 'second storey' (first floor rear) extension. The reason given for issuing the EN is *'the unauthorised second storey, rear extension, by reason of its size and siting, would result in an undue loss of amenity to the occupants of neighbouring residential properties, in particular no.1 Burkitt Street in respect of loss of light/outlook and numbers 2-6 Mona Street in respect of loss of privacy as a result of direct overlooking. The proposal is therefore contrary to the National Planning Policy Framework, UDP Policies 1.3 and H10 and the Residential Design SPD.*

### **Relevant Policy**

12. The most relevant policies are 1.3; H10(a) and H10(d) and C1 of the Tameside Unitary Development Plan (UDP). These deal respectively with *Creating a Cleaner and Greener Environment*, the *Detailed Design of Housing Developments* and *Conservation and enhancement of the urban environment*. The Tameside Residential Design Guide SPD (RDG) is also relevant and the National Planning Policy Framework (NPPF) is a major material consideration, particularly the policies in section 12 of the document.

### **The Appeal on ground (a)**

#### *Main issues*

13. The main issues are firstly, the effect of the appeal extension on the living conditions of the occupants of neighbouring properties in Birkitt Street and Mona Street and, secondly, its effect on the character and appearance of this residential part of Hyde.

#### *Effect on Living conditions*

14. Having seen the relationship of the unauthorised extension to the neighbouring properties, I share the Council's concerns about its effect on the living conditions of the occupants of the nearest properties in both Burkitt Street and Mona Street.

15. The relevant policies within the RDG, that relate to rear extensions and their impact on the living conditions of neighbours, are policies RED2 and RED3. Policy RED2 requires a separation distance of 18m between 2 habitable rooms from an extension to an extended dwelling. The distance between the original rear wall of No.3 Burkitt Street and the properties opposite to the rear on Mona Street is only approximately 16.5m. It is therefore contrary to the policy.

16. Having seen the relationship between the properties the distance between the rear elevation of the first floor rear extension, and particularly No.6 Mona Street, does not comply with the 18m requirement. Because the first floor rear extension currently serves a habitable room, the inadequate spacing distance between the properties has resulted in a loss of privacy to the neighbouring occupants, as a result of direct overlooking.

17. I have noted that the appellant has suggested that the first floor rear extension could be altered to serve a bathroom, with the rear facing window being provided with obscured glazing, in order to mitigate for the risk of direct overlooking/loss of privacy

to the neighbours on Mona Street. I agree with the Council that this would, in part, overcome the impact of direct overlooking. However, there would still be the perception of being overlooked due to the small distance between properties. In any case, if the appellant wished to do this then it would need to be the subject of yet another application.

18. Having seen the relationship of No 1 (with its two-storey outrigger) to No 3, I also share the Council's concerns about the impact that the appeal extension has had on the living conditions of the occupants of this property. The ground floor window at No 1 serves a kitchen and other windows serve a bathroom and a habitable room. Having noted the position of these windows in relation to the works carried out at No 3, I agree with the LPA that the outlook for the occupants at No 1 must be oppressive. I consider, therefore, that the first floor rear extension is contrary to policy RED2 of the RDG.

19. I also consider that the proximity and positioning of the first floor rear extension at the appeal property must have resulted in an obtrusive and overbearing effect when seen from No 1. It must also have also resulted in a loss of light, particularly to the side facing windows of the outrigger at No 1. It follows that this is also contrary to policy H10(d) of the UDP.

20. As indicated by the Council the relationship between No.3 and No.5 Burkitt Street is intimate, due to the layout of the terraced properties and the limited outdoor yard areas. Although the first floor rear extension does not affect the required 45 degree line rule, set out in SPD policy RED3, the two storey brick wall which runs a considerable length of the shared boundary line with No.5, appears significantly oppressive and overbearing to the neighbouring occupants. This is particularly the case with regard to the use of the yard area. The rear extension is therefore, again contrary to policy H10(d) of the UDP.

#### *Effect on Character and Appearance*

21. As indicated by the LPA, the appeal property is modest in scale with limited outdoor space to the front and rear. From my visit I noted its tight and intimate relationship with other properties in the terrace and with those opposite on Mona Street. Having viewed the appeal extension from both near and distant viewpoints, I share the Council's concerns about its negative visual effect in this part of the town.

22. I agree with the Council that the extension totally dominates the rear elevation and that it is an over-excessive addition to the simple original design of the rear elevation of the house. I find that its overall form and scale is perceived as an alien and obtrusive addition to the house and that it constitutes overdevelopment of this tight terraced site. From Nelson Street to the north, the extension is clearly visible and its overall bulk and massing is clearly noticeable as a completely out of scale addition to the terraced house.

23. As indicated by the LPA there is no consistency in the form or design of the appeal extension, having regard to the lean-to roof of the ground floor extension and dual pitched roof of the first floor extension. The fact that the appeal extension is not central to the original dwelling adds to its incongruity and obtrusiveness. Furthermore, the brickwork, does not adequately align with the brickwork used in the construction of the original terraced dwelling.

24. It also looks completely out of place and incongruous due to the fact that, apart from the outrigger at No 1, none of the other properties in either terrace have been extended at the same level or to the same extent. The part single, part double storey

rear extension is not visually attractive in terms of its architectural appearance and is most unsympathetic to the local character and appearance of this part of Hyde.

### *Conclusion*

25. In conclusion I find that the appeal extension detracts from, rather than adding to, the overall quality of the character and appearance of this predominantly residential part of Hyde. I agree with the LPA that it is not a sustainable development and that due to its poor design is contrary to SPD policy RED1; policies H10(a) and C1 of the UDP and section 12 of the NPPF which seeks to achieve well-designed and beautiful places.

### **Other Matters**

27. I sympathise with the predicament in which the appellant now finds himself. However, I have found the unauthorised development to be harmful in planning terms with regard to residential amenity and the character and appearance of the area. It follows that I consider that my decision should be made in accordance with the development plan and that there are no material considerations to indicate otherwise.

26. In reaching my decision I have taken into account all of the other matters raised by the Council, the Appellant and third parties. These include the full planning history of the site, the initial appeal statements and facts supporting the ground (a) appeal, all references to local and national planning policies, the appellant's response to the LPA statement (final comments) and the photographic evidence.

27. However, none of these carries sufficient weight to alter my conclusions on the main points at issue, and nor is any other factor of such significance so as to change my decision that planning permission should not be granted for the appeal extension.

### **Formal Decision**

28. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under Section 177 (5) of the Act.

*Anthony J Wharton*

Inspector