The Planning Inspectorate

Appeal Decisions

Hearing Held on 9 September 2020

Site visit made on 10 September 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2020

Appeal A: APP/P4225/C/19/3235618
663 Oldham Road, Rochdale OL16 4PE

- 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 Zain Mohammed Ali against an enforcement notice issued by Rochdale Metropolitan Borough Council.
- The enforcement notice was issued on 24 July 2019.
- The breach of planning control as alleged in the notice is ongoing engineering operations comprising the formation, laying out and construction of a means of access to a classified road, and the excavation, raising, levelling and re-grading of the front garden area to form an area of hardstanding.
- The requirements of the notice are:
    a) Dig up the raised area of hardstanding within the area edged in blue on 'Plan A';
    b) Remove all imported materials brought onto the Land to raise the levels and form the area of hardstanding within the area edged in blue on 'Plan A';
    c) Demolish the retaining wall on the boundary with No. 661 Oldham Road that has been constructed to facilitate the raised land levels;
    d) Level the land within the area edged in blue on 'Plan A' to match that land level immediately adjacent within the garden of No. 665 Oldham Road;
    e) Seed the Land to grass area within the area edged in blue on 'Plan A';
    f) Rebuild the brick stone wall and erect gates on the Oldham Road frontage to the same height and in the same positions as shown on the Google Street View Image dated April 2017, and;
    g) Remove all building materials, equipment and waste resulting from compliance with requirement (a) – (f) inclusive from the Land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), and (g) of the Town and Country Planning Act 1990 as amended.

Appeal B: APP/P4225/W/19/3235619
663 Oldham Road, Rochdale OL16 4PE

- 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 Zain Ali against the decision of Rochdale Metropolitan Borough Council.
- The application Ref: 19/00372/HOUS, dated 29 March 2019, was refused by notice dated 24 June 2019.
- The development proposed is described on the application form as creation of a vehicle access, alterations to front and side boundaries and site levels with associated landscaping. Proposed front porch.

Procedural Matters

1. At my site visit I observed that the development has been partially completed.

2. It is common ground that the porch proposed as part of the planning application is acceptable.

Decisions

Appeal A

3. 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 partly carried out, namely engineering operations comprising the formation, laying out and construction of a means of access to a classified road, and the excavation, raising, levelling and re-grading of the front garden area to form an area of hardstanding on land at 663 Oldham Road, Rochdale OL16 4PE referred to in the notice, subject to the conditions set out in the Schedule to this decision.

Appeal B

4. The appeal is allowed and planning permission is granted for development described on the application form as creation of a vehicle access, alterations to front and side boundaries and site levels with associated landscaping. Proposed front porch. Land at 663 Oldham Road, Rochdale OL16 4PE in accordance with the terms of the application Ref: 19/00372/HOUS dated 29 March 2019, subject to the conditions set out in the Schedule to this decision.

Application for costs

5. An application for costs was made by Mr Zain Mohammed Ali against Rochdale Metropolitan Borough Council. This application is the subject of a separate decision.

Appeal A on Ground (c)

6. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The appellant argues that the enforcement notice refers to the need to rebuild the brick stone wall and erect gates at the frontage of the property in the requirements and that such requirements do not require planning permission. My understanding is that they were removed to allow the delivery of material to the site, rather than to facilitate car access.

7. That may be the case, but the ground of appeal relates to the matter alleged in the breach rather than the requirements of the notice. It seems to me that the appellant is contending that the steps required to comply with the requirements are excessive and lesser steps would overcome the objection, which would be dealt with on ground (f). However, no such ground (f) has been submitted.

8. In any case, I allow this appeal and grant permission on the deemed application and consequently, any hidden appeal on ground (f) does not need to be considered.

Appeal A on ground (a) and Appeal B

9. The ground of appeal is that planning permission should be granted. The main issues are the effect on:

   - the character and appearance of the area; and
   - the effect on highway safety.

10. The appeal site comprises a two storey detached residential dwelling built primarily of red brick and render with a pitched roof. It is set back from Oldham Road by approximately thirty metres and has a relatively large front garden area which, before the development commenced, had different levels, with a sunken middle section which then rose again in front of the house. My understanding is that there is an existing vehicular access into the site from a shared lane to the rear of the site and vehicle parking is provided on an area of hardstanding in the rear yard.

11. Neighbouring residential properties in the immediate vicinity are similarly set back from Oldham Road with sunken garden areas to the front. There is a variety of vegetation to the front of the properties including mature shrubs, trees, flower beds and lawn areas which give a verdant setting to the residential area. The adjacent property, no 665 Oldham Road has a vehicle parking area in the front garden area adjacent to Oldham Road which appears to comprise a gated and fenced off hardstanding area on the same level of the highway.

12. The applications are for development that has commenced to provide a means of vehicular access to the classified road which involves the excavation, raising, levelling and re-grading of the front garden area with extensive hard and soft landscaping. It would involve demolishing a section of the original front boundary wall and installing double door gated access which would be erected approximately 4.6 metres from the highway. The central part of the garden has been raised by approximately 1 metre to provide a level area and a 2.2 metre high retaining wall with timber screening and rendered finish erected along the boundary with no. 661. A red brick wall with an approximate height of 1.4 metres with timber screens is also proposed along the side boundary with no. 665.

13. The proposed landscaping scheme includes hedge planting along the boundary with no. 665, hedging, planting and grass near to the front of the house, a grassed area and tree planting close to the front boundary of the property with Oldham Road. The hardstanding areas would comprise a variety of block paving and gravel.

14. Prior to the development commencing the evidence before me shows that the garden consisted of mature trees towards the front of the site with a sunken lawn area, planted flower and shrub beds and landscaping that provided an attractive verdant setting to the property and contributed positively towards the attractive character and appearance of this mature residential area and acted as an important landscaped buffer between Oldham Road and the frontage of the house. I observed at ,my site visit that the development has been partially completed and covers most of the front garden area of the property. I do not dispute that in its current state it is rather unsightly, being stark and bare in its immediate surroundings, particularly from the adjacent

residential properties and from close views from Oldham Road. However, that is not its completed appearance and, in this case, it is important to look beyond that to what is actually proposed.

15. It is clear from the submitted plans that the proposal includes an extensive hard surfaced area, but that is not unusual or necessarily at odds with residential surroundings, nor need such a large area be visually intrusive or incongruous within its residential setting. In order to soften the appearance of the development it is proposed to incorporate hedge planting along the southern boundary of the site with no. 665 with three pleached trees planted with hedge at the base, hedging towards the frontage of the house with an area of grass, shrubs and ornamental grasses. In addition, there is an additional grassed area with tree planting close to the frontage of Oldham Road and a hedge along the common boundary with no. 665. The well-considered bespoke design and layout of the landscaping would screen the development from existing viewpoints, including Oldham Road and the adjacent residential properties to an acceptable degree. I do not dispute that the development would be visible in its immediate surroundings, including at close quarters from no. 661 Oldham Road, but the extensive hardstanding area would be interspersed with soft landscaping, including mature trees and hedges in order to ensure it successfully integrates into its residential surroundings. It may be visible from some angles and perspectives, but that need not necessarily be harmful given the overall high quality of hard and soft landscaping to be used.

16. The development would be different from front garden areas either side and in the immediate vicinity, but different is not harmful in this case. The Council does not dispute that the boundary walls, gates and fencing mean it is unlikely to be visible from long distant views or by passing traffic. It may be possible to views the frontage area over the brick wall, from close quarters and through the gates if passing by slowly, but the views would be limited and the hardstanding area would not be overly dominant in those views, neither would it be conspicuous , dominating or at odds with the surroundings.

17. The development would be visible from the ground and first floor front habitable room windows of the adjacent residential properties, but I do not agree that the outlook from those properties would be harmed, but rather it would be changed to an acceptable degree. In addition, there may be views of parked cars and the top of the car roofs, but that is certainly not unusual in residential areas. By limiting the number of parked cars by way of planning condition, the visual effect of cars would also be limited.

18. The Council also argues that the setback position of gates would introduce a jarring effect and be discordant within its setting where front boundary walls run concurrently in line with the highway. However, I observed at my site visit that in the locality there is great variety in the design, height and materiality of property frontages. Therefore, the addition of setback gates within a partly walled and landscaped frontage would not be harmful to the residential setting.

19. The development would certainly be different from property frontages in the locality but overall I consider it to be well designed, taking account of the need to soften the hardstanding areas with a variety of soft landscaping, including trees, shrubs, grass, hedges and boundaries which will help to integrate the development within its attractive residential surroundings and ensure that it makes a positive contribution to the area.

20. As such the development would not be harmful to the character and appearance of the area and would accord with the requirements of Policies DM1, SO3, P1, P2 and P3 of the Rochdale Adopted Core Strategy October 2016 (the CS) and the National Planning Policy Framework (the Framework). Among other objectives, these seek to ensure that all development proposals demonstrate that they are of high quality design, should respect their context, raise the standard of design and promote sustainable development and must enhance the character and landscape of the Borough.

Highway Safety

21. Oldham Road is a classified highway which is a quality bus corridor and has a dedicated cycle lane. The Council contends that vehicular accesses which lead off main roads give rise to complex traffic movements and affect highway conditions and safety. Drivers turning in and out of such accesses cause other vehicles to stop and give way which interrupts the free flow of traffic and increases the risk of conflict between highway users. Consequently, the Council argues that any new access connections to most strategic routes on the highway network should be subject to restrictions. However, that seems to me to be a rather general observation and objective that does not necessarily take into account the specific circumstances of a case, including its location, highway conditions locally and the design and layout of the proposal.

22. It is common ground that the turning area provided demonstrates that a vehicle would be able to drive in and out in forward gear, subject to no more than two vehicles being parked on the appeal site at once. Furthermore, a planning condition could be used to restrict the number of parked vehicles to two in order to ensure that remains the case. It is also common ground that visibility splays dated August 2019 are correctly drawn to the nearside edge of the carriageway and show the required splay length. Evidence shows that most accidents recorded along Oldham Road are caused by vehicles joining from side streets. The Council contends that the proposed development would result in there being an additional access point onto Oldham Road adjacent to a bus stop. The appellant's evidence confirms that there to be no accident incidents in this particular locality.

23. The development would cause a small increase in the number of turning movements in this immediate locality, but there is insufficient evidence before me to indicate that it would result in disruption to the free flow of traffic to a degree that would reduce the effectiveness of Oldham Road and its quality bus corridor. Furthermore, there is no dispute that vehicles could turn successfully within the site meaning that vehicles may enter and egress the site in forward gear. Although the Council states that the plans show how vehicles could turn within the site, there is potential that where cars reverse onto the highway such movements would be unsafe, unsuitable and not advisable on a strategic route. I consider this argument to be rather speculative and given the evidence of suitable on-site turning and the provision of an acceptable visibility splay I see no reason why vehicles cannot use the proposed access in a safe, convenient and efficient manner. In my opinion, based on the evidence before me, any small increase in the number of vehicle movements and potential turning manoeuvres associated with the development would be insufficient to have the effect anticipated by the Council.

24. Furthermore, I also noted at my site visit that there is a marked out bus stop with a shelter and cycle lane adjacent to the appeal site. The bus shelter adjacent to the proposed access has clear sides panels, although at the time of my visit the panel closest to the appeal site was missing. The structure itself causes insignificant hinderance to visibility and I see inadequate justification for a section 106 agreement to secure the retention of clear side panels in this instance. It is argued by the Council that the bus stop attracts congregations of people and those congregating would obstruct visibility sufficiently for them to cause an obstruction to visibility and prevent drivers using the access from seeing approaching vehicles and pedestrians. Similarly it is argued that such an obstruction would prevent highway users seeing vehicles using the proposed access. I have noted the Council's evidence that the bus stop is near to a High School which increases the likelihood of groups of people congregating and therefore impacting on sight lines. Even though such occurrences may be temporary the Council argues that this provides enough time for an accident to occur.

25. The bus stop in question is a relatively infrequently used quiet stop. Buses run every 10 minutes or so at peak times and the evidence submitted shows that a bus stops approximately two to four times every hour. The period of each stop is only very brief with very low passenger numbers waiting at the stop. Therefore, I do not consider that the presence of the bus stop itself, passengers waiting at the stop nor buses stopped there are a significant threat to the safety of highway users. I have noted the distance from the bus stop to the nearest school but consider it unlikely that many pupils would use the stop nor is there adequate evidence to suggest that school children congregate at or near to the bus stop in question.

26. The Council is also concerned about the presence of a dropped kerb and utility access points adjacent to the appeal sites, but such would be dealt with by any subsequent application for a dropped kerb via highways, rather than planning, procedures.

27. There is photographic evidence of other driveways along Oldham Road, but there is insufficient evidence before me that these benefit from planning permission. There is insufficient evidence that they have led to highway safety incidents or accidents. I noted from my own observations that there are not many driveway accesses close to the appeal site. In any case I have dealt with these cases on their own merits based on the evidence before me.

28. The Council has given consideration to a previously dismissed appeal at no. 657 Oldham Road[1], but that appeal was determined approximately fifteen years ago. At that time the site context, including highways conditions, are likely to have been different and the planning context, including the development plan, was also different. That appeal decision refers to PPG13 which is now obsolete and does not include the same planning principles that exist today in the Framework , such as the presumption in favour of sustainable development. As such I give the previous decision little weight when determining the current appeals.

29. On this issue I find that the development would not have a harmful effect on highway safety and as such accords with Policy T2 of the CS and the Framework, which among other objectives, seek to improve accessibility.

[1] Ref. APP/P4225/A/04/1160726

Conclusion

30. For the reasons given above I conclude that the appeals should succeed and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

Conditions

31. I have specified the approved plans as this provides certainty. In order to achieve a suitable landscaping scheme I have imposed a landscaping condition, including provisions for the replacement of trees or plants which die, are removed or become seriously damaged or diseased. To ensure a satisfactory level of car parking and in the interests of the safety of highway users I have also specified that the approved driveway, car parking and turning areas shall be kept freely available for use as such, shall be restricted to the parking of no more than 2 cars and shall not be used for any other purpose.

32. In the interests of the character and appearance of the area a condition requiring the use of matching materials for the porch is required. In order to ensure a suitable surface for the parking area details of the construction and drainage are required.

A A Phillips

INSPECTOR

SCHEDULE

1) The development hereby permitted shall be carried out in accordance with the following approved plans:

   Location Plan 1:1250

   Drawings:

   A 01

   Rev A

   A 02

   A 03

   A 04

   A 05

   A 06

   A 07

2) The landscaping scheme shall be carried out in accordance with the approved plans. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried before the vehicular access is first used, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

3) The approved driveway, car parking and turning areas shall be kept freely available for use as such, shall be restricted to the parking of no more than 2 cars and shall not be used for any other purpose.

4) The materials used in the construction of the porch hereby permitted shall match those used in the construction of the exterior walls of the existing building with respect to colour, form, type, size and texture.

5) Within one month of the date of this decision, a scheme for the design, construction and drainage of the car parking area shall be submitted to and approved in writing by the local planning authority. The car parking area shall be constructed in accordance with the approved details and retained thereafter for the parking of up to 2 cars.

APPEARANCES

FOR THE APPELLANT:

Mr Farooq Fariq BSc (Hons) MCD MRTPI	Director and Chartered Town Planner, Inspire Planning Solutions Ltd
Mr Michael Geoffrey Peet B.Eng (Hons) C.Eng DMS MICE FCIHT	Director, AMNI Transportation
Mr Mohammed Zain Ali BSc (Hons)	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Martin Eastaugh BSc Bio, PGCert Env Plan	Senior Planning Officer (Enforcement)
Mr Mubeen Patel BA MA Town and Country Planning	Planning Officer
Mr John Gillingham BSc Geog	Senior Engineer (Highways)
Mr J J Holmes BA (Hons), LLB (Hons) DMA	Planning Solicitor

INTERESTED PARTY:

Mr Richard Haworth	Local Resident