



Appeal Decision

Site visit made on 1 February 2022

by **A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

an Inspector appointed by the Secretary of State

Decision date: 08 February 2022

Appeal Ref: APP/A4710/C/21/3283797

Land formerly known as Providence Works, Queens Road, King Cross, Halifax HX1 3NS

- 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 Saleem against an enforcement notice issued by Calderdale Metropolitan Borough Council.
- The enforcement notice was issued on 31 August 2021.
- The breach of planning control as alleged in the notice is the erection of a single storey side extension and associated access on the Land which is used as part of a MOT Test Centre/Station.
- The requirements of the notice are:
 - i. Demolish the side extension.
 - ii. Remove all resultant rubble and associated material from the Land.
 - iii. Close the vehicular access by erecting a fence or wall of not more than 1m in height along the approximate alignment marked 'A-B' on the plan marked Appendix 5.
- The period for compliance with the requirements is 3 (three) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

The Appeal on Ground (b)

1. The ground of appeal is that the breach of planning control alleged in the enforcement notice has not occurred. In this case the appellant argues that the vehicular access from Kingsley Place has not been created, but it is already present as evidenced by drop kerbs on the highway and former use by a steel fabrications business before the land was purchased by the appellant.
2. Firstly, given the nature of Kingsley Place as a residential street with restricted width and limited access I do not see that it could have been used to serve an historic industrial use which would have required access by a range of potentially large vehicles. There is no evidence of an access having been approved in this location. Whilst I understand that the presence of an access can be established through specific planning procedures there is no appeal on ground (d) in this case and insufficient evidence to demonstrate on the balance of probabilities that the access is lawful as a consequence of the passage of time.
3. Furthermore, the appellant argues that the MOT test centre/ station is not operational. At my site I observed that this is indeed the case since the extension has not yet been fitted out for such use. However, in this case it is

clear that the enforcement notice attacks the operational development rather than any particular use of the Land. Consequently, because the single storey side extension and associated access on the land have occurred as a matter of fact the appeal on ground (b) must fail.

The Appeal on Ground (a)

4. The ground of appeal is that planning permission should be granted. The main issues are the effect on the safety of highway users and on the living conditions of the occupants of neighbouring residential properties with particular reference to parking.
5. The appeal site is situated between Queens Road and Kingsley Place in a mixed commercial and residential area. The main access to the appeal site is off Queens Road which is a busy local road which serves different uses, including commercial units in the vicinity of the appeal site. The development includes a single storey side extension and a vehicular access off Kingsley Place which is a mainly residential street with terraced houses along one side and commercial along the other.
6. Kingsley Place has a large number of on-street parking spaces which mainly serve the residential properties. Vehicles parked along the highway restrict the street to a single carriageway and I noted that in some places there were vehicles parked on both sides of the road, further restricting the carriageway width. There is no designated turning area anywhere along the street and therefore tight, awkward and potentially hazardous manoeuvres are required to turn within the street.
7. Vehicles parked along the street opposite the access hinder the movement of vehicles into or out of the appeal site. The appellant has submitted a swept path analysis which shows how in theory vehicles could move in and out of the site, but the reality of the situation may be different. The type of vehicles accessing the site and the location and type of vehicles parked on the street may make manoeuvres difficult. Due to the restrictive space within the extension vehicles would have to enter or exit the site in reverse gear. The swept path drawings show a reversing movement out of the access where, as a result of a fence adjacent to the access, visibility is restricted. Oncoming traffic or other highway users have limited visibility of vehicles exiting the site and there is a risk that collisions may occur.
8. Irrespective of whether the manoeuvre can actually take place I find it inevitable that, in such a restricted street, there would be conflict between the vehicle movements of local residents and vehicles associated with visitors, deliveries and refuse collection and the commercial access. The level and location of on-street parking combined with the lack of turning area requires vehicles to carry out awkward manoeuvres within a confined space which increases the risk of collisions and causes conflict between different highway users. Should such turning manoeuvres or conflict occur close to the junction of Kingsley Place and Parkinson Lane there may be severe consequences.
9. Therefore, the addition of additional vehicle movements along Kingsley Place would have an unacceptable effect on highway safety. The existing situation along the street is unsatisfactory and introduction of a new access and additional vehicles would exacerbate existing conditions to an unacceptable degree. I am not satisfied that a condition relating to highways management

would mitigate the potential harm caused to highway safety since the main problems in this case are a consequence of the historic parking arrangements, the width of the residential street and the lack of turning space.

10. Therefore the development conflicts with Policies E1 and BE5 of the Replacement Calderdale Unitary Development Plan (2006) (the UDP) and the National Planning Policy Framework (the Framework) which, among other objectives, seek to ensure that development within Primary Employment Areas does not create unacceptable highway problems and accesses should ensure the safe and free flow of traffic in the interests of highway safety. The Framework outlines that development should only be prevented or refused on highway grounds if there would be an unacceptable effect on highway safety or the residual effects cumulative impacts on the road network would be severe. Since I have found there to be an unacceptable impact on highway safety, that is sufficient to conflict with the Framework.
11. The Council contends that the development sterilises a length of on-street parking for vehicles to access the extension that has been built and this could result in neighbour disputes. Although I can see that there would be a conflict between the existing on-street parking arrangements and the access to the extension, there is insufficient evidence before me to conclude that the development would result in sterilisation of the existing parking arrangements to a degree where it would result in neighbour disputes which would be harmful to the living conditions of the occupants of the neighbouring residential properties. As such, with respect to this issue I find there to be no conflict with Policy BE1 of the UDP and the Framework. These seek to ensure that development does not significantly affect the amenity of residents.

The Appeal on Ground (f)

12. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of the enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the demolition of the side extension and closure of the vehicular access by erecting a fence or wall, the purpose is clearly to remedy the breach. Leaving the extension or access in place would not achieve that purpose. In this respect, the appeal on ground (f) fails.
13. Nonetheless, I am mindful that enforcement action is intended to be remedial and not punitive. The appellant has suggested that the demolition of the extension is excessive as the Council has no objection to the structure itself and the erection of a fence or wall is not a fundamental requirement relating to what the notice seeks to achieve. There is only one potential way to access the extension that has been built and that is via Kingsley Place and the new access which been created. Should the extension to the building be demolished there would be no need for the access to remain. Therefore the requirement of the notice with respect to the demolition of the extension does not exceed what is necessary to achieve the purpose.
14. It is an established principle of planning enforcement that an enforcement notice cannot require improvements to land or restoration beyond its previous condition. Prior to the breach the subject of the enforcement notice took place there is no evidence that a fence or wall was present along the approximate alignment marked A-B on the plan marked Appendix 5 to the Notice. However,

a key requirement of the Notice is to close the vehicular access that has been created. In this case, the erection of a structure across the access constitutes a reasonable requirement to achieve that purpose. The appeal on ground (f) does not succeed.

Formal Decision

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

A A Phillips

INSPECTOR