The Planning Inspectorate

Appeal Decision

Site visit made on 15 March 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22ND MARCH 2024

Appeal Ref: APP/V4250/C/23/3329335
Land at 15 South Lane, Astley, Tyldesley, Manchester M29 7GQ

- 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 Dr Ahlam Aboud against an enforcement notice issued by Wigan Metropolitan Borough Council.
- The enforcement notice was issued on 18 August 2023.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the land from use as an alleyway to use for a residential garden, partly enclosed with fencing.
- The requirements of the notice are (i) cease use of the land as a residential garden, (ii) remove all domestic paraphernalia and fencing, and (iii) return the land to its original state.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice be corrected by deleting the breach of planning control wording and replacing it with *'without planning permission, the material change of use of the land from use as an alleyway to use for a residential garden, partly enclosed with fencing'.* Subject to this correction, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. The National Planning Policy Framework was amended on 19 December 2023 (the Framework). In respect of the ground (a) appeal and the deemed planning application main issues, no material changes have been made to the Framework.

The Notice

3. The breach of planning control refers to the *'change of use of the land from….'*. Given section 55(1) of the Act, this should say the *'material change of use of the land from…'*. A ground (a) appeal has been lodged based on a material change of use of the land, and a ground (b) appeal has not been lodged. In this context, I am satisfied that I can correct the breach of planning control without

injustice being caused to the main parties by deleting the breach of planning control wording and replacing it with *'without planning permission the material change of use of the land from use as an alleyway to use for a residential garden, partly enclosed with fencing'.*

Main Issues

4. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the notice and the main issues are (i) the effect of the development on the character and appearance of the area, and (ii) whether the development has unacceptably restricted access to the alleyway for occupiers and visitors of other properties in South Lane.

Reasons

Character and appearance

5. The development comprises a material change of use of part of a cobbled alleyway which gives access to the rear of a row of terraced properties. The land has been enclosed with a wooden fence measuring about 1.8 metres in height. It is understood that a brick wall previously formed the boundary treatment alongside the edge of the alleyway.

6. The properties in the area are two-storey and of brick construction. The most visible boundary walls to the properties in the immediate area are mainly brick thereby assimilating well with surrounding dwellinghouses. There is a pleasing order to the linear form of the properties in the area and the cobbled alleyway, along with the alleyway on the other side of High Street, provide some welcome open relief to the otherwise built-up development. Collectively these attributes add positively and distinctively to the character and appearance of the area.

7. Owing to the position, extent, and height of the appeal fence, it has unacceptably departed from the open relief provided by the alleyway prior to the breach of planning control taking place. Prior to the fence being erected, there was a pleasing symmetry to the appearance of the alleyways either side of High Street. In addition, given the design and wooden material used for the garden boundary fence, it is experienced by passers-by as an incongruous addition in the street-scene when seen against the mainly brick boundary walls. I do not consider that the application of a darker stain to the wooden fence would sufficiently mitigate the harm caused to the character and appearance of the area.

8. The above harm is sufficient on its own to justify refusing the deemed planning application. However, it is noteworthy that comments have been made that the alleyway was previously used for the storage of refuse bins. The alleyway is now restricted in width and hence there is less space available for the storage of refuse bins. I do not doubt the comments made by an interested party about more refuse bins now being stored on High Street. I find that the storage of additional bins on High Street, and in a relatively more prominent position, would cause additional harm to the character and appearance of this street.

9. For the above reasons, I conclude that the development constitutes poor design and has caused significant harm to the character and appearance of the area. Therefore, the development does not accord with the design, character,

and appearance requirements of policies CP10 and CP17 of the Wigan Local Plan Core Strategy Development Plan Document 2013 (CS) and section 12 of the Framework.

Access to the alleyway

10. While the development has continued to ensure that there is still pedestrian access to the rear of the row of terraced properties, it is no longer possible to park a vehicle or to drive along the alleyway. Other interested parties have referred to the alleyway being previously used for the parking of vehicles and that this provided some relief from an on-street car parking demand point of view. I have very little information before me about this matter and the appellant has not provided any final comments which seek to address other interested party representations.

11. I find that the restrictive width of the alleyway and hence the inability to access the rear of properties from parked vehicles, even on a temporary basis (e.g., construction or maintenance work), does have the potential to put additional pressure on the surrounding highway network from a car parking demand point of view. While my site visit was only a snapshot in time, I noticed that there was limited spare capacity to park vehicles in this part of High Street. To the extent that the alleyway might have been used for car parking purposes in the past, it is possible that the breach of planning control has had the effect of putting additional pressure on High Street in a situation where my site visit revealed limited spare capacity to park vehicles.

12. Furthermore, the removal of the potential to use the alleyway by vehicles for either car parking, or for occasional access to the rear of the terraced dwellinghouses, has rendered the existing terraced properties less accessible for both existing and future residents. In this regard, I find that harm has been caused to the living conditions of neighbouring residents.

13. For the above reasons, I am unable to conclude that the restricted access has not caused harm from an on-street car parking demand point of view. Furthermore, I find that harm has been caused to the living conditions of existing and future occupiers of the row of terraced dwellinghouses in terms of being able to conveniently access the rear of such properties using a private motor vehicle. Therefore, the breach of planning control has unacceptably restricted the width of the alleyway causing harm to the living conditions of the occupiers of the row of terraced properties. Consequently, the development does not accord with the amenity requirements of policy CP17 of the CS and paragraph 135(f) of the Framework.

Other Matters

14. The appellant has referred to other planning applications for boundary treatments which have been approved. These developments are not within the same area as the appeal development. I have considered the ground (a) appeal based on the context of the immediate locality and on its individual planning merits. The existence of the other planning permissions does not alter or outweigh my conclusions on the main issues.

15. The appellant states that the breach of planning control has created a safe and secure play area. I accept that the outside amenity space is now larger because of the material change of use and the erection of the wooden fence. However,

the appellant does not provide any information about how and why the previous outside amenity space was not secure or safe. In any event, the desire to create a safe and secure outside amenity space need not be achieved by the erection of a wooden fence. This could have been achieved by erecting an in-keeping brick wall. However, the consideration of such an option would not have addressed my access concerns outlined above.

16. The appellant has referred to fly-tipping in the alleyway. This is not substantiated in terms of any objective evidence. In any event, the alleyway is not fully enclosed and so the potential for fly-tipping remains. Furthermore, the Council has separate powers to deal with unauthorised fly-tipping or untidy land. This is not therefore a matter which would justify allowing harmful development.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. In reaching this decision, I have considered the supportive comments made by other interested parties. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR