



Appeal Decision

Site visit made on 1 May 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2ND MAY 2024

Appeal Ref: APP/C4235/C/23/3335972

Land at 5 Hibbert Street, Reddish SK5 7LP

- 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 Paul Hunt against an enforcement notice issued by Stockport Metropolitan Borough Council.
- The enforcement notice was issued on 17 November 2023.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the material change in the use of the land from a passageway to a residential use including the erection of a rear timber extension into a public access area.
- The requirements of the notice are to 1. Cease the use of the land as part of the garden/yard of 5 Hibbert Street and 2. Remove the timber extension at the rear of the property.
- The period for compliance with the requirements is six 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 is corrected by deleting the words '*it appears to the Council that the above breach of planning control has occurred within the last four (4) years*' in paragraph 4 and replacing them with '*it appears to the Council that the above breach of planning control has occurred within the last ten (10) years*'. Subject to this correction, the appeal is allowed and the enforcement notice is quashed. 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 already carried out, namely the material change in the use of the land from a passageway to a residential use including the erection of a rear timber extension into a public access area on the land shown hatched red on the plan attached to the notice.

The Notice

2. The breach of planning control refers to a material change in the use of the land '*including*' the erection of a rear timber extension. A material change of use notice has therefore been issued, and not a material change of use and operational development notice. The reference to '*including*' means that the Council is of the view that the rear timber extension is part and parcel of the material change of use of the land. In other words, the breach of planning

control is worded in such a way as to allege that the rear timber extension has facilitated the material change of use of the land.

3. Notwithstanding the above, and the clear references to a material change of use of the land in the Council's statement of case, paragraph 4 of the notice states '*it appears to the Council that the above breach of planning control has occurred within the last four (4) years.*' This is incorrect and should in fact refer to '*ten years*' in accordance with section 171B (3) of the Act. A ground (d) appeal has not been lodged by the appellant, i.e., that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
4. Given the above, I shall correct paragraph 4 of the notice, without injustice being caused to the main parties, by deleting the words '*it appears to the Council that the above breach of planning control has occurred within the last four (4) years*' and replacing them with '*it appears to the Council that the above breach of planning control has occurred within the last ten (10) years.*'

Main Issues

5. 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, the Council's statement of case, and the appellant's grounds of appeal, and the main issues are the effect of the breach of planning control on (i) the character and appearance of the area, and (ii), the safe and convenient use of the rear access by pedestrians and motorists.

Reasons

Character and appearance

6. I was able to walk the rear access between Hibbert Street and Greg Street as part of my site visit. I experienced a general inconsistency to the position of the boundary treatments to the rear of the terraced dwellinghouses and, at points, a narrowing of the rear access. Moreover, I could see that the boundary treatments to the rear of the properties consisted of a combination of brick walls and wooden fences. The area had a tranquil feel and there was no vehicular or pedestrian activity, although a van was parked to the rear of No. 161 Greg Street just before a point where the rear access becomes overgrown and narrow in width.
7. I have no evidence before me about the lawful status of the position of residential gardens in this area, including the position of boundary treatments relative to the alignment of the original rear access. In this context, I have determined the appeal based on the site conditions that I could see as part of my site visit.
8. The Council claims that there is uniformity to the layout and pattern of development alongside the access. I do not agree with this view. The rear access is not the same width along its full length and there is a mixture of brick walls and wooden fences in the locality. In this regard, the appeal development does not look materially out of place.
9. I acknowledge that owing to the position of the timber extension, it does to some extent result in a pinch point along the rear access. However, this is not

to such an extent that it looks out of place. Indeed, there is a lack of uniformity in this regard across the rear access as a whole.

10. I find that the extension suitably assimilates with the mixed brick and wooden boundary treatments in this area. The extended garden area, including the extension, takes up a small amount of space and it is not experienced as being disproportionately large, prominent, or out of character in its immediate context.
11. For the above reasons, I conclude that the breach of planning control has not caused harm to the character and appearance of the area. Consequently, it accords with the design, character, and appearance requirements of policies SIE-1 and CS-8 of the Stockport Metropolitan Borough Council Local Development Framework Core Strategy DPD 2011 (CS), saved policy CDH1.8 of the Stockport Unitary Development Plan 2006, the Council's 'Extensions and Alterations to Dwellings' SPD 2011, and chapter 12 of the National Planning Policy Framework 2023 (the Framework).

Use of the rear access

12. While the use of the land for residential purposes, including the position of the rear timber extension, has narrowed the width of part of the access serving the rear of properties on Hibbert Street and Greg Street, I am nonetheless satisfied that it would still be possible to gain access to the dwellinghouses using a motorised vehicle.
13. Indeed, I noticed on my site visit that a white van was parked in the rear access and beyond the breach of planning control (approximately behind No. 161 Greg Street). Consequently, it must be the case that the unauthorised development has not narrowed the rear access to the point where it unacceptably interrupts the convenient movement of vehicles. Owing to the width of the rear access beyond the position of the white van, it is reasonable that I conclude that the motorist will have needed to pass the breach of planning control prior to parking the van.
14. I acknowledge that the breach of planning control has narrowed the rear access and so therefore there is no longer the same amount of space for pedestrians to wait while a vehicle passes. However, and noting that my site visit was only a snapshot in time, I do not find that there is likely to be very significant use of this part of the rear access by vehicles and, furthermore, given its width, surface, and bends, I consider that traffic speeds are likely to be very low. In this context, I find it likely that pedestrians would be suitably alerted to any oncoming vehicles and would have time to find an area elsewhere within the access to stand in safety.
15. On the evidence that is before me, I therefore conclude that the development has not caused unacceptable harm to the convenient and safe use of the access for pedestrians and motorists. In this regard, I therefore find no conflict with the amenity and safety requirements of policy SIE-1 of the CS, or paragraph 115 of the Framework.

Ground (a) appeal conclusion

16. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the

reasons given above, I therefore conclude that the ground (a) appeal should be allowed.

Overall Conclusion

17. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for development as described in the notice as corrected.

D Hartley

INSPECTOR