



Appeal Decision

Site visit made on 13 May 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th MAY 2024

Appeal Ref: APP/U4230/C/24/3336899

60-62 Chorley Road, Swinton, Manchester, M27 5AD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Hoshmand Mahmood against an enforcement notice issued by Salford City Council.
 - The notice was issued on 14 December 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of unadopted land for retail purposes and the erection of a single storey extension to the front of the shop.
 - The requirements of the notice are to: 1. Cease the use of the land situated to the front of 60-62 Chorley Road for retail purposes, 2. Remove the front extension from the land which is situated in front of 60-62 Chorley Road, and 3. Remove all demolition materials from the site.
 - The period for compliance with the requirements is: 90 days.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 (as amended). 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.
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Decision

1. It is directed that the enforcement notice is corrected in section 3 by the deletion of the words *"It appears to the Council that the above breach of planning control has occurred within the last 10 years"* and their substitution with the words *'It appears to the Council that the material change of use of unadopted land for retail purposes has occurred within the last ten years and the erection of a single storey extension at the front of the shop has occurred within the last four years'*. Subject to the correction, the appeal is dismissed, 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.

The Notice

2. The notice relates to both a material change of use of the land and operational development. In section 3 of the notice, it should therefore refer to the material change of use of the land occurring within the last ten years and the operational development occurring within the last four years.
3. 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. Comments are, however, raised by the appellant about the use of the land to the front of the building for retail purposes as part of the grounds (a) and (f) appeals. The appellant states that it has been *'used in conjunction with*

the retail shop for many years' and 'the forecourt has established retail use, over ten years, and the use of the forecourt could carry on as before with trestle tables and the like displaying goods including fruit and vegetables.'

4. The appellant does not seek to make a case that the operational development took place more than four years ago. I shall therefore correct 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 10 years*' in section 3, and replacing them with '*It appears to the Council that the material change of use of unadopted land for retail purposes has occurred within the last ten years and the erection of a single storey extension at the front of the shop has occurred within the last four years*'. I deal with the use of the land to the front of the appeal building again as part of the consideration of the ground (f) appeal.

Ground (a) appeal and the deemed planning application

Reasons

5. An 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 Council's statement of case, and the main issue is the effect of the development on the character and appearance of the area.
6. The appeal property is mid-terraced and it is in use as a shop. It fronts Chorley Road which is heavily trafficked and where there is a mixture of commercial and residential uses. On this side of Chorley Road, there is a noticeable consistency to the linear position of the properties with spacious and open forecourts and amenity spaces, many with enclosing dwarf brick walls. This provides some welcome relief to the otherwise built form. Overall, this part of Chorley Road is experienced by passers-by as having a pleasing consistency to the pattern of development. In other words, there is generally a common building line in this part of Chorley Road, and this adds positively and distinctively to the character and appearance of the area.
7. The single storey extension has glazed elevations and a shallow lean-to roof. Owing to its height, depth and position, it unacceptably detracts from the general uniformity afforded to the building line and the spacious open frontages of the properties on this side of Chorley Road. While the appellant has commented that he would be prepared to remove the advertisements and graphics from the windows, this would not be sufficient to overcome the significant harm that has been caused to the pattern and character of the development in the locality. I find that even if the advertisements and graphics were to be removed, the extension would still appear dominant and incongruous in the street-scene for the reasons outlined.
8. In reaching the above conclusion, I have considered comments made by the appellant that there are other similar extensions elsewhere in Chorley Road. However, these front projections are not directly analogous. They are either in the form of residential bays or very small front projections. Unlike the appeal development, they are not dominant or conspicuous in the street-scene and the general consistency to the building line and spacious forecourts and amenity spaces is very apparent when passing-by.

9. Given the height and projection of the extension, I do not find that it has caused harm to the living conditions of the occupiers of neighbouring properties in terms of light, privacy, or outlook. Furthermore, the breach of planning control has made efficient use of land. In this respect, I do not find conflict with policies D5 and EF1 of the adopted Salford Local Plan: Development Management Policies and Designations 2023 (LP) as referenced in the notice. Nonetheless, these are neutral matters in the planning balance.
10. For the reasons outlined above, I find that significant harm has been caused to the character and appearance of the area. Therefore, I conclude that the development has failed to accord with the design, character, and appearance requirements of policies D1, D2 and D3 of the LP and chapter 12 of the National Planning Policy Framework 2023.

Other consideration

11. I recognise that the extension has resulted in an improved retail offer for the local community and that the expansion of the business has likely resulted in some economic benefits from a business point of view. However, these matters must be weighed against the significant harm that has been caused to the character and appearance of the area which is a matter of overriding concern.

Ground (a) appeal conclusion

12. I conclude that the development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Ground (f) appeal

13. An appeal made under ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.
14. The claim made by the appellant is that the land to the front of the building has historically been used for retail purposes and has become lawfully established. On that basis, the appellant considers that requirement 1, i.e., cease the use of the land for retail purposes, is an excessive requirement. A ground (d) appeal has not been lodged by the appellant. Furthermore, and, in any event, I have not been provided with any reasonable or objective evidence to demonstrate that the land to the front of the host property has been used continuously for a period of ten years for retail purposes. In addition, the appellant has not lodged a ground (b) appeal, i.e., that a material change of use from unadopted land for retail purposes has not occurred.
15. To the extent that there may be hidden ground (b) and (d) appeals, the onus is on the appellant to make their case on legal grounds. It is noteworthy that the removal of the extension would in turn lead to the associated material use of the land ceasing for retail purposes.
16. In the context of the above, I have considered whether it would be acceptable to delete requirement No. 1 of the notice. In the absence of any objective or credible evidence to demonstrate that a material change of use of the land from unadopted land to retail purposes has occurred continuously for a period

of ten years and/or that the land has always formed part and parcel of the retail planning unit, I find that the steps in the notice are not excessive. In other words, it is necessary that notice includes requirement No. 1.

17. Indeed, in the absence of requirement No. 1, and given section 173(11) of the Act, a varied notice would then permit the storage/sale of retail goods within the land to the front of the host property which, in turn, could potentially lead to unacceptable harm being caused to the character and appearance of the area for similar reasons as outlined in my consideration of the unauthorised extension as part of the ground (a) appeal.
18. The purpose of the notice is to remedy the breach of planning control. For the reasons outlined above, the steps required by the notice are not excessive. The steps are required to remedy the breach of planning control. Therefore, I conclude that the ground (f) appeal fails.

Ground (g) appeal

19. An appeal made under ground (g) is that the period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The notice gives the appellant ninety days to comply with the requirements of the notice.
20. The appellant claims that ninety days falls short of what should reasonably be allowed. He states that twelve months is needed so that he can instruct a contractor to remove the extension, to make plans to close the business while work is being undertaken, to raise funds so that work can be carried out, and to reconfigure the shop internally.
21. The Council states that the extension was erected over a period of about one month. This has not been disputed by the appellant. In this context, I do not find that it would take a long time to dismantle the extension. Even accounting for up to one month to dismantle the extension, this would afford the appellant a further two months to have instructed a contractor and to make other necessary arrangements. The appellant has not reasonably substantiated why twelve months would be needed, as distinct from 90 days, to internally reconfigure the shop.
22. While I appreciate that removal of the extension would likely cost the appellant some money, I have not been provided with specific evidence of financial hardship, or any other evidence to justify why a period of more than ninety days would be needed. Moreover, while I do not doubt that compliance with the requirements of the notice would likely have some negative impact on the operation of the business, this is likely to happen whether the work is carried out in ninety days or whether it is carried out in twelve months.

For the above reasons, I conclude that the compliance period is reasonable. It is a proportionate response to remedying the breach of planning control in the public interest. Therefore, I conclude that the ground (g) appeal fails.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the corrected enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

D Hartley

INSPECTOR