



Appeal Decisions

Site visit made on 21 January 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 JANUARY 2025

Appeal A Ref: APP/C4235/C/24/3342692

6-8 Shaw Road, Heaton Moor, Stockport, SK4 4AE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Samad Niroomandfard against an enforcement notice issued by Stockport Metropolitan Borough Council.
- The notice was issued on 14 March 2024.
- The breach of planning control as alleged in the notice is without planning permission, replacement of wooden sliding sash windows to the first floor of Shaw Road elevation of the property, and the replacement of the ground floor front existing conservatory extension windows and door with metal framed windows and door.
- The requirements of the notice are to (1) remove the u-PVC/aluminium window frames from the bay and flat windows to the first-floor front (Shaw Road) elevation of the property and replace them with wooden sliding sash windows which are a match for those removed as shown in the attached image marked A (Annex B); (2) paint the first-floor windows in white using microporous paint that is formulated for use on the exterior woodwork; (3) remove the metal windows, doors and frames to both the front and side of the conservatory extension to Shaw Road then reinstate wooden windows and doors so that in terms of their size and design they replicate the windows, door and frame removed as shown in the attached image marked B (Annex B).
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f), (g) of the Town and Country Planning Act 1990 (as amended).

Appeal B Ref: APP/C4235/C/24/3338588

6-8 Shaw Road, Heaton Moor, Stockport, SK4 4AE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mt Samad Niroomandrad against an enforcement notice issued by Stockport Metropolitan Borough Council.
- The notice was issued on 15 January 2024.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the resurfacing of the customer car park and the construction of a breezeblock and rendered wall with a gate around the car park.
- The requirements of the notice are to (1) remove the breezeblock and rendered wall used to construct the boundary of the car park with Shaw Road and along the boundary of 110 Heaton Moor Road from the land, (2) remove the tarmac used to surface the car park from the land, and (3) remove the sliding metal gate across the car park access from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(f), (g) of the Town and Country Planning Act 1990 (as amended).

Appeal C Ref: APP/C4235/W/24/3338591

6-8 Shaw Road, Heaton Moor, Stockport, SK4 4AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Mark Thomas Flaherty (Elmfield Planning) against the decision of Stockport Metropolitan Borough Council.
- The application Ref is DC/089669.

- The development proposed is described as alterations to shop frontage, new wall and gate to customer car park and resurfacing customer car park.
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Decisions

Appeal A Ref: APP/C4235/C/24/3342692

1. The appeal is dismissed, and the enforcement notice is upheld.

Appeal B Ref: APP/C4235/C/24/3338588

1. It is directed that the enforcement notice is varied by the deletion of the words in section 5(1) of the notice and their substitution with the words *"remove the breezeblock and rendered wall used to construct the boundary of the car park with Shaw Road and along the boundary of 110 Heaton Moor Road from the land"*. Subject to the variation, the appeal is dismissed, and the enforcement notice is upheld.

Appeal C Ref: APP/C4235/W/24/3338591

2. The appeal is dismissed.

Preliminary Matter

3. The National Planning Policy Framework was revised in December 2024 (the 2024 Framework). This replaces the previous version of the National Planning Policy Framework published in December 2023. The 2024 Framework has not materially changed in terms of the main issues that relate to Appeal C. It has not therefore been necessary for me to seek comments from the main parties about the implications of the 2024 Framework.

Reasons

Appeal A Ref: APP/C4235/C/24/3342692

The Notice

4. The appellant asserts that the breach of planning control is not precise in so far that the notice is not attacking the windows (i.e. the glazed element), but instead the window frames. I am satisfied that reference to 'windows' in the breach of planning control, as distinct from window frames, is acceptable in this case. While the notice is not attacking the glazing element of the subject windows, the glazing is nonetheless part and parcel of the 'windows' which includes the window frames. It is clear from the evidence that the notice is attacking the window frames and door, and this is how the appellant has made his case under the various grounds of appeal. I am satisfied that the notice sufficiently describes the breach of planning control.

Appeal on ground (c)

5. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The appellant claims that breach of planning control has not occurred as the window frames and door to the front conservatory (the evidence indicates that planning permission was approved for it by the Council in 2004) were originally painted aluminium and that they have been replaced with new

aluminium window frames and a door. The appellant does not dispute that the former wooden windows at first-floor Shaw Road facing elevation have been replaced with windows that are of different material, colour, and design.

6. The onus is on the appellant to make his case on legal grounds. The appellant applied to the local planning authority for planning permission for the development which is the subject of this notice. On the planning application form (i.e., prior to the breach of planning control taking place), it refers to the existing materials to the shop frontage as *'timber windows coloured brown'* and the proposed material as *'aluminium window frames, coloured black, with higher energy efficiency'*. The appellant states that this was an error. The claimed error is without any clear explanation from the appellant, and, in my judgement, it is a matter that casts sufficient doubt about the claim that the conservatory window frames, and door, were originally aluminium. The evidence does not support with certainty that the appeal property originally had aluminium window frames and a door.
7. The appellant states that a 2008 Google Street-View image of the property shows that the window frames and door of the conservatory were originally aluminium. I have considered the above image, and it is not possible to determine from this image if the conservatory window frames being installed are wooden or aluminium. The appellant says that they were aluminium, but the planning application form evidence casts doubt about this claim and, moreover, the appellant's evidence does not include objective evidence to support the claim made such as for example detailed sales invoices/receipts referring to the type of window frames and door installed, or a statutory declaration from the shop fitter.
8. I conclude that the appellant's evidence does not precisely and unambiguously demonstrate that the conservatory window frames, and door, had not changed from a brown wooden material to a black aluminium material. The appellant does not make a claim that the former white coloured wooden sash window frames were not replaced with materially different window frames at first floor (Shaw Road elevation).
9. In my judgement, and, on the balance of probability, I find that the conservatory was previously wooden and coloured brown and that white wooden sash windows were installed at first floor level. As a matter of fact and degree, I find that the evidence is that owing to the colour, material, finish and design changes made to the conservatory window frames and door, and first floor windows (Shaw Road elevation), the respective alterations have materially affected the external appearance of the building. In this regard, the alterations constitute an act of development under section 55 of the Act.
10. The development is not permitted given the limitation imposed in A.1(e) of Class A (non-domestic extensions and alterations) of Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This is because it states that development is not permitted by Class A if *'any alteration would be on article 2(3) land'*. The appeal property falls within the Heaton Moor Conservation Area and hence article 2(3) land.
11. For the above reasons, I conclude that the ground (c) appeal fails.

Appeal on ground (f)

12. The appeal made on 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.
13. The purpose of the notice is to remedy the breach of planning control by removing the unauthorised development and restoring the land to its previous condition in accordance with section 173(4)(a) of the Act. The appellant has made comments about other development in the area and has essentially introduced planning merits arguments as part of the ground (f) appeal. Such arguments are relevant to a ground (a) appeal and deemed planning application and no such appeal is before me.
14. The requirements of the notice do not exceed what is necessary to remedy the breach of planning control. Therefore, I conclude that the ground (f) appeal fails.

Appeal on ground (g)

15. The appeal on ground (g) is that the period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
16. The appellant claims that the six months compliance period is too short and that twelve months is needed. I do not find that the claim made that twelve months is needed to find a manufacturer to *'find new materials'*, or to paint the wood, has been reasonably or suitably justified. In this regard, I conclude that the evidence is that six months is a sufficient compliance period. Hence, the ground (g) appeal fails.

Appeal B Ref: APP/C4235/C/24/3338588

The Notice

17. There is a typographical error in requirement 5(1) of the notice. It states *"remove the breezeblock and rendered wall used to construct he..."* The word *'he'* should read *'the'*. I shall vary requirement 5(1) of the notice, without injustice being caused to the main parties, by replacing the word *'he'* with *'the'*.

Appeal on ground (f)

18. The appeal made on 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.
19. The appellant considers that an alternative scheme relating to the provision of 'red brick slips' to the unauthorised wall would ensure that the development does not cause harm to the character and appearance of the Heaton Moor Conservation Area. A ground (a) appeal and deemed planning application is not before me. Furthermore, the so-called alternative scheme would amount to a different breach of planning control. I cannot consider the planning merits of an alternative scheme as part of this ground (f) appeal. The appellant does not include any relevant evidence under his ground (f) appeal relating to the rest of the breach of planning control.

20. The purpose of the notice is to remedy the breach of planning control by removing the wall, sliding metal gate, and the tarmacadam which has been used to surface the existing customer car park. In this regard, the requirements of the notice are not excessive as they remedy the breach of planning control.
21. For the above reasons, I conclude that the ground (f) appeal fails.

Appeal on ground (g)

22. The appeal on ground (g) is that the period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
23. The appellant claims that the three months compliance period is too short and that nine months is needed. He claims that nine months is needed to *'ensure that the appellant has sufficient resources to fund and complete the extensive remedial works'* and that he has *'invested significant personal resource in renovating the site to create a new restaurant'*.
24. While I do not doubt that the appellant has invested financially in the site, I do not have any objective evidence before me to indicate that it would be financially unviable for the appellant to ensure compliance within three months as distinct from the requested nine months. I therefore conclude that the ground (g) appeal fails.

Appeal C Ref: APP/C4235/W/24/3338591

Proposal and Main Issues

25. The proposal does not include all the development which is the subject of the breaches of planning control in the notices under Appeals A and B. It does not include the alterations to the first-floor windows (Shaw Road elevation).
26. The proposal is for alterations to the conservatory in the form of black coloured aluminium frames (with sliding windows) and with a white coloured rendered lower wall; a black metal sliding gate to the customer car park; a white coloured rendered wall to the customer car park (front and side) with piers with black coloured stone copings; and the application of a tarmacadam finish to the customer car park. Planting is proposed on top of the wall fronting Shaw Road. Most of the development which is the subject of this planning application is already in place.
27. The main issues are (i) whether the development preserves or enhances the Heaton Moor Conservation Area, and (ii), whether the development provides sufficient on-site surface water drainage and hence would not give rise to an unacceptable risk of flooding on the adjacent highway.

Heaton Moor Conservation Area

28. The appeal property occupies a prominent position within Shaw Road and within the Heaton Moor Conservation Area (CA). While there have been some alterations to some of the buildings in the CA as a whole, its significance and distinctiveness relates to the construction of traditional buildings which include traditional building materials such as stone, brick and wood. While there are some exceptions, many of the residential and commercial properties in the area have a very traditional appearance. This includes Shaw Road which also includes complementary traditional streetlights. Trees, hedges and mainly stone or brick boundary walls reflect the leafy, rural character of the earlier agricultural use of this area.

Collectively these attributes add positively and distinctively to the significance of the CA as a whole.

29. The evidence is that the conservatory fronting Shaw Road originally had wooden window frames and a door. I find that the use of black aluminium frames (as already in situ) has a more modern finish and texture than wood and hence harm has been caused to the significance of the CA. This harm would be compounded owing to the proposal to include a rendered lower wall to the conservatory which would replace the existing brickwork. This would fail to assimilate well into the street-scene where the use of either coursed brick or stone is a positive and defining feature.
30. The boundary wall around the customer car park has already been constructed. Owing to its colour and rendered finish, it has a particularly jarring impact when experienced from within this part of the CA. The use of bright coloured render is not an appropriate or sympathetic material in this part of the CA and, moreover, the use of several piers has the effect of drawing unacceptable attention to what is a dominant and discordant form of development when appreciated by passers-by. While trailing vegetation may seek to soften the harmful impact to some extent, this would likely take some time to reach maturity and, in any event, may not endure forever.
31. While I find that the use of a sliding and essentially open gate is acceptable in principle in this location, I do not know why it needs to be so tall or indeed why it could not be at a height that reflects the boundary wall (without the piers). I find that it is unjustifiably dominant when seen in the street-scene, particularly when seen alongside the harmful boundary walls (with piers).
32. I have considered the tarmacadam surface which has been applied to the historic customer car park. The photographic evidence shows that this has been a customer car park for many years although the land was not properly surfaced in all areas. In the context of what the land looked like previously, I do not find that this part of the proposal has caused harm to the CA. While I acknowledge that the Council's Conservation Officer would have preferred to see a resin bonded finish in a muted colour, in the context of the appearance of the customer car park before the tarmacadam finish was applied, I find that this development has enhanced the CA. Indeed, this part of the land previously had a very unfinished and unattractive appearance. However, I have found that this part of the development is unacceptable for other reasons (see below).
33. Other than the tarmacadam customer car park, I find that the rest of the proposed development has caused or would cause less than substantial harm to the significance of the CA. In the context of paragraph 215 of the 2024 Framework, I do not find that the less than substantial harm that has been or would be caused to the CA is outweighed by any of the appellant's identified public benefits. Any such benefits include the replacement of an unfinished customer car park surface with a marked-out tarmacadam customer car park surface.
34. For the above reasons, I therefore conclude that the development as a whole does not accord with the character, appearance and conservation requirements of policies SIE-1 and SIE-3 of the adopted Stockport Core Strategy DPD 2011 (CS), saved policy HC1.3 of the adopted Stockport Unitary Development Plan 2006 (UDP), and chapters 10 and 16 of the 2024 Framework.

Drainage and flooding

35. I have not been provided with details relating to the proposed tarmacadam surface for the customer car park relative to the permeability of the land that was previously used for customer car parking surfaces. The photographic images before me indicate that it may have been the case that the land was more porous previously given the finish to parts of the customer car park. While reference is made previously to the use of concrete for customer car park, the images that are before me do not demonstrate with certainty that the whole of the land was concrete. The onus was on the appellant to make his case in this regard.
36. The appellant claims that the tarmacadam surface is permeable or porous. However, this is not supported with any objective technical evidence. It is noteworthy that the Lead Local Flood Authority has raised an objection to the tarmacadam customer car park as they cannot conclude that it would not give rise to surface water drainage flooding on the adjacent highway.
37. In the absence of robust technical evidence to demonstrate that either the tarmacadam customer car park would not give rise to surface water drainage flooding on the highway, and/or that measures could be put in place to ensure satisfactory drainage on site, I cannot conclude that this part of the development is acceptable from a surface water drainage point of view, and hence that it would ensure that the adjacent highway remains safe for all users and at all times.
38. The appellant has indicated that he would be prepared to accept a planning condition which required the submission of a surface water drainage assessment. This is a matter that goes to the heart of the acceptability of the tarmacadam customer car park. It is not appropriate to impose a condition in this way as it remains possible that such a condition may not be capable of being complied with. A possible inability to comply with such a condition would effectively negate any such planning permission.
39. For the above reasons, I cannot conclude that the tarmacadam customer car park accords with the drainage requirements of policies SD-6 and SIE-3 of the CS, saved policy EP1.7 of the UDP, and paragraph 164(a) of the 2024 Framework.

Other considerations

40. The appellant has referred to the use of other modern materials in Shaw Road. Indeed, he has referred me to some properties where black window frames are in place. I do not know the exact circumstances which led to these developments occurring. In any event, I have considered the impact of the proposed development on the significance of the CA as a whole. In this case, the existence of other window frames which may be aluminium and black in colour does not alter or outweigh the identified harm that has been caused to the significance of the CA as a whole.

Ground (a) appeal conclusion

41. For the reasons given above, I conclude that the development would 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.

Overall Conclusions

Appeal A Ref: APP/C4235/C/24/3342692

42. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Appeal B Ref: APP/C4235/C/24/3338588

43. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Appeal C Ref: APP/C4235/W/24/3338591

44. For the reasons given above, the appeal should be dismissed.

D Hartley

INSPECTOR