



Appeal Decisions

Site visit made on 5 February 2025

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

an Inspector appointed by the Secretary of State

Decision date: 6 FEBRUARY 2025

Appeal A Ref: APP/Q4245/C/24/3343162

Cafe Bar 846, 846 Chester Road, Stretford, Manchester, M32 0QJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Gareth Langmead against an enforcement notice issued by Trafford Metropolitan Borough Council.
 - The notice was issued on 22 March 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of timber extensions to front, side and rear and the material change of use from café (Class E) to a drinking establishment (Sui Generis).
 - The requirements of the notice are to 1. cease the use of the premises as a drinking establishment; 2. remove from the garage all customer seating and bar furniture, including service counter, beer taps, optics and any other beverage dispense equipment; 3. remove the timber extensions shown edged blue on the attached drawing No. 2966-EL-01; 4. return the land to its condition before the breach took place as indicated on the attached drawing No 2965-EL01, and 5. remove from the land all building materials, rubble and waste arising from carrying out the above steps.
 - The period for compliance with the requirements is three months.
The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (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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Appeal B Ref: APP/Q4245/W/24/3343003

Cafe Bar 846, 846 Chester Road, Stretford, Manchester, M32 0QJ

- 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 Gareth Langmead against the decision of Trafford Metropolitan Borough Council.
 - The application Ref is 111964/FUL/23.
 - The development proposed is the erection of front, side and rear gazebo style timber extensions to the property including covered external seating and side w/c room. Change of use for the rear yard and garage from its current use of storage to be used as a bar and a beer garden.
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Decisions

Appeal A Ref: APP/Q4245/C/24/3343162

1. It is directed that the enforcement notice is varied by the deletion of the words "*The period for compliance is to be three months after this notice takes effect*" in section 6, and their substitution with the words "*The period for compliance is to be six months after the notice takes effect for requirement 1 and three months after this notice takes effect for requirements 2, 3, 4 and 5*". Subject to the variation, 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.

Appeal B Ref: APP/Q4245/W/24/3343003

2. The appeal is dismissed.

Preliminary Matters

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 identified main issues below. It has not therefore been necessary for me to seek comments from the main parties about the implications of the 2024 Framework.
4. In respect of Appeal A, the appellant has commented that the alleged material change of use from a café (Class E) to a drinking establishment (Sui Generis) has not taken place. This is a hidden appeal made on ground (b) of section 174(2) of the Act. Appeal A is therefore also proceeding on ground (b) of section 174(2) of the Act.
5. In respect of Appeal B, I have taken the description of development from the Council's refusal notice, rather than from the planning application form, as it is more precise and reflects the submitted drawings.
6. The appellant has confirmed that he '*no longer requests the change of use for the rear garden and garage. These areas will remain as per their current use as a storage area and bin store*'.
7. The evidence is that planning permission was approved retrospectively on 31 January 2020 for the appeal site for the change of use of the ground floor from a shop to a café and the installation of an extractor flue to the rear elevation¹.

Ground (b) of section 174(2) of the Act

8. Ground (b) is pleaded on the basis that the matters comprising the alleged breach of planning control have not occurred. The appellant acknowledges that the unauthorised operational development has occurred. His claim is that the material change of use of the premises to a drinking establishment has not occurred. The onus is on the appellant to make his case on any legal grounds.
9. The Council comments that the character of the activity on the land has changed from that which was primarily based on the sale of food, to one where the primary use is the sale of drinks (including alcoholic drinks) and with the ancillary sale of food. The Council comments that the available seating has been reduced, the café service counter has been replaced with an enlarged bar counter which contains beer taps and alcoholic beverages, and the '*the business regularly promotes events, and alcoholic offers at the premisses not commonly associated with a café use*'. The appellant does not dispute what the Council says about these matters.
10. I have also considered comments made by other interested parties and such evidence indicates that when the notice was issued, the land/premises was in primary use as a drinking establishment, albeit that some food was also served. The evidence indicates that the land/premises has been set up with football match days in mind, and where the consumption of drink has been the primary business

¹ Planning permission reference number 99354/FUL/19

focus. The evidence indicates that the associated comings and goings of customers, including the gathering of customers outside the building, has increased at peak times, particularly on football match days (the site is very close to the Manchester United stadium). Overall, the evidence demonstrates that the character of the activity on the land has materially changed because of the primary use of the land as a drinking establishment.

11. As a matter of fact and degree, and based on the evidence that is before me, I find that the matters comprising the alleged breach of planning control, including the identified material change of use of the land, have occurred. The appellant has not provided me with any clear, objective or unambiguous evidence to counter the position reached by the Council in respect of this matter. Therefore, I conclude that the ground (b) appeal fails.

Ground (a) appeal and the deemed planning application and Appeal B

Main Issues

12. The main issues in respect of both appeals are the effect of the development on (i) the character and appearance of the area, and (ii) the living conditions of the occupiers of neighbouring residential properties in respect of noise and disturbance.

Character and Appearance

13. The appeal property falls within a terrace of other ground floor commercial uses on Chester Road. It is located within a prominent corner plot position at the junction of Wesley Street with Chester Road. There is a pleasing design consistency to the character and appearance of the brick-built terrace of properties in Chester Road and the forecourts are essentially open thereby ensuring that the architectural details of the terrace of properties are clearly visible to passers-by. The open or undeveloped forecourt arrangement continues in respect of other blocks of terraced properties further down Chester Road. This adds positively and distinctively to the character and appearance of the area.
14. The wooden structure to the front and side of the property, including its plastic translucent roof, does not assimilate well with the mainly traditional brick-built buildings that exist within the locality, including the subject terrace of properties. The wrap around structure is experienced as a large, dominant and intrusive form of development in the street-scene. It materially detracts from the otherwise open forecourts that prevail in Chester Road. This harm is compounded in so far that large parts of the front and side elevations of the property are now concealed from view and replaced with a discordant and dominant wrap around structure.
15. The unauthorised operational development in the rear yard area of the property also fails to assimilate well with the brick built dwellinghouses and church in Wesley Street. Owing to its size, colour and wooden material, this part of the development has a visually jarring impact when experienced in the context of the surrounding development.
16. For the collective reasons outlined above, I find that the unauthorised operational development causes significant harm to the character and appearance of the area. It does not constitute good design. Therefore, the development which is the subject of Appeals A and B fails to accord with the design, character and

appearance requirements of policy L7.1 of the adopted Trafford Core Strategy 2012 (CS), policy JP-P1 of the adopted 2024 Places for Everyone Joint Development Plan Document 2022-2039, and chapter 12 of the 2024 Framework.

17. In reaching the above conclusion, I am mindful of the comment made by the appellant that tables and chairs could be positioned on the forecourt in association with the lawful use of the land. That may be the case, but tables and chairs are not permanent fixtures, would be capable of being positioned indoors when the lawful business was closed, and would not be of the same scale and appearance as the wrap around structure.

Living Conditions

18. The appeal property falls within a terrace of other ground floor commercial units. The evidence is that the upper floors of this terrace of properties includes flats. Immediately to the rear of the rear yard/garage associated with the 846 Chester Road is a terrace of dwellinghouses on Wesley Street. In respect of both appeals, the appellant accepts that use of the rear yard/garage for drinking purposes, or as a bar, causes harm to the living conditions of the occupiers of neighbouring properties in respect of noise and disturbance.
19. Given the close relationship of this land with properties on Wesley Street, and the potential for it to hold high numbers of people, some of which may spill out on the street, coupled with its independent access arrangement, I do not disagree that use of this part of the land by customers constitutes a materially harmful impact on existing and future occupiers of neighbouring residential properties from a noise and disturbance point of view. Given the location of the rear yard/garage, I do not find that the imposition of an hours of use or any other condition would suitably mitigate the harmful impacts.
20. The Council considers that it may be possible to allow the material change of use of the land (without the unauthorised operational development) subject to the imposition of conditions relating to hours of use, the prohibition of use of rear yard/garage by customers of or visitors to the premises, the submission of a noise impact assessment to establish noise levels and to determine if attenuation measures are needed, and the submission and approval of a noise management plan.
21. I have considered the above. While not using the rear yard/garage by customers of or visitors to the premises would be capable of being controlled by condition, it is noteworthy that there are flats above the terrace of buildings on Chester Road. I find that use of the land to the front and side of the appeal property by customers has at least the potential for unacceptable levels of noise and disturbance to occur for those that live in Wesley Street and Chester Road.
22. In the absence of a noise impact assessment from the appellant, which includes noise monitoring data with reference to background noise levels and maximum noise levels that would be possible from use of the outside areas when at full capacity, I cannot conclude with certainty that use of the land as a drinking establishment would not cause harm to the living conditions of the occupiers of the neighbouring residential properties and, secondly, that the Council's suggested noise condition, if I were minded to grant deemed planning permission, would be capable of ensuring that there is an acceptable residential living environment for occupiers of neighbouring residential properties. If I were to impose the Council's

suggested noise condition, it would suggest that I had already determined that the development could be made acceptable in noise terms, and I cannot reach that conclusion on the evidence that is before me.

23. In respect of Appeals A and B, I cannot therefore conclude that the primary use of the land as a drinking establishment would be capable being acceptable in noise and disturbance terms, even accounting for the imposition of a condition which did not permit use of the rear yard/garage by customers. In this regard, the evidence does not demonstrate accordance with the amenity requirements of policy L7.3 of the CS, and paragraphs 135(f) and 187(e) of the 2024 Framework.
24. I consider the above further as part of my assessment of Appeal A and the three months compliance period in the notice. Indeed, it may be possible for the appellant to consider this matter further as part of the submission of another, albeit different, planning application which relates to a primary drinking establishment use (at least without the rear yard/garage area used by customers), and with the resultant proposed use justified in terms of a professionally prepared and submitted noise impact assessment and any associated mitigation measures and controls.

Other Considerations

25. I acknowledge comments made by some interested parties that the business makes a positive contribution to community life. However, the requirements of the notice do not seek to remove the opportunity to run the business in such a way that it accords with the planning permission or lawful use of the site. Nor does upholding the notice mean that the appellant could not explore with the Council the option of serving both food and alcoholic beverages on the land and subject to clear and objective evidence demonstrating that any possible noise and disturbance issues would be capable of being fully mitigated. Therefore, it is not an inevitable outcome of this appeal that a facility, which is valued by members of the community, would have to cease in its entirety.
26. I recognise comments made by some interested parties, including 'Gorse Hill Alleys', about the loss of the W.C which is used by both customers and members of the public generally, particularly on football match days. I acknowledge comments made that prior to the W.C being in place some would urinate in streets and alleyways on football match days. In this regard, I do not doubt that the W.C has provided a 'community' type facility in the area and has helped to eliminate the possibility of such anti-social activity occurring in nearby streets, particularly on football match days. However, this matter must be weighed against the potential for one or more W.C to be provided inside the premises.
27. I recognise that the outside structures provide some outside shelter for customers. I have found that these have a harmful visual impact and, moreover, it may be possible for the appellant to explore a more sensitive design solution in this regard such as the provision of a retractable awning.

Ground (a) appeal and Appeal B conclusions

28. For the reasons outlined above, material harm has been caused to the character and appearance of the area because of both the wrap around structure and the structure in the rear yard. In respect of the primary use of the land as a drinking establishment, I am unable to conclude, on the evidence that is before me, that the

whole of the land (minus the rear yard area) would be capable of being acceptable in terms of the resultant impact on the living conditions of the occupiers of all surrounding residential properties. These are matters of overriding concern and are not outweighed by any other material planning considerations.

29. I conclude that the developments which are the subject of appeals A and B do not accord with the development plan for the area when considered as a whole and there are no material planning considerations that indicate the decisions should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails, and Appeal B should be dismissed.

Ground (g) of section 174(2) of the Act

30. The appellant has not appealed on ground (g) of section 174(2) of the Act which is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed. However, I have the power to vary the terms of the notice, where it would not cause injustice to the main parties, under section 176(1)(b) of the Act.
31. While there is no evidence before me to indicate that the unauthorised operational development cannot reasonably be removed within the compliance period of three months, my reasoning above in terms of the use of the land as a drinking establishment indicates that it may be possible to secure planning permission for part of the land (including land outside) for such a use, subject to the submission of a noise impact assessment and, if necessary, the provision of mitigation measures and controls. In this context, I find that the compliance period should be extended to six months.
32. I find that a compliance period of six months would afford the appellant, should they so wish, the opportunity to prepare a noise impact assessment, to submit a new albeit different planning application for a drinking establishment, and for any such planning application to be determined. In view of the comments made by the Council in respect of the drinking establishment use, I find that such a variation is reasonable and proportionate. If a planning permission was subsequently approved for some form of drinking establishment on the land, then in accordance with section 180(1) of the Act the notice would cease to have effect in so far as it was inconsistent with that planning permission.
33. I shall therefore vary the compliance period in the notice from three to six months in so far as it relates to the use of the land as a drinking establishment. Given the circumstances of the appeal, I do not find that this would cause injustice to either of the main parties.

Conclusions

Appeal A Ref: APP/Q4245/C/24/3343162

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

Appeal B Ref: APP/Q4245/W/24/3343003

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

D Hartley

INSPECTOR