



Appeal Decision

Site visits made on 4 and 5 February 2025

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 APRIL 2025

Appeal Ref: APP/B4215/C/24/3347933

Land at 101 Manchester Road, Chorlton, Manchester M21 9GA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Chorlton Takeaway Sales Limited against an enforcement notice issued by Manchester City Council.
- The notice was issued on 13 June 2024.
- The breach of planning control as alleged in the notice is without planning permission, the installation of a shop front and external roller shutters.
- The requirements of the notice are to:
 1. Remove the roller shutters, shutter box and shutter guides.
 2. Remove the shop front.
 3. Restore the shop front to its condition before the breach took place, as shown on the attached photograph ENF/01.
 4. Remove all building materials rubble and waste arising from carrying out the above steps.
- The period for compliance with the requirements is: Three (3) months.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with variations.

Matters Concerning the Enforcement Notice

1. The appellant has outlined issues with the Enforcement Notice (Notice), which have caused me to consider whether it is necessary to correct and or vary the Notice under my powers under s176(1)(a) of the Town & Country Planning Act 1990 (1990 Act). These powers allow me to correct any defect, error or misdescription in the Notice or, under s176(1)(b), to vary the terms of the enforcement notice. In each case, the test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
2. Section 173 of the 1990 Act indicates that (1) An enforcement notice shall state— (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of section 171A (1) within which, in the opinion of the authority, the breach falls. There are two purposes which the requirements of an enforcement notice can seek to achieve. The first is section 173(4)(a), which is to remedy the breach of planning control and the second is section 173(4)(b), which requires the recipient to remedy any injury to amenity which has been caused by the breach.
3. In this case, the Notice refers to the installation of a shop front and external roller shutters. The Notice has been served with respect to section 171A (1) (a), which requires the roller shutters and the shopfront to be removed, and the shopfront restored to its condition before the breach took place. The appellant makes the case that reference to the installation of a shopfront as a whole is not appropriate when a

shopfront is divisible into individual elements and can include, amongst other things, glazing, doors, stall risers, pilasters and fascia boards. The appellant contends that the Notice should specify what component parts have been removed or altered as part of the allegation to form the shopfront and then what component parts need to be reinstated or retained as part of the requirements to remedy the breach.

4. I accept that a Notice must be drafted fairly to tell a recipient what he has done wrong and what he must do to remedy it¹. However, it is important to acknowledge that enforcement notices should only target development, and there are circumstances where alterations to parts of a shopfront may not amount to development². Based on the evidence before me, the changes that have been made by the appellant include several features of a shopfront. When taken together, the installation of the glazing, an entrance door and pilasters could fairly be described as the installation of a shopfront. Despite not describing specific components of the shopfront, I am of the view that the allegation as described does fairly tell the recipient what he has done wrong.
5. The requirement to remove the shopfront and restore it to its condition before the breach took place also seeks to remedy the breach of planning control and is consistent with the wording of 173(4) (a) of the 1990 Act. In the case where the allegation is the installation of a shopfront, but the requirements only require the reinstatement of component parts and not its removal, the purpose of the Notice would be to remedy any injury to amenity, and section 173 (11) of the 1990 Act would be engaged. Based on the evidence before me, that is not the purpose of the Notice in this instance, and the requirements fairly tell the recipient what he must do to remedy it. I can see no lesser steps or requirements other than those set out that would achieve the purpose of remedying the breach.
6. Step 3 of the requirements refers to a photograph attached to the Notice, referenced ENF/01. It was included to show the shopfront in its condition before the breach took place. It includes a blue line around the shopfront with no annotation on the photograph nor any reference to it in the Notice. The appellant suggests the Notice is defective by requiring the appellants to restore the premises in line with the photograph attached to the Notice. This is because they do not believe ENF/01 shows the shop front before the breach took place, highlighting a more recent Google Street View image from September 2023. It is also said that the blue line on the photograph makes it unclear what the Notice is asking the recipient to do.
7. The shopfront shown on ENF/01 is very similar to the more recent image on Google Street View, highlighted by the appellant. The differences are minor and largely relate to the colour of the door and window frame being changed from brown to blue. Nonetheless, since there are differences, ENF/01 is inconsistent with the wording of the requirement to restore the shopfront to its condition before the breach took place. I also agree that it is not entirely clear what the blue line on the photograph is indicating to the recipient.
8. Notwithstanding the issues with the attached photograph, in my judgement, the wording of the requirement to restore the shopfront to its condition before the breach took place is itself sufficiently clear. Although I accept that the appellants are seeking clarity on what work is required, it is unnecessary to provide such detail or direct the recipient to an image of the previous condition of the premises. In my judgement, the

¹ S173 of the 1990 Act

² as defined in section 55 (2) (a) of the 1990 Act

appellant would be best placed to know the previous condition, and the requirement to restore the shopfront to its previous condition, without reference to the photograph, is consistent with the wording in section 173(4)(a) of the 1990 Act.

9. I am satisfied this is a situation where I can use my powers to vary the Notice without causing injustice to either party. Given the wording of step 3, deleting the photograph and reference to it would not make the requirements any more onerous for the appellant nor cause any injustice to the Council's case. As such, I will delete the photograph attached to the Notice referenced ENF/01, and vary the wording of paragraph 5, step 3 of the Notice, by deleting the words, 'as shown on the attached photograph ENF/01.'

Application for Costs

10. An application for costs has been made, which is subject of a separate decision. The costs application is made by Manchester City Council against Chorlton Takeaway Sales Limited.

The Appeal on Ground (c)

11. The appeal on ground (c) is that the matters alleged in the enforcement notice have occurred but do not amount to a breach of planning control. To succeed on this ground, the appellant should demonstrate that, on the balance of probability, the matters stated in the enforcement notice are not a breach of planning control.
12. The appellant outlines in their ground (c) appeal that the roller shutters, shutter box and guidance are development and a breach of planning control. However, elements of the shopfront do not constitute a breach of planning control. The main contention is that a retractable canopy forms part of the shopfront and was approved in 2021, Council reference 130131/FO/2021. Also, following the Notice being issued, the Council granted advertisement consent at the premises for a fascia board, fascia sign and projecting sign on 14 June 2024, Council reference 139543/AO/2024. The advertisement consent will hereafter be referred to as the 2024 consent.
13. Based on the evidence before me, the shopfront connected with Ruyi Vegetarian House included a central door, a wooden framed window, a stall riser, pilasters on either side and a large fascia board. Attached to the front of the previous shopfront was a retractable canopy, some external lighting and a fascia sign. In contrast, and from what I saw, the 'Miami Crispy' shopfront is made predominantly of glass with a central glass doorway with orange-coloured casing on the pilasters on either side. In addition, it also had external roller shutters and housing, a retractable canopy with an advertised blind and a fascia sign for Miami Crispy.
14. The scale of the alterations to the shopfront goes beyond maintenance or refurbishment and amounts to another alteration that materially affects the external appearance of the building. The works would have been a building operation and, therefore, amounted to 'development' in line with section 55 of the 1990 Act. I have not been directed to any provision within the Town & Country Planning (General Permitted Development) (England) Order 2015 that permits the changes. A retrospective planning application was submitted for the installation of the new shop front, retention of a retractable canopy, and installation of new roller shutters together with associated elevational alterations³. However, this application was

³ Council reference 139542/FO/2024

refused on 14 June 2024. Accordingly, the installation of the shop front and roller shutters would have been a breach of planning control at the time the Notice was issued.

15. The appellants contend that the retractable canopy was granted planning permission in 2021, and forms part of the shopfront. However, in my judgement, the retractable canopy is attached but it does not form part of the shopfront. The retractable canopy is physically severable and was attached as a late addition following the grant of planning permission. This is compounded by the fact the appellant confirms it was removed from the previous shopfront and reattached, and it is set out separately from the shopfront changes in the description of the development in the refused application to regularise the development carried out on site⁴.
16. Further to the above, I can only have regard to the development alleged in the Notice when determining the appeal. The Notice does not allege the installation of a retractable canopy as a breach of planning control or require its removal to remedy the breach. The retractable canopy is not, therefore, affected by the requirements of the Notice. The Council also confirms in its submissions that it has no objection to the appellant removing the retractable canopy temporarily and reinstating it when complying with the requirements to restore the shopfront to its previous condition.
17. I have had regard to the 2024 consent, but from what I saw on site, the fascia board and sign are larger, and the projecting sign is in a different position than approved by the 2024 consent and its plan. Accordingly, the 2024 consent appears to be inconsistent with the sign and associated fascia board currently on site. However, even if the 2024 consent granted permission for the fascia board and sign on site, the appellant could rely on the provision of section 180 of the 1990 Act, which ensures that the requirements of the Notice will cease to have effect insofar as it is inconsistent with planning permission granted for the development.
18. The appellant also claims that the existing fascia board and sign have continually been in situ for 10 years and comply with Schedule 3, Part 1, Class 13 (1) of The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (Advert Regulations). The appellant states that the only time the sign has been replaced is when the occupier of the appeal property has changed. *Case law*⁵ has also been referred to, which considered whether periods of continual use of land for the display of advertisements over 10 years were materially interrupted by periods of non-use.
19. Although I have had regard to the matter raised, the burden of proof is on the appellant, and very limited information has been provided to demonstrate their case regarding Schedule 3, Part 1, Class 13 (1) of The Advert Regulations. Furthermore, the Council has provided evidence, in the form of Google Street View Images from 2019 and 2024. It is evident from the images that the Treasure Pot fascia sign was not as wide or tall as the more recent fascia signs. The increase in size, therefore, demonstrates that in the last 5 years, there has been a material increase in the extent to which the site has been used for the display of advertisements. As such, based on the evidence before me, the fascia board and sign would not be compliant with Class 13 (1) of the Advert Regulations.

⁴ Council reference 139542/FO/2024

⁵ London Borough of Hackney v JCDECAUX (UK) Ltd [2022] EWHC 2621 (Admin)

20. Accordingly, the appellant has failed to discharge the required burden of proof and demonstrate that, on the balance of probabilities, the matters alleged in the Notice do not constitute a breach of planning control.
21. The appeal on ground (c), therefore, fails.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the Notice with variations.

Formal Decision

23. It is directed that the enforcement notice is varied by:

In paragraph 5, step 3, delete the words ‘as shown on the attached photograph ENF/01.’

Delete the photograph ENF/01 attached to the Notice.

24. Subject to the variations, the appeal is dismissed, and the Notice is upheld.

M. P. Howell

INSPECTOR