



Appeal Decision

Site visit made on 26 February 2025

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 May 2025

Appeal Ref: APP/W4223/C/24/3336567

Land to the rear of Sorella, 38 High Street, Uppermill OL3 6HR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Atdhetare Hoxha (Sorella Restaurant Limited) against an enforcement notice issued by Oldham Metropolitan Borough Council.
 - The notice was issued on 13 December 2023.
 - The breach of planning control as alleged in the notice is the continued siting on the land of external storage sheds, external toilets with timber cladding and a timber fence despite the refusal of planning permission FUL/350180/22
 - The requirements of the notice are:
 1. Permanently remove from the land the timber gates shown coloured green and numbered 1-4 on the plan.
 2. Permanently remove from the land the timber fence shown coloured green and numbered 1-2-3-4-5 on the plan.
 3. Permanently remove from the land the external storage sheds and toilets located in the area shown edged blue and marked A on the plan.
 4. Permanently remove from the land the external storage sheds located in the area shown edged blue and marked B on the plan.
 - The period for compliance with the requirements is: Three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), and (f) 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 by:
 - In section 3 the deletion of the alleged breach of planning control in its entirety and replacement with “The erection of external storage sheds and external toilets with timber cladding”.
 - In section 5 the deletion of requirements 1 and 2.
2. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background and Preliminary Matters

3. In 2022 the external area to the rear of the appeal premises was upgraded, which included the erection of the storage sheds, toilets, and fencing which are the subject of the enforcement notice. A retrospective planning application¹ for the retention of the development was subsequently refused in February 2023. An

¹ Council Ref: FUL/350180/22

initial enforcement notice issued on 8 November 2023 was withdrawn, with the notice subject of this appeal subsequently being issued on 13 December 2023.

4. When undertaking the operational development described above, the Council contend that trees were also removed from the appeal site. Trees in a Conservation Area that are not protected by a Tree Preservation Order are protected by the provisions in section 211 of the 1990 Act. Whilst there is dispute between the parties as to the number of trees which were removed, it is agreed that a Cherry Laurel tree was removed without the requisite notice under section 211 being sent to the Council.
5. I am satisfied from the available evidence that the Cherry Laurel constituted a “tree” for the purposes of section 211 of the 1990 Act. The appellant has referred² to a previous communication from the Council regarding a group of laurels in the Boarhurst Conservation Area. Whilst I do not have the full details before me, it appears that the tree at the appeal site was significantly larger than those referred to by the appellant. Each case though is determined on its own merits, and the Council’s previous communication does not alter my finding in relation to the Cherry Laurel tree at the appeal site. My finding is also in line with that of the appellant’s own arboricultural advice³, which concluded that the removal of the tree had not followed Conservation Area regulations.
6. In respect of the removal of the tree(s) from the site the Council advise that a prosecution file has been passed to the Council’s legal team. In addition, a Tree Replacement Notice (TRN) was also issued by the Council at the same time as the enforcement notice. The appellant advises that an appeal has been submitted against the TRN, however those matters are not before me in this appeal. I am satisfied that the appeal against the enforcement notice can be dealt with separately from the TRN appeal.
7. The revised National Planning Policy Framework (“the Framework”) was published on 12 December 2024. I have considered the changes and as they are not material to the appeal development, further comments from the parties were not sought. I have, however, determined the appeal having regard to the revised Framework.

The Notice

8. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act), or the terms varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
9. In section 3 of the notice the words “continued siting on the land of” and “despite the refusal of planning permission FUL/350180/22” do not describe an act of development and are therefore unnecessary. Furthermore, the alleged breach of planning control would be more succinctly described as “The erection of external storage sheds, external toilets with timber cladding and a timber fence”. Notwithstanding any further corrections which may be necessary following the consideration of the ground (c) appeal below, I shall therefore correct the notice

² Appendix 7 of the appellant’s Appeal Statement

³ Appendix 5 of the appellant’s Appeal Statement

accordingly. I am satisfied that I can correct the notice without causing injustice to either party.

Ground (c)

10. An appeal on ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. It is for the appellant to make their case on the balance of probabilities.
11. The appellant's case on this ground relates solely to the erection of the timber fencing and gates at the appeal site. The appellant's argument is that the fence and gates are permitted development by virtue of Part 2, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ("the GPDO").
12. Part 2, Class A of the GPDO grants planning permission for the "*Erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*", subject to various limitations set out at paragraph A.1 being met. There is no dispute that the fence and gates are not adjacent to a highway used by vehicular traffic and do not exceed 2 metres in height, matters which were confirmed during my site visit. Consequently, the timber fence and gates do not exceed the height limit at paragraph A.1(b).
13. The Council argue that the timber fence cannot constitute permitted development as it has been erected within the confines of the roots of trees which were felled without the necessary consent. However, whilst paragraph A.1(d) restricts development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding a listed building, there are no conditions or limitations within Part 2, Class A of Schedule 2 of the GPDO which prevent fences being erected near to trees (or their roots) in a Conservation Area.
14. Thus, I find that the timber fencing and gates erected at the appeal site to be development which is granted planning permission by the GPDO. The appeal under ground (c) therefore succeeds to that extent, and I shall correct the enforcement notice by removing reference to the fence and gates from the allegation and the requirements.

Ground (a) – the deemed planning application

15. An appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. Since the appeal under ground (c) succeeds in respect of the timber fencing and gates, my consideration under ground (a) is now limited to the external storage sheds and external toilets with timber cladding.

Main Issue

16. The main issue is whether the development preserves or enhances the character or appearance of the Uppermill Conservation Area, with particular regard to trees.

Reasons

17. The appeal site is an external courtyard sandwiched between the rear of a row of terraced properties on High Street and Ebenezer Congregational Church (ECC) on

School Street. Use of the courtyard is shared between a café trading at 36 High Street and a restaurant operating from 38 and 40 High Street. The site also lies within the Uppermill Conservation Area (UCA), and I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

18. The UCA occupies a large area which encompasses High Street and the tight-knit network of streets which lead off the historic core of the settlement. The UCA is characterised by attractive stone and slate roof buildings which are well preserved. High Street is predominately commercial in character, with the streets which lead off it comprising mainly housing which include terraces and larger detached properties. Trees are also a feature of the UCA, softening an otherwise largely built environment. Whilst many trees are located on public open spaces and adjacent to the river, trees are often also visible between and to the rear of buildings which helps provide a pleasant backdrop to many short and longer distance views.
19. As set out above, the appeal site comprises an external courtyard which is set amongst a tightly packed townscape. As a result of its location between the rear of the terraced properties on High Street and ECC, the appeal site is not widely visible in the wider street scene. Nevertheless, views across the appeal site are possible from School Street and Alexandra Mill to the rear.
20. The Council accepts that the external storage sheds and toilets with timber cladding do not themselves cause undue harm to the character and appearance of the UCA. This is due to their size, location to the rear of the property, and that once weathered the timber buildings will be appropriate within its setting. Particularly given that the storage sheds and toilets are largely screened from external view by the timber fence and gates, which have been found to be lawful under ground (c) above, I find no reason to disagree with the Council's view.
21. Nevertheless, the Council's primary concern is that to facilitate the development mature trees were removed from the site, causing harm to the character and appearance of the area. Whilst the specific number of trees which were removed is disputed between the parties, it is clear from the photographic evidence that the development necessitated the removal of one large Cherry Laurel tree.
22. Although it would not have been widely visible in longer distance views, the Cherry Laurel tree would have been prominent in views across the appeal site from both School Street and Alexandra Mill. The tree contributed positively to the character and appearance of this part of the UCA, softening what is otherwise a largely built environment and providing a verdant feel to the appeal site. I note the appellant's concern regarding works that were allegedly undertaken by the ECC to overhanging branches, however this does not, in my view, negate the overall positive visual contribution that the tree made to the area. The removal of the tree has therefore resulted in a notable loss of vegetation which is harmful to the character and appearance of the UCA.
23. To overcome the loss of the Cherry Laurel tree, the appellant has proposed the planting of two new trees on a small and narrow strip of land between the timber storage sheds and ECC. The Council's Arboricultural Officer has raised concerns regarding whether this area would be suitable to accommodate the planting of two trees, particularly considering the growth of stems, roots and crowns which may

over time cause issues for adjacent structures. Furthermore, no detail or methodology has been provided by the appellant with regards to ground condition or preparation, planting methods, or aftercare.

24. I share the Council's concerns with regards to the suitability of the proposed planting area and whether trees could be retained in that location in the long term. The appellant has failed to provide an adequate response to the concerns raised by the Council. Consequently, it has not been demonstrated that the Cherry Laurel tree could be adequately replaced at the appeal site with trees of an appropriate species and size, that would be capable of retention for the long term. I cannot be certain therefore that the proposed replacement trees would mitigate the harm caused.
25. The appellant has also provided a Unilateral Undertaking (UU) under s106 of the 1990 Act. The purpose of the UU is to provide a financial sum to the Council towards replacement tree planting and subsequent maintenance in Uppermill. It would require the appellant to pay the contribution to the Council within 28 working days of planning permission being granted. The undertaking is signed, dated, and adequately drafted. However, I have significant concerns about its effectiveness.
26. Notwithstanding the financial contribution towards replacement tree planting, the replacement would not be on the appeal site and the UU fails to specify the land on which the planting would take place, the number of trees to be planted, or their species. Indeed, I cannot be certain that there is an appropriate and available location within Uppermill for such planting to take place. Without such basic information, the obligation is essentially meaningless, and it is not possible to know whether the tree planting would be achievable and/or beneficial such to mitigate the identified harm. For these reasons, I afford no weight to the planning obligation.
27. Soft landscaping has also been carried out within the rear courtyard area, and whilst it provides a pleasant backdrop for users of the courtyard area itself, the landscaping has no tangible impact when viewing the appeal site from external vantage points. Consequently, the soft landscaping also fails to adequately compensate for the positive contribution that the Cherry Laurel tree made to the UCA.
28. Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the UCA. Paragraph 212 of the Framework states that when considering the impact of a development on a designated heritage asset, great weight should be given to the asset's conservation. Whilst the harm I have identified would be less than substantial, it nevertheless is of considerable importance and weight. Paragraph 215 of the Framework requires this harm to be weighed against the public benefits of the proposal.
29. The appellant argues that the external storage sheds and toilets are essential to the business, and their removal and re-location inside the building would place an unacceptable strain on the business. There is no evidence before me to show that the removal of the storage sheds and toilets would compromise the financial viability of the business, and the contribution it makes to the local economy. The extent to which their removal would hinder the business operations has also not been substantiated. Finally, it is unclear whether there might be an alternative form

of development or scheme which would be less harmful to the UCA and capable of accommodating adequate replacement trees on the appeal site. Overall, the less than substantial harm caused to the designated heritage asset is at the lower end of the scale. Nevertheless, I must afford any harm great weight, and there are no public benefits that result from the development which outweigh this.

30. For the above reasons, I conclude that the development fails to preserve or enhance the character or appearance of the UCA. It is therefore contrary to saved Policy D1.5 of the Oldham Metropolitan Borough Unitary Development Plan (2006), and Policy 24 of the Oldham Local Development Framework, Development Plan Document – Joint Core Strategy and Development Management Policies (adopted November 2011). Together these policies seek, amongst other things, to protect, conserve, and enhance the settings, historic character and significance of the borough's heritage assets, and to protect trees on development sites and requiring, where necessary, adequate replacement tree planting.

Conclusion on ground (a)

31. Given the above, and in the absence of any significant public benefit, the development fails to preserve or enhance the character or appearance of the UCA.
32. The development therefore fails to satisfy the requirements of the Act and is not in accordance with the development plan. There are no other material considerations that require a decision to be made other than in accordance with the development plan.

Ground (f)

33. For the appeal to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
34. The notice does not specify which of these two purposes it seeks to achieve. Nevertheless, the requirements are to completely remove the unauthorised development. I am satisfied, therefore, that the purpose of the notice is to remedy the breach of planning control as set out under section 173(4)(a) of the 1990 Act.
35. The appellant's case on this ground relates to the gates and fencing constituting permitted development under the GPDO, and that the planning merits of the external storage sheds and toilets, along with the proposed replacement tree planting, result in the development being acceptable in planning terms. These matters though have already been addressed under the grounds (c) and (a) appeals above.
36. As set out above, whilst the fencing and gates amount to permitted development and have been excluded from the enforcement notice, I have found that the remainder of the development fails to preserve or enhance the character or appearance of the UCA and is in conflict with the development plan. Accordingly, the removal of the external storage sheds and toilets is necessary in order to remedy the breach of planning control.
37. The appellant has not suggested any other lesser steps. Since the requirements are not excessive in order to remedy the breach of planning control, the appeal on ground (f) fails.

Conclusion

38. For the reasons given above I conclude that the appeal succeeds in part, on ground (c), but otherwise fails. I have upheld the enforcement notice, with corrections, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

David Jones

INSPECTOR