



Appeal Decision

Site visit made on 22 September 2025

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 October 2025

Appeal Ref: APP/R0660/C/24/3346616

Higher Kinderfields Farm, Hollin Lane, Sutton, Cheshire SK11 0NN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Michael Eardley against an enforcement notice issued by Cheshire East Council.
- The notice was issued on 15 May 2024.
- The breach of planning control as alleged in the notice is the unauthorised erection of a building.
- The requirements of the notice are to:
 - a) Demolish the building shown in the approximate position shaded in green on the attached Plan marked "Plan B".
 - b) Remove all resultant debris from "the Land"
- The periods for compliance with the requirements are:
 - a) 6 months after this notice takes effect.
 - b) 6 months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (f) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is dismissed and, subject to variations, the notice is upheld.

Applications for costs

1. An application for costs is made by Mr Michael Eardley against Cheshire East Council in relation to the appeal. This application is the subject of a separate Decision.

The ground (c) appeal

2. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is upon the appellant.
3. Planning permission was granted in 2017 for the demolition and replacement of a garage/workshop¹. The approved drawings for the planning permission are somewhat rudimentary. Nevertheless, the east elevation (front) clearly indicates a large opening to the front that appears to be partly cut into the adjacent ground. The base of this opening appears to set the floor level of the building, as can be seen on the south elevation drawing. Accordingly, the approved building was for a single storey building with a high floor to roof height.
4. The building that has been constructed has an upper floor and an under-croft area that is used for storage. The under-croft is largely open on three sides with a retaining concrete panel wall on the east elevation and halfway across the north and south elevations due to it being cut into the side of the bank. There is a large, glazed opening that provides access into the east elevation. There are also large,

¹ Council reference 17/4021/M

glazed openings in the north and south elevation and three similar sized openings in the west elevation.

5. In considering whether works amount to a material operation comprised in the development under section 56(2) of the Town and Country Planning Act 1990 (the Act), it is not enough to list or measure any differences between what is on the ground and on the plans. It is also necessary to consider the significance of the differences – and the similarities between what has been done and what was approved. The degree of compliance with the plans is relevant, as is the degree to which the works are substantially usable in the permitted building².
6. In comparing the approved drawings with what has been constructed, the access into the building is in a similar position to the approved opening. However, the access is considerably smaller in size, largely due to it not requiring cutting into the adjacent ground level, unlike the approved building's access. Also, the approved drawings have no openings in the other three elevations. The openings in the constructed building account for a significant proportion of the elevations of the building.
7. What is more discernibly different is that the approved building did not include an under-croft, unlike that which has been constructed. I do not accept it is simply a case of the metal clad walls are missing. A new floor has been created to provide a level floor with the ground level to the east of the building, which appears to be significantly higher than the floor level of the approved building. The approved building had a single access to the building. If the under-croft was clad in metal sheeting then there would be no access to it; only the upper-floor would be accessible. This is a substantial difference between the approved and constructed buildings.
8. I acknowledge the building is in the same location as that approved and, when read in isolation, some of the differences between the building that was approved and that which has been constructed may only be minor. However, when read as a whole, the differences amount to a building that is substantially different to that which was approved.
9. I have had regard to the previous Inspector's decision for the appeal regarding the use of the building for holiday accommodation³. The Inspector states 'There also seems to be some disagreement about the size of the building but any differences between that approved and that constructed seem to be small.' However, they also acknowledge the poor quality of the approved plans and confirm that it was not the purpose of that appeal to determine whether the building is lawful. Moreover, I cannot be certain the Inspector had the same evidence before them as I have regarding the lawfulness of the building. Accordingly, the previous Inspector's decision has little bearing on my determination of this appeal.
10. As a consequence, I do not find that what has been constructed is in accordance with the 2017 planning permission. As there is no dispute the building amounts to development that requires planning permission, the erection of the building amounts to a breach of planning control.
11. The ground (c) appeal therefore fails.

² *Commercial Land Ltd v SSTLR & Kensington & Chelsea RBC* [2002] EWHC 1264 Admin, [2003] JPL 358,

³ Appeal reference APP/R0660/W/23/3327031

The ground (d) appeal

12. The onus is on the appellant to demonstrate that at the time the notice was issued it was too late to take enforcement action against the alleged breach of planning control. The relevant test of the evidence is 'on the balance of probability' (ie that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
13. The alleged breach of planning control as set out in the notice is operational development. Therefore, the relevant period for immunity from enforcement action is four years from the date of the notice. In order for the ground (d) appeal to be successful, it must be demonstrated that, on the balance of probabilities, the building was substantially completed by 20 June 2020.
14. The appellant has provided a statutory declaration, within which they state that work started on the building in March 2018 and it was substantially completed by 30 October 2019. Attached to the statutory declaration is a photograph dated 30 October 2019. Although the clarity of the photograph is not particularly high, it can clearly be seen that the metal cladding has been attached to the building.
15. In the same photograph, a least one of the windows has been installed (one can clearly be seen in the west elevation through the eastern opening). However, the detailing of this window does not appear to match the window in situ in the photograph attached to drawing 23308 rev A, which was submitted as part of the application for the change of use of the building to holiday accommodation. This photograph is clearly a later one as the vapour barrier hanging in the front opening is fully intact in the 2019 photograph, whereas it has been torn in this photograph. Therefore, it is reasonable to conclude that if it is indeed a window depicted in the 2019 photograph, it was only a temporary one. This is also supported by the Council's contention that they received a report in June 2021 that the windows were recently installed.
16. Also noticeable in the October 2019 photograph is the lack of any glazing in the front elevation. Therefore, the building was clearly not weatherproof at that time. The opening also remains unglazed in the later photograph I refer to above for the planning application for the holiday accommodation.
17. The appellant's grounds of appeal list a number of works carried out to the building prior to 10 October 2019. This includes 'demolition of the existing 1950's building and the clearance of the site, concrete footings, the erection of a galvanised steel framed building, concrete retaining panel walls on the under-croft on 3 sides, full timber floor, sip panel walls, black corrugated steel roof and black corrugated steel cladding sheets on all sides of the upper portion.' This extensive list does not mention the installation of the windows.
18. Given that the windows account for a significant portion of the elevations, I find the lack of evidence that the current windows were installed in the 10 October 2019 photograph, and no evidence before me to indicate they were installed between then and 20 June 2020, indicates that the building was not substantially completed by 20 June 2020.

19. I find therefore, it has not been demonstrated that, on the balance of probabilities, the building was substantially completed four years prior to the notice being issued. The ground (d) appeal therefore fails.

The ground (f) appeal

20. This ground of appeal 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 which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
21. The description of development for the 2017 planning permission is 'Demolition and replacement of garage/workshop'. The demolition of a building is a 'material operation' under section 56 of the Act for the purposes of determining when development has begun. In this regard, the demolition of the original garage was a fundamental part of the approved development under the 2017 planning permission and represented a material operation comprised in the development. Therefore, the demolition of the original garage before the expiry of the three year period was commencement of the approved development.
22. Consequently, whilst there are significant differences between what was approved and what has been constructed, the demolition of the original building implemented the 2017 planning permission. Accordingly, the 2017 planning permission remains extant.
23. The development could be altered to bring it in accordance with the extant planning permission, although it would appear to require more than simply rearranging the fenestration and cladding the under-croft. Nevertheless, based on the evidence before me, there are lesser steps that would remedy the breach of planning control, ie bringing the development in line with the 2017 planning permission.
24. I find therefore, the ground (f) appeal succeeds. I shall vary the requirements of the notice to provide the option of either demolishing the building or altering it to comply with the 2017 planning permission.

Formal Decision

25. It is directed that the enforcement notice is varied by the following:
- 1) Under section 5 of the notice, the deletion of requirements a) and b) and substitute the following:

Either
 - a) Demolish the building shown in the approximate position shaded in green on the attached Plan marked "Plan B".
 - b) Remove all resultant debris from "the Land".
Or
 - c) The building shall be altered to comply with the terms of the planning permission reference 17/4021/M, dated 6 October 2017 including the conditions subject to which that permission was granted.

2) Under section 6 of the notice, the insertion of the following:

c) 6 months after this notice takes effect.

26. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

A Walker

INSPECTOR