



# Appeal Decision

Site visit made on 18 September 2024

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

**Decision date: 29 October 2024**

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**Appeal Ref: APP/C3430/C/23/3330315**

**Land to the rear of 20, 20A and 22A The Avenue, Featherstone, Wolverhampton WV10 7AT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Samina Sarwar against an enforcement notice issued by South Staffordshire District Council.
  - The notice was issued on 28 July 2023.
  - The breach of planning control as alleged in the notice is without planning permission, unauthorised operational development consisting of the construction of two single storey extensions on the land, ("the Land") outlined in red for identification purposes on the site plan attached to this report. The Unauthorised Extensions are identified on the aerial image at Appendix 1 to this report, marked building 1 ("Building 1") and building 2 ("Building 2") for identification purposes and for the avoidance of doubt.
  - The requirements of the notice are
    - i) Demolish the Unauthorised Extensions identified as Building 1 and Building 2 on the aerial image at Appendix 1 attached to this notice.
    - ii) Restore the Land and the Host Buildings to their previous state and condition before the breach took place.
    - iii) Remove all material and debris resulting from compliance with compliance with i) above from the Land
  - The period for compliance with the requirement is three months.
  - The appeal is proceeding on the ground set out in section 174(2)(a) 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 varied by:
  - i) Deleting requirement ii) of the notice in full and replacing it with 'Restore the Land to its condition before the breach took place.'
2. 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.

## Preliminary Matters

3. Since the appeal was made, there have been further revisions of the National Planning Policy Framework (the Framework). However, the revisions have not raised any new matters which are determinative to this appeal.

## The Notice

4. It is the duty of the Inspector to put the notice in order irrespective of the grounds of appeal. The requirements should flow from the allegation. The second requirement is to 'Restore the Land and the Host Buildings to their

previous state and condition before the breach took place.’ The first requirement is to demolish the Extensions and the purpose of the notice is therefore to remedy the breach. The Council has not specifically identified the Host Buildings in the allegation or on any plan. Amending the wording to ‘Restore the Land to its condition before the breach took place’ replicates the wording of Section 173(4) of the Act where the purpose of the notice is to remedy the breach and removes references to unidentified buildings. I will amend the notice accordingly.

### **The appeal under ground (a) and the Deemed Planning Application (DPA)**

5. The notice refers to two rear extensions identified as Building 1 and Building 2 on the enforcement plan. However, Building 2 has now been demolished, and the appellant is applying for planning permission for Building 1 only.

### **Main Issue**

6. The main issue is therefore the effect of the development (Building 1) on the character and appearance of the area.

### **Reasons**

7. At the junction of The Avenue and South Crescent, there is a row of four commercial premises within what is a largely residential area. The row which fronts onto The Avenue consists of two takeaway establishments with convenient stores at either end, Londis and Costcutters. The appeal site is made up of three of those premises including the appellant’s business, Featherstone Fish Bar together with an area to the rear of those premises. Access to the rear of the appeal site is from South Crescent due to the corner location.
8. Located at the rear of the takeaways, the development is a largely square flat roofed extension constructed originally with breeze blocks and subsequently covered with brown wooden fence panels which forms an extension to the takeaway business operated by the appellant. The height of the building means that fence panels towards the top of the building have been cut down and added to the full size panels at the bottom to provide adequate coverage. The development has a very modest window facing the rear of the appeal site and two different styles of doors of the kind normally seen on dwellings on two sides, one of which has a very modest canopy made of wood. The mismatch of materials and haphazard appearance of the development is incongruous particularly compared to the surrounding buildings which reflect the largely commercial use of those buildings.
9. The width of the development leaves modest gaps between the adjacent buildings at either side with restricted access around the buildings. At the time of my site visit, there were metal trolleys filled with refuse and refuse bins around the development itself as well as within the wider rear area. It was not possible to access the appellant’s premises from the rear due to refuse being stored in the very modest gap between the development and the building to the rear of Costcutters. The photographs provided show vehicles parked and refuse bins stored in various locations at the rear of the appeal site in a random fashion.
10. The depth of the development means that it extends beyond the building line of the adjacent Londis store. The remaining outside space is limited and the

addition of the development dominates the rear of the appeal site due to its size and location and the remaining area appears cramped.

11. There is reference in the title documentation provided for the appeal site to a 'Service Yard' and use for loading and unloading vehicles and for the storage of waste bins. I note that the appellant is of the view that there are no rights for other users in relation to the rear of the appeal site. The Council refers to a complaint being made by a retail owner who can no longer use the rear area for deliveries after the notice was issued. Any dispute about rights to unload or load vehicles or store waste bins at the rear fall outside the remit of this appeal as that is a civil matter. However, the appellant does indicate that views of the development are limited and that is a matter for me to consider.
12. At the rear of the appeal site, the development is next to a strip of hardstanding which is wide enough for a vehicle. This hardstanding strip runs across the appeal site from the pavement on South Crescent and finishes at garage style shutters doors which are on the side of the building which is to the rear of Costcutters. Just inside the rear access, there is a door with shutters at the rear of the two storey Londis building which has flats above. The presence of those accesses does mean that the rear area is not private and users of those accesses including any occupiers of flats would have views of the development.
13. There are public views of part of the development from outside the appeal site from the pavement at South Crescent through the access. Whilst there are gates at the access, there is no information before me as to when those gates are closed when the rear access is in use and cars are parked at the rear. The development is out of place and incongruous even having regard to its location at the rear of a commercial frontage. The development also appears to have displaced previous refuse and bin storage by the appellant irrespective of any other rights that may exist for other businesses.
14. A condition has been suggested by the appellant to provide a render finish to the exterior of the development. However, altering the finish would not address the harm caused as a result of the mass and scale of the development in this location.
15. The appellant states that the development was erected during the Covid pandemic and has improved the business and created jobs for locals. However, no details are provided of job creation and there is no information before me to justify the scale and size of the development in this location. I note that the owner of part of the appeal site states that the development does not affect him but he has not made any comments upon the planning issues.
16. For the reasons given, I do find that the development does harm the character and appearance of the area. It is therefore contrary to Policy EQ11 of the South Staffordshire Core Strategy Development Plan Adopted 2012 and Core Policy 4 which is supported by the Council's Design Guide SPD 2018 which collectively promote high quality design and promote an attractive and functional environment. The updated Framework also reinforces the need for design guides to support standards of design.

**Conclusion**

17. 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).

*E Griffin*

INSPECTOR