



Appeal Decision

Site visit made on 27 January 2026

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th February 2026

Appeal Ref: APP/B4215/C/25/3361570

Land at Land Adjacent to 198A Barlow Road, Manchester, M19 3HF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Barlow Rd Tyres Limited against an enforcement notice issued by Manchester City Council.
- The notice was issued on 20 February 2025.
- The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use of the land to a tyre retailing and fitting place with associated storage (Sui Generis) and erection of a canopy.'
- The requirements of the notice are to:
 1. Cease the use of the tyre retailing and fitting place with associated storage (Sui Generis) and remove any manifestations of this use including tyres, tyre fitting equipment and related advertisements/signage.
 2. Remove the canopy, the approximate location of which is shown hatched blue on the attached plan ENF/PLAN1.
 3. Remove any rubble and debris, returning the land to its condition before the breach occurred.
- The period for compliance with the requirements is: two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (d) 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.

Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the initial words 'Land at' as superfluous to the description of the site at the start of Section 2 of the Notice.
2. Subject to the correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the erection of a canopy at land adjacent to 198A Barlow Road, Manchester, M19 3HF as shown on the plan attached to the notice and subject to the condition attached to this decision.

Preliminary Matter

3. In addition to operational development, the Notice alleges a material change of use but does not state the previous use of the Land. While describing the previous use is not always necessary, the reasons for issuing the Notice refer to a 'more intensive use' of the Land. For the avoidance of doubt, the Council were consulted to establish whether or not the allegation should refer to a material change of use by intensification. However, the Council duly confirmed that was not the case. I have considered the appeal on that basis.

The Appeal on Ground (c)

4. An appeal on ground (c) is that the matters stated in the Notice do not constitute a breach of planning control. The burden of evidence lies with the appellant to demonstrate that planning permission exists or is not required for what is alleged in the Notice.
5. The appellant refers to planning permission ref. 36728, dated 25 April 1990, for the 'Erection of a single storey building for light industrial use (B1) and retrospective change of use of existing bungalow into offices (within B1)' at 198a Barlow Road. He asserts that that permission authorised a light industrial use of the site which permits the current tyre business use. While a copy of the 1990 Decision Notice has been provided, no plans showing the extent of land it related to, or the development approved by it have been submitted.
6. There can be little contention that the permission was implemented due to its part-retrospective nature. However, the Council's evidence indicates that the approved Class B1 use of the Land had been supplanted, at least in part.
7. A later retrospective permission for the conversion of the offices into dwellings (ref.054199/FU/CENTL2/98) located east of the appeal site will have commenced a new chapter in the planning history of that part of the site the permission related to and superseded the benefits of the earlier permission. However, aside from the buildings used as dwellings, there is little to demonstrate whether any residual land in lawful B1 use survived.
8. According to the Council's evidence, in declared submissions on planning applications relating to the site, the owner had described the last use of the land as a 'builder's yard' on four separate occasions between 2016 and 2020. Again, it is unclear as to the extent of the land concerned, but by that time the evidence shows that the wider site had been subdivided by a high wall and a second access point formed. This suggests that those references were probably in relation to the Land subject of the Notice. The first declaration of 1 September 2016, stated that use had ceased two years earlier, pointing to a builder's yard use for some period potentially into 2014.
9. As a *sui generis* use, a builder's yard falls outside of any of the Classes identified in the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). The use of the site for that purpose would also have been inconsistent with the preservation of the approved former Class B1 use and, as there is no suggestion that an enforcement notice was served against it, no lawful right of reversion to the B1 use by application of s57(4) would exist.
10. Even if, as the appellant contends, the builder's merchant use description was misapplied by the owner's representative submitting the planning applications, the appellant has not demonstrated that the existing tyre business use is consistent with a former Class B1 (now Class E(g)) use. As a use characterised by several different uses where it is not possible to say that one is incidental to another, the use is probably also *sui generis*. Furthermore, where the nature of the noise generated by the activity of tyre fitting has not been fully assessed, it is unclear from the evidence that the use might be one capable of being carried out in any residential area without causing detriment to amenity. The appellant has failed to demonstrate on the balance of probability that the use of the Land for the sale, storage and fitting of tyres falls within [then] Class B1 of the UCO.

11. The appellant contends that the canopy standing on the site was the maintained and repaired single storey building approved in 1990. However, there is little detail provided of the building benefitting from that permission, nor whether the existing structure conforms with the terms and conditions associated with it.
12. The appellant describes recent works as incorporating similar materials to a previous structure and that the works have taken place within the curtilage of the original structure. However, the detail of the extent of any external and/or structural works or alterations to provide the existing canopy is limited.
13. An aerial image of the site¹, dated 7 April 2023, shows the extent of cover on the site at that time. Read in conjunction with the appellant's streetview image showing the 'new' gate in place, they appear to show modest low structures to the western side of the site. Their smaller extent roughly coincides with a dividing line which appears on the Ordnance Survey base map used in the Notice and the 'Existing location and site plan' provided by the appellant.
14. In contrast, the existing canopy covers a much greater area and has significantly greater height such that it cannot be reasonably said that the works were mere repair and maintenance of the previous structures. Whether or not the construction of the canopy complies with VOA guidance on 'Repair and Rateable Value' is a matter outside of my remit and consideration.
15. The appellant contends that the works carried out would fall under permitted development rights. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants planning permission for specified works by virtue of Article 3(1) and various Classes of development set out in Schedule 2 of the Order. However, in the absence of detail of any previous lawful building on the site, or direction to the specific class of development which might permit works to erect or extend any existing building 'across part of its curtilage', there is little basis to conclude that the works that have taken place benefitted from planning permission granted by the GPDO.
16. For the above reasons, I find the appellant's evidence is ambiguous and insufficiently precise; the appellant has not discharged the evidential burden to demonstrate that the use of the site and the erection of the canopy benefit from the planning permission dating back to 1990, or provisions in the GPDO. The appeal on ground (c) fails.

The Appeal on Ground (d)

17. An appeal on ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any such breach. The burden of evidence again lies with the appellant. To be successful on this ground it would be necessary for the appellant to demonstrate that any relevant period of immunity has been achieved. The test is on the balance of probability, that is whether the claim is more likely than not to have occurred.
18. In support of the ground (d) claim, the appellant has provided a significant amount of evidence. This includes affirmations, sworn statements, dated invoices, site imagery, and website and social media excerpts. Notably the evidence includes

¹ Council Statement Appendix 10

details of a transaction for a tyre changer from '786Autos' to 'Barlow Road Tyres' using the site address on 13 June 2013. An invoice for the purchase of a wheel balancer from the same company is dated 25 June 2014.

19. Along with examples of addressed customer invoices from late 2013 onwards, bulk used tyre purchases, and the registration of financial accounts to the site in July 2014, I find the balance of evidence points to a business concerned with the supply and fitting of tyres being established at the address from late 2013.
20. Although some supporting statements are not sworn under the Statutory Declarations Act 1835, the various signed statements of businesses utilising the site services and the statutory declaration of the appellant, landlord and an associate add weight to the claim. Moreover, there is little evidence from the Council or others to contradict or otherwise make the applicant's version of events less than probable.
21. The Council state that the use of the Land has increased over time and that a material change of use occurred in 2016 when the wider site was subdivided on construction of a high wall and a new access to the tyre business created.
22. In consideration of an alleged material change of use of land, Bridge J in *Burdle*² highlighted 3 broad categories of distinction in considering the relevant planning unit (PU). These are:
 - 1) a single PU where the unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary;
 - 2) a single PU that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
 - 3) the unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes.
23. Bridge J went on to state that 'It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally'.
24. The retrospective 1998 permission for the residential use of the bungalows to the east would have created two or more new planning units on the wider owned land on approval. However, it is unclear from the evidence as to whether that permission related to the whole of the land, including the appeal site.
25. Even if it did, it seems to me that the later introduction of a third-party tyre business to the wider site would have created a new and separate planning unit at that time. Despite a shared access point, there is little to suggest that the different areas of the wider site had any shared occupancy (as opposed to ownership), or that their primary uses were in any way functionally and physically related.
26. Even if it initially coincided with other uses on the Land, such as the purported builders' yard, it seems that from some point in 2014, when the builder's yard use was said to have ceased, the tyre business was probably a use forming a discreet planning unit at that time. On the wider site, this would be a scenario falling within

² *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

type 3 as identified in the *Burdle* case regardless of the presence of a means of enclosure, or otherwise.

27. Although that planning unit might have been further consolidated when the wall and new access were constructed in 2015/16, the evidence points to the use of the Land probably having continued as a tyre business throughout.
28. I note the Council's assertion that the business was not registered until 2023 and was then described as a retail business. However, as with matters such as commercial property rates, or Council tax payments, while relevant, they do not necessarily reflect the exact situation on the ground. Accordingly, I find that contention a matter of limited weight. It was clear at my site visit that the site was in use for the purpose alleged in the Notice.
29. Pursuant to the Council's clarification that the Notice does not allege a material change of use by intensification, then, in those circumstances, I find that on the overwhelming balance of the appellant's evidence and absence of substantive evidence to the contrary, the alleged use has probably taken place for 10 years or more prior to the date the Notice was issued.
30. Turning to the erection of the canopy. There is no dispute between the main parties that the works to the canopy took place in 2023. As I have found it development requiring planning permission under the ground (c) appeal above, and that aerial and street-view image provided by the parties show that it was not substantially complete in February 2021, 4-years prior to the issue of the Notice, it falls short on the applicable timeframe for immunity as previously specified in s171B³.
31. For those reasons, I find the appeal on ground (d) succeeds to the extent that the use of the site for a tyre retailing and fitting place with associated storage has become lawful through the passage of time, however, it fails in relation to the erection of the canopy.

The Appeal on Ground (A) and the Deemed Application for Planning Permission

32. Subsequent to my finding that the use of the site has persisted for sufficient time to become lawful, my considerations under the ground (a) appeal are limited to the erection of the canopy only.

Main Issue

33. The main issue is the effects of the development on the character and appearance of the Barlow Road streetscene.

Reasons

34. The site is located on the edge of a housing area. It sits between housing to the south and east, open playing fields to the north, and a pub site bordered by a school playing field, parks and gardens to the west. Further west are commercial premises, shops and community facilities.

³ For operational development substantially completed before 25 April 2024, the amendment of s171B(1) by the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 extending the time limits for enforcement action from 4 years to 10 years does not apply. The relevant period is 4-years on, or prior to, the relevant date.

35. The site is unusual insofar as it is positioned behind three raised advertising hoardings and high timber fencing across most of its frontage. The hoardings and fencing provide a significant degree of screening.
36. On approach from the east, the high internal brick wall along the eastern edge of the Land limits views of the site. However, the canopy edge and supporting beam are visible above the wall, albeit viewed against the backdrop of the public house beyond. From the west, the site is largely screened by a combination of the side fencing, an angled hoarding close to the pub car park entrance, and an evergreen tree within that adjacent site.
37. The greatest effect is when passing the entrance to the site where the front of the canopy structure is visible above the access between two of the hoardings. Even when accounting for the unusual context and observers' eyes being drawn to the adjacent adverts, the construction of the metal framework and corrugated sheeting with untreated eaves appear distinctly industrial in nature and incongruous with the characteristic brick and slate buildings in the streetscene.
38. The effect is increased by the darkening of the backdrop caused by the internal expanse of the roof. However, any sense of enclosure on the spacious area about the site provided by the parklands and isolated setting of the pub, is limited against the effect of the hoardings.
39. While most of the canopy is substantially screened such that its form is largely hidden with only limited elements visible in the streetscene, I find the appearance on the eastern fringe and at the entrance stand out as a contrasting form of development. It conflicts with policies EN1 and DM1 of Manchester's Local Development Framework Core Strategy Development Plan Document [2012] which seek good design that is responsive to its strategic character area and the character of its surroundings. However, in the unusual context of the site, and in accordance with Paragraph 56 of the National Planning Policy Framework (the Framework), a condition to seek treatment to the shallow eaves lines could, in my view, provide sufficient enhancement to make the poor appearance of those elements acceptable in planning terms. In turn, there would be no material harm to the Barlow Road streetscene.
40. I note the Council's contention that a Discontinuance Notice could be served on the owner of the hoardings such that screening at the site would be reduced. However, there is little to suggest the Council finds any reason to do so exists, or that it is otherwise a realistic proposition for them. If that were to occur, then out of necessity to secure the site any replacement means of enclosure above 1m along the frontage or material alteration to the building (canopy), would be subject to planning control. That would provide the Council with the ability to secure a suitable outward appearance. Accordingly, I find that contention a matter of limited weight in the appeal.
41. For the reasons above, I find the works can be made to accord with Policies EN1 and DM1 through the use of a planning condition. Planning permission should therefore be granted on the application deemed to have been made for the canopy.

Conditions

42. The main parties have been consulted on a condition requiring edge treatment of the canopy. This is necessary to secure enhancement of the current appearance of

the visible parts in order to assimilate the development in its location. Due to concerns expressed by the Council, some time limits have been extended to ensure reasonableness.

43. The condition is imposed to ensure that the specified details are submitted, approved and implemented to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the works. The timescales encourage early dialogue and provides a sufficient period to agree details between the main parties in the appeal.
44. The condition provides for a right of appeal with regard to the provisions in s37(2)(d) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 and s78 of the Act in the event that agreement cannot be reached.
45. The condition makes sure that the development can be enforced against; it imposes a requirement to remove the canopy in the event that any requirement is not met. It will necessitate the Council issuing a further decision, to monitor the time trigger points, and/or rely on further enforcement proceedings; however, in the context of resolving breaches of planning control, those should not be unusual or overly burdensome requirements for the local planning authority.

Conclusion

46. For the reasons given above, I conclude that the appeal in relation to the site's use should succeed on ground (d). The appeal in relation to the erection of a canopy succeeds on ground (a). I shall grant planning permission for the operations as described in the notice. The enforcement notice will be corrected and quashed.

R Hitchcock

INSPECTOR

Condition relating to Appeal Ref. APP/B4215/C/25/3361570
Land Adjacent to 198A Barlow Road, Manchester, M19 3HF

- 1) The canopy hereby permitted shall be removed and all materials brought onto the land for the purposes of such shall be removed within 2 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 months of the date of this decision a scheme for the treatment of the eaves/verge of the canopy shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

END.