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**Proposal:** APPEALS UPDATE REPORT

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**Report of:** Head of Planning Legal and Democratic Services      **Status:** For Publication

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**Report to:** Development Control Committee      **Date:** 6 March 2007

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## 1. PURPOSE OF THE REPORT

- 1.1. To inform Committee members of the recent appeal decisions/activity in relating to applications since the report to Committee in December 2006.
- 1.2. The Head of Planning Legal and Democratic Services and the Portfolio Holder for Spatial Development felt it appropriate as part of the improvements to the Development Control Service to update members of the Committee on a regular basis about appeals against the Councils decisions .
- 1.3. The report below relates to appeals pursuant to applications which have been submitted to the Council; a report will be presented to the next meeting of Committee about Enforcement activity and appeals pursuant to notices which have been served by the Council.

## 2. RECOMMENDATIONS

- 2.1. That the report be noted.

## 3. Appeal Activity

- 3.1 Since the meeting of the Development Control Committee held on 6 December 2006 decisions have been received from the Planning Inspectorate in respect of 4 appeals and 1 appeal has been withdrawn :

2005/358 : Former Garage, Aitken Street, Irwell Vale

Retrospective demolition of part of garage

Refused by Officers - 25/11/05

Culminated in issue of a Conservation Area Enforcement Notice - 9/6/06

Appeal considered by way of a Hearing - 8/2/07

Appeal dismissed and Notice upheld, with variations

2006/69 : Land rear of 521-531 Helmshore Road

Erection of detached dwelling (Outline)

Refused by Officers - 23/3/06

Appeal considered by way of Written Representations - 2/2/07

Appeal dismissed

2006/100A : ASDA, St Mary's Way, Rawtenstall

Illumination of sign on rear elevation of building

Officer recommendation for conditional consent

Refused by Committee - 15/9/06

Appeal considered by way of Written Representations - 20/12/06

Appeal upheld and conditional consent granted

2006/171 : Land at Lee Road, Stacksteads

Erection of three dwellings (Outline)

Officer recommendation for approval

Refused by Committee - 30/5/06

Withdrawn - 4/1/07

2006/182 : 4 Daneswood Avenue, Whitworth

Erection of 3-bedroomed detached dwelling with single garage

Refused by Officers - 2/6/06

Appeal considered by way of Written Representations - 5/2/07

Appeal dismissed

Copies of the Planning Inspectorate's decision letters are appended with the exception of 2006/171; as this appeal was withdrawn, no decision letter was issued.

- 3.2 Decisions from the Planning Inspectorate are awaited on 5 appeals, the last 4 of which have been received since the meeting of the Development Control Committee held on 6 December 2006 :

2005/5356 : Anvil Street, Stackstead

Erection of 11 houses

To be dealt with by public inquiry; date undecided

2006/355 : Scar End Farm, Weir

Proposed holiday park, comprising 20 tourist lodges (Outline)

Being dealt with by Written Representations

2006/443 : 454 Rochdale Road, Bacup  
Erection of two storey extension to rear  
Being dealt with by Written Representations

2006/462 : 2 Hapton Way, Loveclough  
Levelling of side garden and perimeter fence  
Being dealt with by Written Representations

2006/585 : Springfield House, Newchurch Road, Rawtenstall  
Conversion of Coach House to dwelling  
Being dealt with by Written Representations

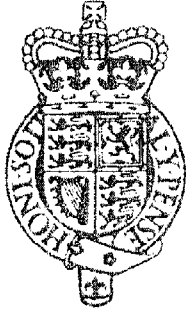
#### **4. HUMAN RESOURCES**

- 4.1 **Human Rights Act 1998** implications are considered to be Article 8 which relate to the right to respect for private and family life, home and correspondence. Additionally, Article 1 of Protocol 1 relates to the right of peaceful enjoyment of possessions and protection of property.

#### **5. Background documents:**

- 5.1. The appeal decision letters on the relevant Planning Application files.

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# Appeal Decision

Hearing held on 30 January 2007

by **Derek Thew** DipGS MRICS

an Inspector appointed by the Secretary of State for  
Communities and Local Government

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Date

08 Feb 2007

**Appeal Ref: APP/B2355/F/06/2020488**

**Former Garage, Aitken Street, Irwell Vale, Rossendale**

- The appeal is made under sections 39 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended by the Planning and Compensation Act 1991.
- The appeal is made by Richmond Residential & Commercial PLC against a conservation area enforcement notice issued by Rossendale Borough Council.
- The Council's reference is 2005/358.
- The notice was issued on 9 June 2006.
- The contravention of conservation area control alleged in the notice is the partial demolition of an unlisted building (garage) preparatory to the erection of a dwelling without planning permission and all works connected therewith.
- The requirements of the notice are:
  - a) Demolish the remainder of the garage structure in its entirety.
  - b) Remove all existing and resultant demolition waste and all hardcore and other waste materials buried into the surface of the land from the site shown edged red on the notice plan to an authorised place of disposal.
  - c) Remove from the land the two containers shown on the notice plan.
  - d) Remove from the land the metal fencing the approximate position of which is shown with a broken black line on the notice plan.
  - e) Thereafter the soiling and seeding of the land shown edged red on the notice plan.
- The period for compliance with the requirements a) to d) is 60 days. The period for compliance with the requirements e) is 120 days.
- The appeal is made on the grounds set out in section 39(1)[a], [b], [d], [e], [h] and [j] of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the conservation area enforcement notice is upheld with variations.**

## Procedural Matters

1. At the hearing the appeals on ground (a) and (b) were withdrawn and an appeal on ground (c) was added.

## Background

2. The notice land is situated within the Irwell Vale Conservation Area.
3. On 26 April 2000 planning permission (ref. 14/2000/110) was granted for the change of use of the garage building on the notice land into a dwelling. This consent was described as the renewal of permission ref. 1994/166. However, it was agreed at the hearing that the later consent could be regarded as an entirely free-standing permission.
4. Between December 2004 and January 2005 part of the garage building was demolished and the roof was removed from the residual sections. The enforcement notice seeks the demolition of the remainder of the garage structure.

### The Appeal on Ground C

5. For the appeal to succeed on this ground it needs to be demonstrated that the demolition works that have taken place do not amount to works of demolition for the purposes of section 74(1) of the 1990 Act.
6. In considering this matter I have had particular to the judgement of Lord Hope of Craighead in the case of Shimizu (UK) Ltd v Westminster City Council [1997] 1 All ER 481, which includes the following words:

*“In the context of section 74 of the Act, which requires to be read together with the legislation relating to listed buildings in Part I of that Act, the reference to demolition of a building means the demolition of the whole building. But advice can still be given to the effect that the question what constitutes the demolition of the whole building is a question of fact and degree which will need to be decided on the facts of each case.”*

Subsequent guidance in Appendix D of Circular 01/2001: ‘Arrangements for Handling Heritage Applications – Notification and Directions by the Secretary of State’, states:

*“The House of Lords also considered that works for the demolition of an unlisted building in a conservation area must also involve the total or substantial destruction of the building concerned. This means that many works which involve the destruction of the fabric of part only of a building will not be works of demolition and will not be works of demolition and will not require conservation area consent.”*

Hence, only “the total or substantial destruction of the building concerned” can amount to demolition for the purposes of section 74(1) of the 1990 Act. But the question of what constitutes the total or substantial destruction of a building is a question of fact and degree which has to be decided in the light of the circumstances of each case.

7. I understand that until December 2004 there were three main sections to the building: a flat-roofed, stone section abutting Aitken Street, a flat-roofed, workshop with full-height timber doors; and a ridge-roofed, brick section. All sections of the building were of single-storey height. The demolition works have removed all of the stone section, much of the workshop section and the roofs to all three sections. At the hearing I asked the main parties to estimate approximately how much of the building has been demolished and there was broad agreement that about 50% of its walls have been taken down. Bearing in mind the extent of the walls and roofs that have been removed, I think it reasonable to conclude that the scale of the demolition works have been very substantial.
8. It was argued for the appellant that the notice only alleges “*partial demolition*” of the building and that this is something materially different from its substantial demolition. But that is not a view with which I can concur. The word ‘partial’ simply means something less than the whole and, to my mind, it cannot be implied from that word that the scale of the demolition is somehow of a minor nature and something less than very substantial.
9. Referring to the former garage building, a local resident, Mr Naylor, spoke of how people passing the site asked him “*why have they knocked it down?*”. I regard such a question as an indication that the average passer-by would be under the impression that most of the building had been demolished. When the residual walls are viewed from Aitken Street they look like little more than the fragmentary remnants of a building. This consideration and each of the above factors lead me to the view that, as a matter of fact and degree, the substantial destruction of the building that has taken place does amount to works of demolition for the purposes of section 74(1) of the 1990 Act. Hence the appeal fails on ground (c).

### **The Appeal on Ground D**

10. For the appeal to succeed on this ground three distinct tests need to be met. First, it needs to be demonstrated that the works to the building were urgently necessary in the interests of safety or health, or for the preservation of the building. Secondly, that it was not practicable to secure safety or health, or the preservation of the building, by works of repair or works affording temporary support. And thirdly, that the works carried out were limited to the minimum measures immediately necessary.
11. At no time has the Council issued any notice alleging that any part of the building on the notice land is dangerous. It was suggested by the appellant that the County Bridgemaster had expressed concerns about the effect of the building upon the safety of the adjacent road bridge over the River Irwell, but no written evidence was submitted to support that suggestion. There is no documentary evidence before me to demonstrate that there was an urgent safety or health need to demolish those parts of the building that were removed between December 2004 and January 2005. Nor is there any written evidence to show that those works were necessary to preserve the building. I understand that the demolition was undertaken on behalf of the site owner, Mr Briggs, and he neither appeared at nor was he represented at the hearing. It was put to me that Mr Briggs may have undertaken the demolition with a view to implementing the planning permission (ref. 14/2000/110) for the change of use of the garage building into a dwelling. But, if that is so, such a reason does not support an appeal on this ground.
12. In the light of all the above factors it follows that the applicable tests have not been satisfied and so the appeal on ground (d) fails.

### **The Appeal on Ground E**

13. For the appeal to succeed on this ground it needs to be demonstrated that conservation area consent ought to be granted for the demolition works that have already taken place.
14. A conservation area is an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance. At the hearing the appellant accepted that the site in its present condition neither preserves nor enhances the character or the appearance of the Irwell Vale Conservation Area.
15. The unauthorised demolition works have left a number of somewhat dilapidated brick walls and an exposed concrete floor slab on clear view from Aitken Street. The impact of these items, plus the hardcore scattered across the land, give the site a ramshackle appearance that is materially harmful to the street scene. As such, I am satisfied that conservation area consent should not be granted for the demolition works that have already taken place. The appeal on ground (e) therefore fails.

### **The Appeal on Ground J**

16. For the appeal to succeed on this ground it needs to be demonstrated that the steps required to be taken exceed what is necessary to alleviate the harm caused by the unauthorised works. I have considered each of the requirements in turn.

#### ***Requirement A - Demolish the remainder of the garage***

17. The appellant wishes to retain the remaining structures on the notice land as part of the implementation of either the planning permission granted in April 2000 or as part of some other development.
18. First, I have considered whether the planning permission (ref. 14/2000/110) granted in April 2000 is still capable of implementation. That consent was for the change of use of the garage building into a dwelling. At face value, that description is quite clear. However, precisely how the development

was to have been implemented is far from clear. The approved drawings (ref. 2360-02A,-03A and -04) are all labelled with the words 'Sketch Proposals' and they seem to be little more than illustrations of the finished dwelling. Those drawings contain no precise information as to which parts of the original building were to be retained and which parts were to be demolished. Nor was any survey either submitted, or required to be submitted, to show which parts of the building were capable of being retained. The fact that the flat-roofed, single-storey sections of the garage building were to become ridged-roofed, two-storey sections of the new dwelling demonstrate that the proposed scheme was intended to involve operational development on a sizeable scale. But, from the certificate of planning permission and the approved drawings, there is simply no way of knowing where the line was to be drawn between the conversion of the existing building and the construction of new works.

19. Notwithstanding this uncertainty as to what exactly what was permitted by the April 2000 consent, I think it reasonable for me to find that the consent as worded did not permit the total demolition of any section of the existing garage prior to the erection of the new dwelling. Yet that is effectively what has happened. The works carried out between December 2004 and January 2005 were tantamount to the total demolition of that section of the garage within which the new living accommodation would be provided under the 2000 permission. There is currently no residual structure on site which could be converted into that section of the proposed dwelling it was envisaged would contain a dining/living room, staircase, study/bedroom and an entrance hall. In addition there are only two walls left of that part of the structure it was envisaged would contain the kitchen and main living room. As a result of the scale of demolition that has taken place, I consider that there is an insufficient amount of the former building left to enable any further works to be described as works to change the use of a garage building into a dwelling. Consequently, it is my conclusion that the planning permission (ref. 14/2000/110) granted in April 2000 is no longer capable of being implemented.
20. An additional factor leading me to the same conclusion is that the planning permission contained three conditions precedent (nos.2, 3 and 4) requiring steps to be taken before any development commenced. There is no written evidence to show that those conditions were complied with. In such circumstances, any works undertaken on the site could not amount to works of development to implement that consent. Consequently, the planning permission granted in April 2000 expired in April 2005 and is, therefore, no longer capable of being implemented.
21. I turn now to consider the likelihood of there being some other development on the land that could utilise the remaining walls. I understand that the appellant is in the process of preparing a planning application for the erection of a dwelling incorporating these walls. I have not seen that scheme and, if submitted as a formal application, it will need to be determined on its own merits. However, there is no evidence before me to demonstrate that these residual walls are structurally sound and capable of being incorporated into a new scheme. Nor can there be any certainty that any new scheme will be permitted or, if a new scheme is permitted, that it will be implemented. In the light of so many uncertainties I am not persuaded that it would be appropriate to permit the retention of the remaining walls for re-use at some possible future date.
22. I was invited by Mr Naylor to vary requirement (a) to allow for the retention of the existing walls to a height 1 metre high where they adjoin the bank of the River Irwell. He considered that these walls could offer some mitigation from flooding in times of high water. However, I have no details before me as to either the structural integrity of the walls in question or their suitability to act as a form of flood defence. In such circumstances it would be inappropriate to introduce such a variation to the notice.
23. For each of the above reasons I am satisfied that the remaining garage walls should be demolished in their entirety and I do not intend to vary the first requirement.

***Requirement B - Remove all existing demolition waste, hardcore etc***

24. If the remaining brick walls are to be demolished then it is appropriate that the rubble and other materials resulting from that demolition should be removed from the land. As explained in paragraph 15 above, I consider that the hardcore scattered across the land is visually harmful to the character and appearance of the conservation area. I am mindful that the site might be redeveloped at some time in the future and that the hardcore could be used as part of that scheme. But, in the absence of either a valid permission for the redevelopment of the land or any guarantee that such a permission will be forthcoming, the future of this site remains uncertain. In such circumstances it would be inappropriate to allow waste material and hardcore to be left on the land to the detriment of the area's visual amenity. I think it reasonable to require that such materials should be removed and I therefore do not intend to vary the second requirement.

***Requirement C - Remove the two containers***

25. There are two storage containers sited partly on the notice land and partly on adjoining land to the south. I understand that the containers were probably sited here to be used for the storage of machinery and equipment needed in association with the development of the notice land. It was suggested by the appellant that the requirement to remove the containers should be deleted because they stand partly on ground outside the notice land. But that argument is not persuasive. I was told that the notice land is owned by Mr D Briggs and the adjoining land to the south is owned by Tilerock Ltd. Both parties were served with copies of the enforcement notice and, as such, both are aware of its requirements, yet neither have appealed against its provisions. Furthermore, there is no physical boundary between the two ownerships. As a result there is no physical impediment to a vehicle entering any part of the land next to the containers in order to secure their removal. The containers, by their very presence, harm the visual amenity of the area. The requirement to remove them is therefore both appropriate and necessary. In such circumstances I do not intend to vary the third requirement.

***Requirement D - Remove the metal fencing***

26. The fencing around the site is standard portable mesh fencing of a type that is commonly seen around development sites. If the notice land were an active building site then such fencing might well be appropriate. But the notice land is not an active building site. Once the items referred to in the preceding requirements have been removed from the land then there should be no need for such fencing around the site. I therefore do not intend to vary the fourth requirement.

***Requirement E - Soil and seed the land***

27. I have given careful consideration to the fact that the notice land might be redeveloped in the future. But in paragraph 21 of this decision I summarise the present situation in this respect and, as I state in that paragraph, there can be no certainty either that any new scheme will be permitted or, if a new scheme is permitted, that it will be implemented. In such circumstances and to ensure that the site is left in a condition that does not harm the character and appearance of the conservation area, I think it important that this requirement is retained.
28. At the hearing my attention was drawn to the fact that parts of the notice land are river bank or land at river level that it would be physically impractical to soil and seed. I have corrected the notice plan and varied the requirements of the notice to reflect this fact. I have also made a minor correction to the south western corner of the land as defined on the notice plan to reflect more accurately land ownership in this area.
29. Subject to the corrections and variations specified in the preceding paragraph, the appeal on ground (j) fails.



### The Appeal on Ground H

30. For the appeal to succeed on this ground it needs to be demonstrated that the compliance periods specified in the notice fall short of what should reasonably be allowed.
31. The site in its present condition causes material harm to the character and appearance of the conservation area, and that harm should not be allowed to continue for any longer than is necessary. A compliance period need be no longer than the time reasonably required for implementing the specified works and, having regard to the nature of those works in this instance, I regard the compliance periods of 60 days and 120 days as adequate. I am not persuaded that there is currently any good reason to extend either period to 18 months as requested by the appellant. Should the Council at some point in the future decide that it would be appropriate to allow additional time then it has the power to do so under section 38(5)(b) of the 1990 Act. The appeal on ground (h) therefore fails.

### Formal Decision

32. I direct that the notice be corrected and varied as follows:
- (a) Delete from both the First Schedule and the Third Schedule paragraph (b), the words "shown edged red on the attached plan" and insert in their place the words "**shown edged black on the plan attached to the appeal decision**".
  - (b) Delete from the Third Schedule paragraphs (c) and (d) the words "on the attached plan" and insert in their place the words "**on the plan attached to the appeal decision**".
  - (c) Delete from the Third Schedule paragraph (e) the words "shown edged red on the attached plan" and insert in their place the words "**shown hatched on the plan attached to the appeal decision**".
  - (d) Substitute the plan attached to this decision for the plan attached to the notice as issued.
33. Subject thereto, I dismiss the appeal and uphold the conservation area enforcement notice.

*Derek Thew*  
Inspector

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## APPEARANCES

### FOR THE APPELLANT:

Mr A Chorlton  
Ms J Bradbury  
Mr J Mercer

Chorlton Planning Ltd  
Halliwells Solicitors, Manchester  
Richmond Residential & Commercial PLC

### FOR THE LOCAL PLANNING AUTHORITY:

Mr B Sheasby

Team Manager – Development Control

### INTERESTED PERSONS:

Ms S Seddon  
Ms K Fishwick  
Mr P Naylor

Resident of Irwell Vale  
Rossendale Civic Trust  
Irwell Vale & Lumb Residents Association

### DOCUMENTS SUBMITTED AT THE HEARING

- 1 Completed planning application forms – ref. 2000/110
- 2 Planning permission 2000/110
- 3 Letter from Council to Storah Architecture - 4 April 2005

### PLANS SUBMITTED AT THE HEARING

- A -D Drawings forming part of planning permission 2000/110
- E Appellant's plan of land to be excluded from notice and the provisions of requirement (e)
- F Land Registry plan - title no. LA931976



# Plan

This is the plan referred to in my decision dated:

by **Derek Thew DipGS MRICS**

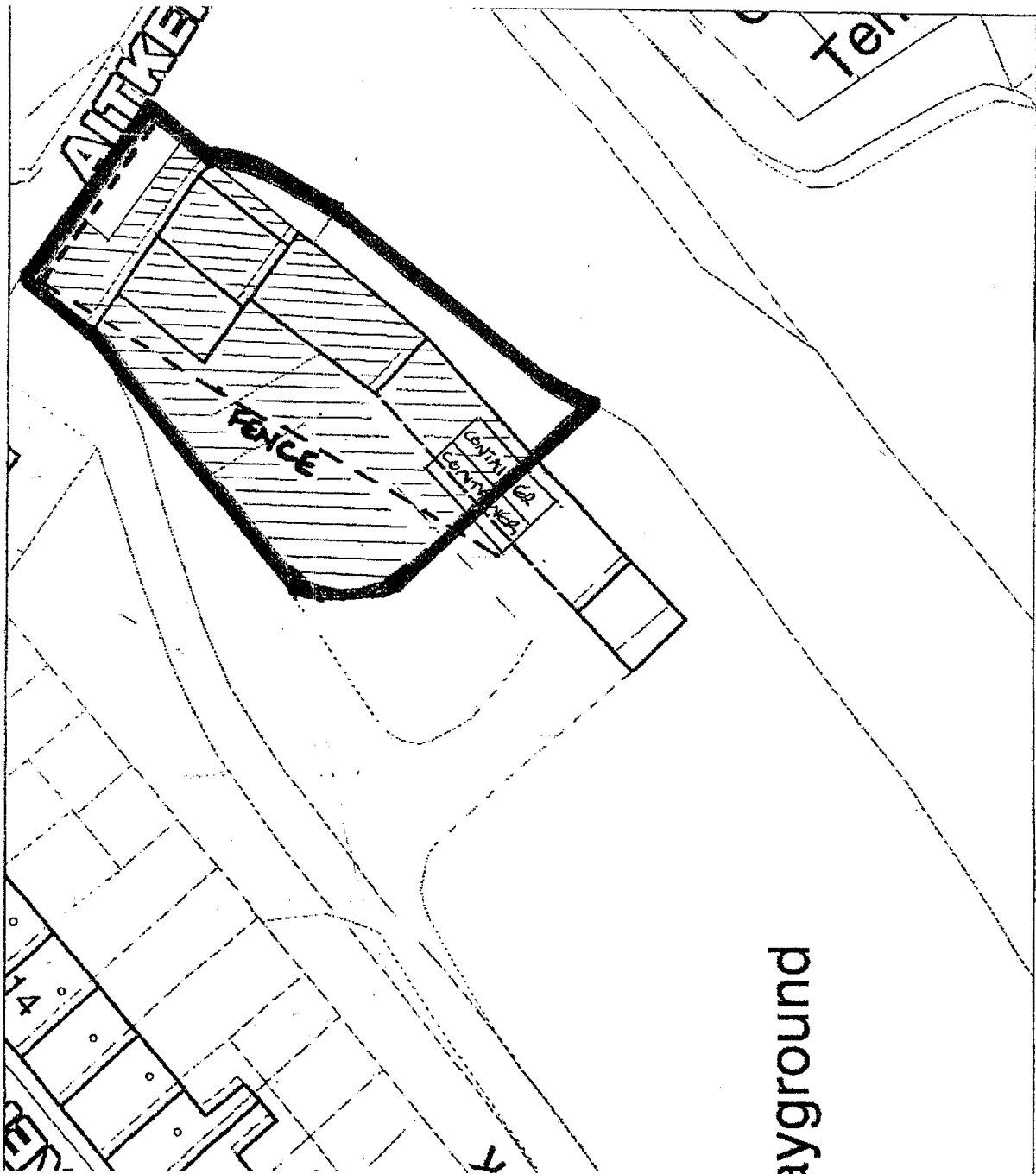
Land at Former Garage, Aitken Street, Irwell Vale,  
Rossendale

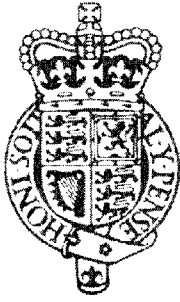
Appeal Ref: APP/B2355/F/06/2020488

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Scale:

**08 FEB 2007**





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# Appeal Decision

Site visit made on 13 December 2006

by **Malcolm Rivett BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State for  
Communities and Local Government

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Date: 2 February 2007

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**Appeal Ref: APP/B2355/A/06/2025261**

**Land rear of 521-531 Helmshore Road, Helmshore, Rossendale,**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr and Mrs Porter against the decision of Rossendale Borough Council.
  - The application Ref 2006/069, dated 10 February 2006, was refused by notice dated 23 March 2006.
  - The development proposed is erection of detached dwelling house.
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## Procedural Matter

1. The application was submitted in outline with all detailed matters reserved for future consideration. I have determined the appeal on this basis.

## Decision

2. I dismiss the appeal.

## Main Issues

3. The main issues are the effect of the proposal on housing land supply and on the living conditions of neighbouring residents.

## Reasons

4. Policy 12 of the Joint Lancashire Structure Plan (JLSP) states that provision should be made for 1,920 new dwellings in Rossendale in the period 2001-2016. Paragraphs 6.3.10 – 6.3.13 of this policy's supporting justification state that this figure should be regarded as a maximum requirement and that, where there is a significant oversupply of housing permissions, planning applications for further residential development may not be approved unless they make an essential contribution to the supply of affordable or special needs housing or form a key element within a mixed use regeneration project.
  5. In support of the JLSP, the Council's Housing Policy Position Statement (HPPS), formally approved in August 2005, states that 824 new dwellings were completed in the borough between 2001 and 2005 and that, at April 2004, there were existing planning permissions for 1,168 new dwellings. The Council contends, therefore, that there are outstanding residential planning permissions in excess of the borough's requirements for the next 10 years. Paragraph 4.12 of the HPPS states that applications for residential development in Rossendale will be refused, on housing land supply grounds, unless it is a like for like replacement for an existing dwelling or would positively contribute to the urban
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regeneration of the Bacup, Stacksheads and Britannia Housing Market Renewal Initiative areas or the Rawtenstall Town Centre Masterplan (Action Area Plan).

6. The appeal proposal does not fall within either of the exceptions set out in the HPPS, nor, I understand, would it be an affordable or special needs home as referred to in the JLSP. I find, therefore, that it is contrary to policy 12 of the JLSP and the HPPS, as set out above. In my opinion a single dwelling is unlikely, by itself, to significantly harm the redevelopment of the borough's identified regeneration areas. However, I consider that allowing this proposal would be likely to make it difficult for the Council to resist similar proposals and that cumulatively such developments could prejudice the achievement of the objectives of policy 12 of the JLSP and the HPPS.
7. The appellants state that there is a shortfall of dwellings actually completed against the total requirement of new housing to 2016. However, with permissions already granted for more than the overall housing requirement to 2016, I have no reason to believe that the requirement will not be met without the approval of additional housing schemes. Whilst the Council's statistics concerning residential permissions and completions are up to 2 and a half years old, I am not aware that any such permissions have expired unimplemented. The appellants also refer to planning permissions granted for housing on other sites in Helmshore, although I have not been provided with details of these schemes. I noted a number of apparently recently-built dwellings in the area, although I have no reason to believe that permission for these was granted after the adoption of the HPPS.
8. The appeal site is below the level of Nos 515 – 531 Helmshore Road and the ground floor rear windows and back yards of these properties are mostly screened by high rear walls. To the north of the site, only the side elevation of No 48 Station Road would face the proposal at a distance of approximately 10m. Consequently, whilst I have not seen a detailed design for the dwelling, I consider that an appropriately designed single or 2 storey dwelling on the site would be unlikely to result in any significant loss of privacy or other harm to the living conditions of adjacent residents. I therefore find that the proposal, in principle, is not contrary to policy DC.1 of the Rossendale District Local Plan which seeks to ensure that development will not be detrimental to the existing conditions in the surrounding area, taking account of, amongst other things, privacy. However, notwithstanding my findings on this issue, I consider the harm I have found that the proposal would have on housing land supply objectives to be of overriding importance and for that reason alone the development should not go ahead.
9. I appreciate that the site was once part of a larger parcel of previously developed land on which Nos 38-48 Station Road were built and that the proposal could improve the site's somewhat unsightly appearance. However, I consider that these matters do not outweigh the harm I have identified that the proposal would cause.
10. For the above reasons, and having regard to the views of neighbouring residents and all other matters raised, I conclude that the appeal should be dismissed.

*Malcolm Rivett*

INSPECTOR



# Appeal Decision

Site visit made on 5 December 2006

by **P Hellowell**

Inspector appointed by the Secretary of State for Communities  
and Local Government

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Date  
**20 DEC 2006**

**Appeal Ref: APP/B2355/H/06/1200068**

**ASDA, St Mary's Way, Rawtenstall**

- The appeal is made under Regulation 15 of the Town and Country Planning (Control of Advertisements) Regulations 1992 against conditions imposed when granting express consent.
- The appeal is made by ASDA Stores Ltd against the decision of Rossendale Borough Council.
- The application Ref. 2006/100A is dated 1 March 2006.
- The condition in dispute is No 1(b) which states that: the sign on the rear elevation of the building (Sign A on Drawing No ASDA /106 24 HR/2005 Rev F shall not be illuminated at any time.
- The reasons given for the condition are: To protect the amenities of local residents/the character and appearance of the area, in accordance Policy DC5 of the adopted Rossendale District Local Plan.

**Summary of Decision: The appeal is allowed on the terms set out below in the Formal Decision.**

## Main Issues

1. The principle issue in this case is the effect of the illumination of the sign on the amenity of the area.

## Planning Policy

2. The Council have drawn attention to their policies and I have taken these into account as a material factor in my consideration of the appeal. However, as the Regulations require that the local planning authority, and the Secretary of State on appeal, shall exercise their powers only in the interests of amenity, and where applicable, public safety, taking into account any material factors, I do not consider that the Council's policies should, by themselves, be decisive in the determination of the appeal.

## Reasons

3. The appeal premises are a large superstore situated on the west side of St Mary's Way with extensive car parking to its south and west sides. The setting is in mixed use and includes housing to the south and west.
4. I note that the Council's concern is the impact of the sign over the main entrance in the western elevation in illuminated form on the residential neighbours. However, the boundary between the store and rear gardens of these properties is over 100m away with the houses themselves being located a further beyond this and in a more elevated position than the store. As a result views of the sign from these properties would be from some distance away. Furthermore, when the store is open the sign would be seen across a well lit car park as well as in conjunction with illumination emanating from the building and providing the period and intensity of the illumination is controlled I do not consider that sign, in

illuminated form, would unacceptably intrude into the outlook from these neighbouring properties during opening hours. In these circumstances, therefore, I consider that there is no justification for the condition imposed by the Council.

### Conclusions

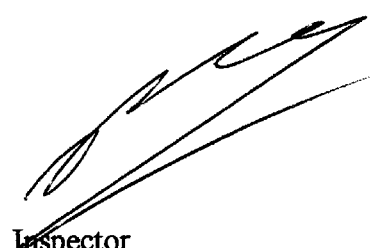
5. For the reasons given above, therefore, and having taken account of all the material factors, I conclude that the display of the sign in illuminated form would not be detrimental to the interests of amenity subject to appropriate conditions relating to the period and intensity of the illumination.

### Formal Decision

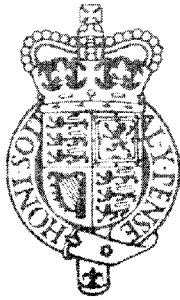
6. I allow the appeal and direct that condition No. 1(b) imposed by the Council in their decision notice dated 15 September 2006 relating to application No. 2006/100A should be deleted and replaced by the following conditions:-

2(a) the level of luminance to sign A on drawing No ASDA/106 24HR/2005 REV F shall not exceed that recommended in the Institute of Lighting Engineers Technical Report No 5 (Third Edition).

2(b) the above sign shall not be illuminated at any time which is more than 30 minutes before the store is open for business to the public or more than 30 minutes after the store closes for business to the public.



Inspector



# Appeal Decision

Site visit made on 17 January 2007

by **John Yellowley BSc CEng MICE**

**an Inspector appointed by the Secretary of State for  
Communities and Local Government**

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Date: 5 February 2007

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**Appeal Ref: APP/B2355/A/06/2027344**

**4 Daneswood Avenue, Whitworth OL12 8UY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr B Shackleton against the decision of Rossendale Borough Council.
- The application Ref 2006/182, dated 4 April 2006, was refused by notice dated 2 June 2006.
- The development proposed is a 3 bed detached dwelling with a single garage.

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## Decision

1. I dismiss the appeal.

## Procedural Matter

2. I note the spelling of the address of the location of the development differs between the application form and the notice of refusal of planning permission. I have adopted the spelling on the notice of refusal which is consistent with the Ordnance Survey map.

## Planning Policy

3. The development plan includes the Joint Lancashire Structure Plan 2001-2016 (SP), adopted March 2005 and the Rossendale District Local Plan (LP), adopted April 1995. Policy 12 of the SP expects 1920 new dwellings to be provided in Rossendale in the period 2001-16. The Council records that the LP is now out of date in respect of several policies which are deemed not to be in general conformity with the SP. To address this situation the Council issued an Interim Housing Position Statement in August 2005 to clarify residential development policy and, in the light of experience gained in its implementation, considered it was appropriate to issue a Revised Interim Housing Policy (RIHP) in November 2006. Policy 1 of the RIHP sets out the limited circumstances where residential development may be acceptable and which outweigh the general presumption against development on over supply grounds.
4. Policy DC.1 of the LP sets out criteria, including servicing, access and car parking provision, for all new development which is expected to provide a high standard of building and landscape design, to contribute to environmental quality and not to be detrimental to existing conditions in the surrounding area.

## Main Issues

5. I consider the main issues are the effect of the proposed dwelling on the management of the supply of land for housing and the effect of the proposed car parking provision on highway safety.
-



## Reasons

### *The management of the supply of land for housing*

6. The RIHP reports that as at 31 March 2006 there were extant planning permissions for 1412 new dwellings and 972 new dwellings had been completed since 31 March 2001. After taking account of losses, the level of excess supply over the period to 2016 will be 376 dwellings. This represents a further increase on the excess of 255 dwellings, established as at 31 March 2005, on which the Council determined the application. I have considered the circumstances in Policy 1 of the RIHP where permission may be granted but I can find none which are relevant to this application.
7. The appellant considers his application has been treated differently to an application for 45 houses on a site nearby which was permitted a month after his was refused. I have no information on which to judge the merits of that case. It does not overcome my concern with this application and neither that nor the previous outline permission for a dwelling on the appeal site which lapsed, would justify overriding the approach adopted by the Council to manage the supply of housing. Whilst it could be argued that permission for a single dwelling would not compromise the overall level of provision, the cumulative effect of such decisions would prejudice the housing strategy and I conclude on this issue that the proposal would be contrary to Policy 12 of the SP and Policy 1 of the RIHP.

### *Proposed car parking provision*

8. The appeal site includes a substantial area of land to one side of 4 Daneswood Avenue, a semi-detached house, where the proposed dwelling would be located. Vehicular access would be in a similar position to that currently used by No 4 but would be exclusively for the use of the proposed dwelling. Access to No 4 would be for pedestrians only using a short flight of steps down from the footway and the current off street parking provision would no longer be available to the occupiers.
9. The majority of dwellings on Daneswood Avenue and the short cul-de-sacs served by it, including the new residential development at the northern end, have some form of off-street parking. Notwithstanding those facilities, at the time of my visit cars were parked on both sides of Daneswood Avenue and a number chose to partly obstruct the footway to limit obstruction of the road for other vehicles. The Council reports its adopted car parking standards as requiring 2 spaces for each dwelling. Planning Policy Guidance Note (PPG) 13: *Transport* advises that policies in development plans should set maximum levels of parking for broad classes of development. I therefore consider the car parking provision for the proposed dwelling, which would include a single garage and a driveway large enough for one vehicle to park clear of the footway, would be adequate. However, in my view, the lack of any off-street car parking at No 4 would be likely to result in on street parking which would impede the free flow of traffic and be detrimental to highway safety.
10. The appellant considers that the difference in level between the footway and the existing house would make it difficult to provide car parking as it might require the demolition of the existing single storey extension to the side and that when originally built, No 4 never had a driveway. Be that as it may, I do not accept that the physical characteristics of the site prevent such provision and traffic conditions on Daneswood Avenue are likely to be different to when the original houses were provided. However, I do not agree with the Council that it would be necessary to provide an area to turn vehicles within the curtilage of

either the detached dwelling or No 4 to enter and leave in a forward direction as I consider reversing onto Daneswood Avenue would not harm highway safety. Nevertheless, for the reasons given above, I conclude on this issue that the lack of parking provision at No 4 would be contrary to Policy DC.1 of the LP.

11. The appellant reports that neighbours would support the proposals if required. I note that no representations were received in response to either the application or this appeal and whether or not neighbours do support the application does not overcome my concern on the harm I have identified. Accordingly and in respect of all other matters raised, I conclude the appeal should be dismissed.

*John Yellowley*

Inspector