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**Proposal: Appeals Update Report**

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<b>Report of:</b> Planning Unit Manager	<b>Status:</b> For Publication -
<b>Report to:</b> Development Control Committee	<b>Date:</b> 18 <sup>th</sup> May 2009

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**REASON FOR REPORTING**

- 1.1. Other (please state) As part of the Planning Unit's performance, it is considered appropriate that Committee Members are informed about the appeal decisions received since September 2008.

**2. RECOMMENDATIONS**

- 2.1. That the report be noted.

**3. Appeal Activity**

3.1 **Appeals received since the last report (16<sup>th</sup> March 2009)**

- 3.2 There have been 10 appeals received since the last report.

3.3 **Appeals decided since the last report (16<sup>th</sup> March 2009)**

- 3.4 Twelve appeals have been decided since the last report. Each has been appended to this report. Out of the twelve decided, two were allowed, one was withdrawn and nine were dismissed. One appeal that was allowed was originally recommended for approval by Officers, but was refused by Members (Fancy Fingers, 221 Bacup Road, Planning reference 2008/0206).

**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

Site visit made on 4 March 2009

by **Clive Sproule** BSc(Hons) MSc MIEEnvSc  
MRTPI CEnv

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Decision date:  
17 March 2009

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**Appeal Ref: APP/B2355/A/08/2090585**

**Heald Lane Farm, Heald Lane, Weir, Bacup, Lancashire OL13 8QZ**

- 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 Mrs Carolyn Ashcroft against the decision of Rossendale Borough Council.
- The application Ref 2008/0172, dated 22 May 2008, was refused by notice dated 8 August 2008.
- The development proposed is a block of seven stables.

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## Decision

1. I dismiss the appeal.

## Procedural matters

2. The proposed stable block has been constructed and I am therefore treating this appeal as one that seeks retrospective planning permission.
3. The planning application form notes the appeal site address to include the settlement of Wier. However, I understand the correct spelling to be Weir and the site address has been modified accordingly.

## Main issues

4. These are the effect of the proposed development on: (a) the character and appearance of the area; and (b) the living conditions of the occupiers of The Barn in relation to visual impact.

## Reasons

### *Character and appearance*

5. The proposed development stands in a prominent location on the hillside above Weir. Although previous habitation and associated land uses are evident around the appeal site, Heald Lane Farm is within an area of landscape that is rural in character.
  6. The development plan for this area includes *The North West of England Plan – Regional Spatial Strategy to 2021* (RSS). RSS Policy DP7 seeks development to respect the character and distinctiveness of its location, which is echoed in policy DC1 of the Rossendale District Local Plan (LP) and reflects national policy within Planning Policy Statement 1 – *Delivering Sustainable Development* (PPS1) and Planning Policy Statement 7 – *Sustainable Development in Rural Areas* (PPS7).
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7. There is considerable variety in the equestrian building designs that are visible from the appeal site. However, the stable block that is the subject of this appeal is for the most part seen within the context of the buildings that stand around the footpath at the top of Heald Lane. These are principally stone built pitched roof buildings of considerable age.
8. The proposed stable block has the appearance of a significant structure on the hillside due to its size and the light coloured rendering on the external elevations. The scale of the building is emphasised by the mono pitch roof design, which incorporates high level windows that face into the yard area at the centre of the "u"-shaped structure. These windows and the associated overhang above the stable doors are seen by the users of the adjacent footpath and the land to the north of the site. The windows and overhang by their scale and projection out from the remainder of the built form are dominant features in the aspect of the stables from the footpath.
9. The appellant has drawn attention to a number of factors that have led to the proposed design. However, it has not been demonstrated that matters including electrical wiring and the availability of light and air could not have been addressed within in a structure that would be more sympathetic to the building styles immediately around the appeal site.
10. Changing the colour of the wood staining on the overhang and the landscaping proposed would neither effectively reduce the prominence of the built form in views from the north, nor mitigate its failure to sufficiently reflect the characteristic pitched roof buildings nearby. I find therefore that the proposed development departs from the designs of neighbouring buildings to such an extent as to be unacceptably harmful to the character and appearance of the area and in this respect conflicts with LP policy DC1, RSS Policy DP7, PPS1 and PPS7.

#### *Living Conditions*

11. The stables are positioned in close proximity to the gardens of both Heald Lane Farm and the adjoining dwelling known as The Barn. These gardens are a significant length and the rear elevation of the stables reflects the boundary line between the gardens. Some views to the northwest from the garden and ground floor of these properties are limited by the size and location of the building. However, The Barn retains open aspects in other directions across the valley.
12. Planting is present at The Barn that partially screens the proposed single storey structure. The proposed roof rises away from the adjoining gardens at a relatively low angle, which lessens the potential enclosing effect of the stable block on the adjacent amenity space. Whilst the proposed building is a significant structure, its visual impact at The Barn is notably reduced by its offset position from the garden of the dwelling and the separation distance between the stables and the northwest elevation of the house. The proposed landscaping would further mitigate its presence in views from The Barn.
13. I therefore conclude on the second main issue that the proposed stable block is not unacceptably harmful to the living conditions of the occupiers of The Barn and in this respect complies with LP policy DC1.

*Other matters*

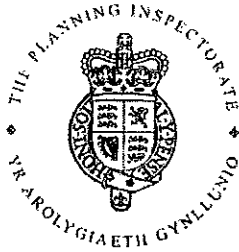
14. The appellant has referred to other developments in the locality. However, each appeal is considered on its own merits within the context of relevant planning policy and that is how I have dealt with this case.
15. Reference has also been made to an existing planning permission for a stable block on the appeal site that would have a pitched rather than mono pitch roof. The drawings associated with each scheme indicate the floor level of the appeal proposal to be lower than that of the approved scheme. Whilst this may to some extent compensate for the height of the mono pitch roof, the form of the approved stable block would be more sympathetic to the pitched roof designs of the buildings around it. I consider that if this appeal were to be dismissed, there would be a reasonable likelihood of the approved scheme being implemented.
16. I note that the appellant seeks through the construction of the stables to make efficient use of the land and that native species of plants would be used for the proposed landscaping. I also note that some evening and night users of the footpath may welcome the light emitted from the existing stable windows. However, these matters and the Council's suggested condition do not outweigh the harm that I have identified.

**Conclusion**

17. For the reasons given above and having considered all other matters raised, my findings with respect to the effect of the proposed development on the character and appearance of the area are paramount and therefore the appeal fails.

*C Sproule*

INSPECTOR



# Appeal Decision

Site visit made on 4 March 2009

by **Clive Sproule** BSc(Hons) MSc MIEEnvSc  
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Decision date:  
23 March 2009

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**Appeal Ref: APP/B2355/A/08/2091703**

**1032 Burnley Road East, Lumb, Rossendale, Lancashire BB4 9PL**

- 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 Brent Jordan against the decision of Rossendale Borough Council.
- The application Ref 2008/0680, dated 9 October 2008, was refused by notice dated 2 December 2008.
- The development proposed is a first floor extension to the existing double garage to create ancillary study / games room including first floor glazed linked extension to the existing dwelling and removal of timber decked area to rear.

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## Decision

1. I dismiss the appeal.

## Main issue

2. The effect of the proposed development on the character and appearance of the No.1032 and the locality.

## Reasons

3. No.1032 is an extended end of terrace house that is part of a ribbon of development within the open countryside. There is considerable variety in the scale and style of the built form in this locality. Nevertheless, No.1032 is constructed in materials which are sympathetic to the characteristic buildings that are apparent both within the terrace and elsewhere in the street scene.
  4. Policy DC.1 of the Rossendale District Local Plan (LP) seeks to ensure that all new development is of a design that respects its setting. This reflects national policy within Planning Policy Statement 1 – *Delivering Sustainable Development* (PPS1) and Planning Policy Statement 7 – *Sustainable Development in Rural Areas* (PPS7).
  5. The proposed development would be seen within the context of the existing extension and the characteristic buildings around it. This includes the neighbouring church which has a front elevation that stands forward of the proposed development. Nevertheless, the church is separated from the appeal site by the course of a river. The resulting gap between the buildings ensures that the existing side extension and the associated wooden decking are apparent in the street scene, as would be the proposed development.
  6. The proposed first floor extension to the garage would be in materials and of a design that would reflect the existing extension at No.1032. The proposed
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linking structure would replace the existing decking and bridge the gap between the two principal built structures on the appeal site. Glazed structures can be an effective transition from one phase of development to another. However, the proposed elevated corridor and the associated spiral staircase are not characteristic built forms that are present elsewhere in the street scene.

7. Although the proposed development would be subordinate in height to the main building and its side extension, it is proposed to use obscure and light bronze glass panes to enclose the elevated link. The extent, nature and position of the proposed glazing and the associated spiral staircase would emphasise the scale, massing and prominence of the development in the street scene. It would be an obvious and significant departure from the characteristic materials and built forms at both No.1032 and in the locality.
8. Whilst there is a considerable degree of development on either side Burnley Road East, the surrounding fields are evident in views from the highway across the appeal site. This discernable break in frontage development emphasises the rural setting of the street scene. The proposed increase in the scale of built development on the appeal site would reduce the aspects of the open countryside around it to such an extent as to notably erode the rural character of the area.
9. I therefore conclude on the main issue that the proposed development would be unacceptably harmful to the character and appearance of both No.1032 and the locality and conflicts with LP policy DC.1, PPS1 and PPS7.
10. I note that there would be sufficient separation distance between the proposed windows and those of facing buildings to ensure that the extension would not result in an unacceptable loss of privacy for the occupiers of nearby properties. I also note that the appellant would accept a condition regarding the type of glazing to be used in the development. However, these matters do not outweigh the harm that I have identified.

### **Conclusion**

11. For the reasons above and having considered all other matters raised, I conclude that the appeal should be dismissed.

*C Sproule*

INSPECTOR



# Appeal Decision

Site visit made on 23 March 2009

by **Shelagh Bussey MA, Dip TP, Dip EM, PhD, MRTPI.**

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Decision date:  
27 March 2009

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## Appeal Ref: APP/B2355/A/09/2094188

### Land off Waingate Lane, Waingate Village, Rawtenstall, Lancashire.

- 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 S Ashworth against the decision of Rossendale Borough Council.
- The application Ref 2008/0585, dated 14/08/2008, was refused by notice dated 07/01/2009.
- The development proposed is replacement of existing dwelling with bungalow.

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### Decision

1. I dismiss the appeal.

### Main issues

2. The main issues are whether the proposed development accords with national and local policy concerning residential development in the countryside, and the impact of the proposed development on the character and appearance of the area.

### Procedural matters

3. The application was made in outline with approval sought for access, layout and scale.
  4. The description of the proposal refers to the replacement of an existing dwelling. However, the 'dwelling' for which replacement is sought is a residential caravan that has been on the site for a number of years with the benefit of a planning permission reference 13/3/2209, subject to the condition that includes the requirement that it should be in a state fit to be drawn or propelled on its wheels on a public highway.
  5. The caravan is connected to mains water and electricity. It has no wheels and is supported above the ground on blocks. However, it does not appear to have been otherwise adapted or permanently fixed to the ground. I am of the opinion that it could be lifted in one piece and moved from the site on a transporter. I conclude that the caravan falls within the statutory definition given in the Caravan Sites and Control of Development Act 1960, as supplemented by the Caravan Sites Act 1968. In reaching this conclusion I have taken account of the several appeal decisions that have been drawn to my attention by the main parties. However, it is clear from those other decisions that the specific details and circumstances differ in each case.
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6. Consequently, I also conclude that its siting relates to the use of the land and that it does not amount to operational development. Also, that the caravan cannot be regarded as being a permanent structure/dwelling. This leads me to a further conclusion that the site is not brownfield, as defined in PPS3, because it has not been occupied by a permanent structure.
7. I have therefore considered the proposal as being for the erection of a new permanent dwelling on a greenfield site; not a replacement dwelling.
8. I have taken into consideration that the caravan on the site could be replaced on a regular basis and thus that the land could be permanently used for a residential purpose. However, I consider that the construction of a permanent dwelling on the site would be materially different to the siting of a residential caravan because it would urbanise and, therefore, alter the character of the land.

### **Reasons**

#### *The Principle of Residential Development in the Countryside*

9. The site is a small plot of land that is accessed from Waingate Lane, which leads to a small cluster of dwellings and the Grade 11 listed Waingate Farmhouse, located around 30.0 metres to the east. The site is bounded on three sides by substantial timber fencing and mature trees. A public footpath runs parallel with the boundary fence to the north.
10. I note that there is a range of facilities close-by in Rawtenstall town centre that is within reasonable walking distance. The appeal site is, therefore, sustainably located in this regard. However, it falls just outside an urban settlement boundary and is located within a Countryside Area, as defined in the adopted Rossendale District Local Plan. As I have concluded above, the development would not be a replacement dwelling in terms of planning policy. There is no indication that it is intended as an affordable/special needs home or that its occupation would be restricted to occupation by agricultural, forestry or certain other occupational workers.
11. PPS7 stresses that new development in the open countryside should be strictly controlled; the countryside should be protected for its own sake and that priority should be given to the re-use of brownfield land unless there are no other more suitable brownfield sites available to meet current housing requirements and to ensure an up-to-date five year supply of deliverable sites. These presumptions are affirmed in PPS1 and PPS3. They are also translated locally in policies of the RSS, particularly RDF 1 and RDF 2, and in saved Policy DS.5 of the Local Plan. In addition, the Council's Interim Housing Position Statement (July 2008), which is a material consideration, clarifies circumstances where new residential development may exceptionally be permitted outside the urban boundary of settlements in Rossendale. The appeal proposal does not fall within any of those categories.
12. The appellant has challenged the Council's five year supply of deliverable housing, a view which is supported in some appeal decisions. However, whether or not there is the necessary supply, I do not consider that paragraph 71 of PPS3 lends support to the proposal because the countryside designation of the site is a policy constraint, and its greenfield character would not result in

an effective use of land. Therefore, it fails to meet the requirements of paragraph 69 of the PPS.

13. Taking all of these considerations into account, I conclude that the proposed development would not accord with national and local policy that seeks to restrict residential development in the countryside, and that it would result in an undesirable encroachment into the countryside.

*Impact on the Character and Appearance of the Area*

14. The application plans and the design and access statement indicate that a single-storey bungalow of modest scale, with a footprint less than the maximum that would be permitted by the Caravan Sites Act 1968, is proposed. However, in order to provide a pitched roof, necessary for good design, the development would be higher than a permitted caravan on the site. Even if the construction works did not necessitate the removal of boundary trees, it is likely that some, under the applicant's control, would be removed by future occupiers to increase natural light into the bungalow and to maximise usable garden space. Furthermore, in order to provide satisfactory visibility splays for vehicular safety, it would be necessary to reduce part of the fencing to a maximum height of 1.0 metre.
15. Cumulatively, these factors would result in a significant increase in the prominence of development at the site, which would have an urbanising impact that would contribute to the erosion of the countryside and to the loss of its intrinsic qualities to a substantially greater extent than the continued siting of a caravan. I conclude that the proposed development would significantly detract from the character and appearance of the area and consequently that it would conflict with saved Policy DC.1.

**Other matters**

16. It could be ensured, through subsequent reserved matters applications that the bungalow was of a high quality design and finished in appropriate external materials. Having regards to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am satisfied that the setting of the nearby listed building could thereby be preserved. I am also content that through appropriate design the privacy of neighbouring residents need not be significantly impaired. I have considered all other matters raised in the representations but none are sufficient to outweigh my conclusions on the main issues.

*Shelagh Bussey*

INSPECTOR



# Appeal Decisions

Site visit made on 23 March 2009

by **Shelagh Bussey MA, Dip TP, Dip EM, PhD, MRTPI.**

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Decision date:  
1 April 2009

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## Appeal A: APP/B2355/H/08/2088273 KFC New Hall Hey, Rawtenstall.

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by YUM Restaurants International Limited against the decision of Rossendale Borough Council.
- The application Ref 2008/0503, dated 08/07/2008, was refused by notice dated 08/09/2008.
- The advertisement proposed is an internally illuminated pylon sign - 10.0 metres high.

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## Appeal B: APP/B2355/H/09/2094274 KFC New Hall Hey, Rawtenstall.

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by YUM Restaurants International against the decision of Rossendale Borough Council.
- The application Ref 2008/0754, dated 11/11/2008, was refused by notice dated 06/01/2009.
- The advertisement proposed is an internally illuminated pylon sign - 8.0 metres high.

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### Decisions

1. Appeal A - I dismiss the appeal.
2. Appeal B - I dismiss the appeal.

### Main issue

3. The main issue in both appeals is the effect of the proposed pylon sign on the character and appearance of the area in views from surrounding parts of the retail/leisure park and from the A682 Rawtenstall by-pass.

### Reasons

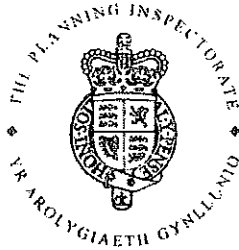
4. Both appeals relate to the same site within a retail/leisure park that is under construction and which is located at an important gateway fronting the A682 Rawtenstall by-pass. The appeal premises, which will comprise a KFC drive-thru restaurant, have not yet been constructed. The building will be single-storey, approximately 4.5 metres high and will be sited within the main car park, which will be located around 19.0 metres to the south of the by-pass. Larger/taller retail sheds will be constructed to the rear of the car park. Tree planting is proposed on the narrow embankment between the retail/leisure park and the highway. Hardman's Mill, a Grade II listed building, is situated to
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the rear of the retail/leisure park. The effect of the proposed sign on its setting is an important material consideration which I have taken account of.

5. The proposed sign would be an internally illuminated, double-sided pylon displaying the corporate KFC logo in red, black and beige colours with 'drive-thru' and direction of travel signs below. I have no objection to these aspects of the design of the sign. Nor do I have concerns for public safety.
6. My objection relates to the effect of its height on the character and appearance of the area. The appeal A sign would be 10.0 metres high and the alternative appeal B proposal would be 8.0 metres high. Both would be significantly greater in height than the restaurant building to which they would relate. Although they would be seen in some views, particularly from the road, against the backdrop of the taller retail buildings to the rear, it is my opinion that as a consequence of their considerable height and free-standing location each would, nevertheless, appear to be poorly related to the scale of the subject building, and unduly prominent and incongruous in its setting in views from both within the retail/leisure park and from the A682. I do not consider that the 2.0 metre reduction in height of the alternative proposal B is sufficient to overcome these objections.
7. I conclude that both signs would be significantly detrimental to the visual amenity of the locality. In addition, for the same reasons, I conclude that they would detract from the setting of the nearby listed building, which has a characteristic tall chimney, the prominence of which would be competed with.
8. In reaching these conclusions I have taken into account that there is a drop in levels from the A682 to the proposed car park, and that the intervening embankment will be planted with trees. However, whilst I do not think that either of the proposed signs would adversely affect the landscaping proposals in the vicinity, I do not consider that individually or in combination the effects of the differences in floor levels, maturity of the landscaping or the juxtaposition of the larger retail buildings to the rear, together with their associated signage and illumination, are sufficient to satisfactorily assimilate either of the signs into the character and setting of the commercial area under construction, or in views from the by-pass.
9. The Council refers to saved Policy 1 of the adopted Joint Lancashire Structure Plan and the criteria of saved Policy DC5 of the adopted Rossendale District Local Plan in their refusal notices. These are material considerations that I have also taken into account in my determination of these appeals.

*Shelagh Bussey*

INSPECTOR



## Appeal Decision

Site visit made on 4<sup>th</sup> March 2009

by **Jonathan G King** BA (Hons) DipTP MRTPI

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Decision date:  
3 April 2009

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### Appeal Ref: APP/B2355/A/08/2089798

#### Land adjacent to Baron Street, Rossendale, Lancashire BB4 7LF

- 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 Malcolm Halshaw against the decision of Rossendale Borough Council.
- The application Ref 2008/0430, received by the Council on 1<sup>st</sup> September 2008, was refused by notice dated 27<sup>th</sup> October 2008.
- The development proposed is 2 detached dwellings.

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### Decision

1. I dismiss the appeal.

### Main issues

2. The main issues in this case are the effect of the proposed development on:
  - (a) the objectives of the Council's policies for housing development;
  - (b) the character and appearance of the locality;
  - (c) the living conditions of the occupiers of other dwellings in the vicinity;  
and
  - (d) highway safety.

### Reasons

#### *Housing objectives*

3. In refusing permission, the Council relies on its Interim Housing Policy Statement of July 2008 (IHPS), which provides guidance on how the Council intends to manage the release of housing land prior to the adoption of the new Local Development Framework. It explicitly does not introduce new policy. It encourages new residential development within the urban boundary of settlements in the District, amongst other things where it uses previously developed land (PDL) and where it does not undermine the focus for most residential development in the main development locations and the regeneration priority areas. Insofar as it reflects the policies of the Regional Spatial Strategy for the North West (RSS), I accord the IHPS significant weight.
  4. Central to the Council's argument is the question of whether the land may be regarded as PDL for the purposes of applying its policy with respect to housing development. I address this matter before proceeding to consider the policy
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issue more generally. There is agreement that the land occupied by the former workshops or garages is PDL. The remainder, which has now been largely cleared, is the subject of the dispute.

5. I have seen the statements by the appellant and others that the land was used as a garden to No 6 Baron Street, and possibly by the occupiers of other houses in the street. I have no evidence from the Council to cast doubt on these statements. However, use as a garden does not automatically convey PDL status on land. Annex B to Planning Policy Statement 3 Housing (PPS3) gives the definition as *"that which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed structure"*. It is the matter of being within a curtilage that is the determining factor, not its use as garden. The normally accepted meaning of "curtilage" is ground that is attached to a dwelling and forms part of one enclosure with it.
6. At the time of my visit, there was some rough grass and spring bulbs flowering on the land, and the remains of what may have been a post for a washing line. But in themselves these things are not conclusive as to the status of the land. The short terrace of houses in Baron Street have a narrow access way running between their rear walls and a retaining wall that rises up to the land. There are steps leading from this access up to the land from a point behind No 4. This would seem to suggest a connection between the houses generally and at least some of the land. There is also what appears to be a garden path which runs behind the houses at the higher level, indicating that there has been some domestic occupation there in the past. But this seems to me to be outside the appeal site and therefore not part of the disputed land. None of this is conclusive either as to the former use of the majority of the land, nor does it indicate that it was curtilage land in the accepted sense. It does, however, lend some support to the statements provided by the appellant.
7. Against that background, it is impossible to say with confidence that the land was in the curtilage of No 6 Baron Street or any of the adjoining dwellings or, if it was, when that connection ceased. The most I can say is that it seems very likely that the land was used in the past as some form of garden by the occupier of No 6 and possibly others, but I cannot conclude firmly on this basis alone that the land should be regarded as PDL for the purposes of applying planning policy. In reaching this conclusion, I note appeal decisions on other sites in Rossendale where Inspectors have concluded that land is PDL. But such decisions must be unique to the individual circumstances. Consequently, I do not regard them as setting a precedent for the present case.
8. Turning then to policy, RSS Policy L4 concerns regional housing provision. It sets out an annual rate (net of clearance replacement) of 222 units. This rate has not been achieved in recent years so that the IHPS now indicates a requirement for 251 units per annum. In that context, it shows that at July 2008 there were 5.8 years of housing land supply. My colleague who determined appeals on land at Rochdale Road, Bacup in August 2008 [APP/B2355/A/08/2063111 & 2063112] came to the conclusion on the basis of evidence available to her that the supply of housing land was only approximately 5 years. Other Inspectors at various times have been even less positive; and the present appellant suggests strongly that this conclusion is optimistic. The IHPS shows that completions have not kept pace with the annualised rate; and the Council's own estimates of future completions (made

in 2006) are that this trend will continue for the next few years. The well-publicised downturn in housing completions nationally only adds credibility to those estimates. Moreover, on the basis of the information provided by the appellant, it seems to me that some of the sites identified within the Council's supply figures may not be realistically available for development in any case. Tellingly, the Council has not sought to contest any of the appellant's evidence on this topic. Consequently, there must be serious doubt about whether the Council has in fact a 5 year supply of available housing land.

9. Planning Policy Statement 3 *Housing* (PPS3) says that, where a 5-year supply cannot be demonstrated, applications for housing should be considered favourably, having regard to the policies of the PPS, including the criteria in paragraph 69. By reference to those, the Council raises no issues about the quality of the housing, which would provide family accommodation. The site is within an urban area, close to a main road and reasonably sustainable. Setting aside the question of whether part of the site is PDL and subject to my other issues, its use for housing would in my view be both effective and efficient, since it would make use of otherwise useless land. Finally, the Council has provided no evidence to show that the development would practically undermine its wider policy objectives, for example in relation to housing market renewal.
10. But even if there is a 5-year supply of deliverable sites, PPS3 still requires the Council to consider whether permitting the proposed houses would undermine their policy objectives. It has not done so. It has referred to Policies L2, L3 and L4 of the RSS, but not identified any harm to them, seemingly relying solely on the matter of PDL. It is true that, amongst other things, Policy L4 seeks to maximise the re-use of vacant and under-used brownfield land and buildings. However, that is not to say that all development must be on such land, or that building elsewhere would inevitably undermine the housing objectives. The RSS indicative target proportion of housing provision on brownfield land is "at least 65%", and I understand that the Council's own allocations include some greenfield sites. As I read the RSS and the IHPS, there is no blanket presumption against development that is not on PDL. In any case, it is common ground that at least part of this site is PDL. RSS Policies L2 and L3 are general in nature, relating to understanding housing markets and existing housing stock and renewal. While the IHPS is clearly in part a response to these policies, the Council has not sought to explain the nature of the harm to the achievement of their objectives.
11. In conclusion on this issue, I take the view that part of the site is PDL and part may or may not be PDL. However, in view of the sustainable location and the uncertainty about the existence of a 5 year deliverable supply of housing land, all in the context of the RSS and PPS3, I am of the opinion that this should not be the determining factor. I know of no harm to the Council's housing policy objectives that would be brought about by this small-scale development and consequently there is no good reason to oppose it on policy grounds.

#### *Character & appearance*

12. Bacup Road is a main road that has no single distinct character in the vicinity of the site. Approaching from the north-west, there is traditional 2-storey frontage development on the northern side. But, adjoining the site, set back

from the road and elevated above it, is No 312, a large, modern detached house. Beyond the site is the angled terrace of small houses in Baron Street and then a development of bulky mid twentieth century 3 storey flats. Opposite are commercial premises. The proposed development would broadly follow the lead provided by No 312 in terms of position relative to Bacup Road.

13. Taken alone, the design of the houses is acceptable. However, I agree with the Council that, in context, they are not. Planning Policy Statement 1 *Delivering Sustainable Development* says that design which is inappropriate to its context, or which fails to take the opportunities available for improving the character and quality of an area should not be accepted. I consider that the character and quality of this locality is capable of being improved through the careful and sensitive design of new development. The development of this site provides such an opportunity, but to my mind does not take it. The use of red brick would be at odds with the dominant stone (or in the case of No 312, pale render) used elsewhere locally, including in houses on the adjacent Heys Close. And, by turning their backs on the road, the houses would have a poor visual relationship with No 312 and the road. The prominent, elevated position would only serve to highlight these incongruities.
14. I conclude on this issue that the proposed development would harm the character and appearance of the area.

#### *Living conditions*

15. The Council has raised objections with respect to the effect of the development on the living conditions of the occupiers of Nos 4 and 6 Baron Street, and other representations have raised concerns about the impact on other nearby properties. I am broadly satisfied that the quality of life of all of the neighbours would remain satisfactory, with the exception of those living at No 4. House B would be located with its side facing the rear elevation of that property. As indicated previously, this part of the site is substantially higher than the Baron Street terrace. Standing at the rear door of No 4, one's eye is below the level of the appeal site and, according to the plans, the difference in floor levels would be in the region of 2.8 metres. The facing elevation of the new house is described by the appellant as being single storey but, at some 7 metres high, it would be less than a metre lower than the main 2-storey part of the house. The outlook from the rear of No 4 would therefore be towards a tall, mostly blank gable, only about 6 metres away and located on elevated land. The upper windows appear to serve a bathroom and a landing. On the ground floor, there is a part glazed door and an associated window. I am in little doubt that the proposed house would deprive the rooms they serve of daylight, and for the occupiers it would further diminish the quality of their outlook, already compromised by the present levels. The proposed house would be overbearing, in unneighbourly proximity, and would give an uncomfortable sense of enclosure. In short, it would unacceptably harm the living conditions of the occupiers.

#### *Highway safety*

16. Access would be taken from the top of the site, from a new entrance on to Hareholme Lane. At the point of the proposed access, Hareholme Lane is said to be unadopted. It is, nonetheless, reasonably surfaced - sufficiently, in my



view, to provide adequate access to the proposed development together with Hareholme House and another permitted, but as-yet unbuilt dwelling adjacent. Shortly after Hareholme House, the lane deteriorates in width and surfacing and is incapable of providing access to any other properties. Consequently, few vehicles would use this section of road. Visibility to the right when emerging from the proposed access may be limited, but in view of the very low level of usage, and the steepness of the hill that would effectively slow traffic, I am satisfied that any shortfall in visibility would not lead to any practical reduction in road safety. The submitted plan shows the access drive on a new ramp at a gradient of 1:7.5, but the appellant is of the view that this could be reduced to about 1:9. It is difficult to tell from the small scale plans supplied, but I am content to accept that this would be possible. This is still a steep gradient, and the lack of a level section at the entrance could make exiting at this point awkward, especially in icy weather. But steep accesses are not uncommon in this hilly locality; and I note that the condition attached to the reserved matters permission for the unbuilt house adjacent stipulates a maximum gradient of 1:7. In the circumstances, the steepness of the drive is not sufficient reason to oppose the development.

17. That notwithstanding, in the absence of detailed plans, it is unclear to me how the proposed ramp would be built in practice while maintaining its own stability and that of adjoining land within the limited space available. Were the development to be allowed, this is something that would have to be investigated more thoroughly. However, as it is not, I do not propose to consider the matter further.

*Conclusion*

18. Notwithstanding my conclusions with respect to the policy issue and highway safety, I am in no doubt that the proposed development would be unacceptable owing to its effect on the character and appearance of the area and on the living conditions of the occupiers of No 4 Baron Street. I have had regard to all other matters raised, but none is sufficient to outweigh the conclusions I have reached in this case.

*Jonathan G King*

Inspector



# Appeal Decision

Site visit made on 4 March 2009

by **Clive Sproule** BSc(Hons) MSc MIEEnvSc  
MRTPI CEnv

an Inspector appointed by the Secretary of State  
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Decision date:  
3 April 2009

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**Appeal Ref: APP/B2355/A/08/2092077**

**Bank Nook, Fish Rake Lane, Rossendale, Lancashire BB4 7AH**

- 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 A Hamilton against the decision of Rossendale Borough Council.
- The application Ref 2008/0304, dated 25 April 2008, was refused by notice dated 27 August 2008.
- The development proposed is the demolition of the existing ground floor store, porch and bathroom and extension to the ground floor comprising entrance lobby, bathroom and dining room with basement store below.

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## Decision

1. I dismiss the appeal.

## Main issue

2. Whether the proposal would be inappropriate development in the Green Belt and if so, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other material considerations, so as to amount to the very special circumstances necessary to justify the development.

## Reasons

*Whether the proposal would be inappropriate development in the Green Belt*

3. Bank Nook is a stone built rural dwelling set within land that is designated as Green Belt. National guidance within Planning Policy Guidance note 2 – *Green Belts* (PPG2) indicates the limited extension of an existing dwelling in the Green Belt is not inappropriate development if it does not result in a disproportionate addition over and above the size of the original dwelling.
  4. The reason for refusal refers to policy DC.1 of the Rossendale District Local Plan (LP) which is supported by the Council's Supplementary Planning Document – *Alterations and Extensions to Residential Properties* (SPD). An Inspector in a recent appeal decision (Ref: APP/B2355/A/08/2080585) attributed limited weight to the consultation draft of the SPD. However, I have the adopted version of the SPD before me.
  5. The SPD is clear that domestic extensions in Green Belt locations will be strictly controlled and should not normally exceed "a third", which it clarifies to mean 30%, of the volume of the original dwelling. The appellant estimates the proposed development would increase the volume of Bank Nook by 32.80%.
-

Whilst the Council dispute this figure, it is nevertheless slightly higher than the maximum sought by the SPD.

6. The appellant's estimate includes the proposed basement store which would provide structural support for the extension. It would increase the volume of the building and provide additional residential storage space. The proposed store would be physically and functionally connected to the dwelling and consequently, the existing and proposed basement areas should be included within the calculated volume of the building.
7. I consider that the combined effect of the extensions on either side of the house would amount to a disproportionate addition over and above the size of the original building. I find the proposed development conflicts with LP policy DC.1. It would be inappropriate development in the Green Belt and conflicts with PPG2 and LP policy DS.3.
8. PPG2 paragraph 3.2 is clear that inappropriate development is by definition harmful to the Green Belt. The Secretary of State attaches substantial weight to such harm when considering proposals involving inappropriate development.

*Effect on the openness of the Green Belt*

9. PPG2 states that openness is the most important attribute of the Green Belt, which should be kept permanently open. The substantial increase in the volume of the house would cause a corresponding loss of openness. Such a loss occurs from the presence of the additional built form, regardless of whether the new structure can readily be seen. Therefore the vegetation and topography around Bank Nook would not mitigate the loss that would occur.
10. Permitted development rights could enable a residential extension to be built at Bank Nook and if this appeal were to be dismissed, I consider there to be a reasonable likelihood that such an extension would be constructed. Nevertheless, the part two-storey proposal would be appreciably wider than the extension that the appellant notes could be built under permitted development rights. To my mind the scale of the proposed extension would be sufficient to be harmful to the openness of the Green Belt, which conflicts with PPG2 and adds to the harm by inappropriateness.

*Character and appearance*

11. Bank Nook occupies a relatively isolated position and views of the house are restricted by the trees, vegetation and topography around it. Given the scale of the proposed development within its setting and the current level of vegetation around the house, the proposal would have a limited impact on the wider landscape in this area. The design of the proposed extension would include windows and materials that would be sympathetic to the existing house. In addition, the lean-to roof would reflect those of the smaller structures that it would replace and the form of the greenhouse on the opposite side of the building.
12. However, whilst lean-to structures are a feature of some rural buildings, the proposed development would notably depart from the pitched roof style of the main component of the building. Although it would be subordinate to the main house, the proposed extension would be of sufficient size for the strong lines of

the lean-to roof to visually compete with, rather than complement the characteristic central core of the building. I find therefore that the proposed development would be unacceptably harmful to the character and appearance of Bank Nook and thus conflicts with LP policy DC.1. This would be a substantial degree of harm in addition to that to the Green Belt and would not be adequately mitigated by the conditions the appellant would be willing to accept.

*Other matters*

13. I note that the proposed development would provide the appellant with additional living accommodation. I also note that Bank Nook is not a listed building and that many of the maturing trees on the property have been planted by the appellant.

*Very special circumstances*

14. PPG2 is clear that there is a general presumption against inappropriate development, which should not be approved except in very special circumstances. I have taken into account the other considerations and matters that have been raised within the evidence before me. However, I conclude that material considerations do not exist in this case that clearly outweigh the harm by way of inappropriateness and the other harm that I have identified, so as to amount to the very special circumstances needed to justify such development. In the light of this and the conflict of the proposal with national policy guidance and development plan policies I conclude that the appeal should not succeed.

*C Sproule*

INSPECTOR



# Appeal Decision

Site visit made on 4 March 2009

by **Clive Sproule** BSc(Hons) MSc MEnvSc  
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Decision date:  
8 April 2009

**Appeal Ref: APP/B2355/A/08/2092439**

**The Stables, Highfield Road, Cloughfold, Rossendale, Lancs. BB4 7JS**

- 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 Kevin Gillatt against the decision of Rossendale Borough Council.
- The application Ref 2008/0663, dated 3 October 2008, was refused by notice dated 2 December 2008.
- The development proposed is the formation of a second storey extension to a single storey bungalow.

## Decision

1. I dismiss the appeal.

## Main issue

2. The effect of the proposed development on the character and appearance of the dwelling and the countryside.

## Reasons

3. The Stables is within the open countryside. The dwelling is seen within the context of the nearby settlement and the rising land and tree coverage to the rear of the building, which reduces its prominence within the landscape.
4. National policy within Planning Policy Statement 7 – *Sustainable Development in Rural Areas* (PPS7) seeks to protect the intrinsic character of the countryside. Policy DC.1 of the Rossendale District Local Plan (LP) expects new development to contribute to the environmental quality and consider the existing circumstances of its location. LP policy DC.1 is supported by a Supplementary Planning Document entitled *Alterations and Extensions to Residential Properties* (SPD). The SPD states that domestic extensions in the countryside will be strictly controlled and should not normally exceed “a third”, which it clarifies to mean 30%, of the volume of the original dwelling.
5. The front elevation of the existing building has retained some of the characteristics of the linear single storey former stable block. However, this is less so at the rear of the dwelling, which has a projection perpendicular to the main axis of the building. It is proposed to construct the extension in materials that would comply with LP policy DC.4 and include window openings that would reflect those of the existing structure. Two storey houses are not uncommon in this area and whilst the proposal would change the appearance of The Stables,

I consider that it has not been demonstrated that it would give the dwelling an urban character or be inappropriate for a rural location.

6. However, whilst the proposed development would not extend the footprint of the existing building, it would add a second storey to much of it. The Council has indicated that this would amount to significantly more than a 30% increase in the volume of the existing dwelling. The extended building would have a considerably greater presence that would be visible from footpaths and land outside the residential curtilage. To my mind the proposed development would be a significant increase in the built form in this location that would be sufficient to notably erode the rural character of the area.
7. I conclude on the main issue that whilst the proposed development would not be unacceptably harmful to the character and appearance of The Stables, it would fail to protect the intrinsic character of the countryside. I consider the harm that would be caused to the intrinsic character of the countryside outweighs the lack of harm to the existing building and the proposed scheme's compliance with LP policy DC.4. I find therefore that the proposal conflicts with LP policies DC.1 and DS.5, the SPD and PPS7.
8. Reference has been made to a recent nearby development and the 1994 planning permission (Ref 94/328) for the erection of a detached bungalow on the appeal site. However, full details regarding these matters are not before me. Each appeal is determined on its own merits and with reference to the planning policies that are relevant to it and this is how I have dealt with this case.
9. I note the proposed development would provide the appellant with additional living accommodation. I also note that The Stables occupies a relatively small proportion of the land in which it sits and that a former isolation hospital and associated buildings were once present in the vicinity of the appeal site. However, these neither matters nor the scope of the suggested conditions outweigh the harm that I have identified.

### **Conclusion**

10. For the reasons above and having considered all other matters raised, I conclude that the appeal should be dismissed.

*C Sproule*

INSPECTOR



# Appeal Decision

Site visit made on 3 February 2009

by **Jean Russell MA MRTPI**

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

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Decision date:  
5 March 2009

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**Appeal Ref: APP/B2355/A/08/2090491**

**Wood Top Mission Hall, 199 Bury Road and 195a Bury Road, Rawtenstall, BB4 6DJ**

- 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 Havencare Management Ltd against the decision of Rossendale Borough Council.
- The application (ref: 2008/0076), dated 23 January 2008, was refused by notice dated 11 June 2008.
- The development proposed is change of use from storage of catering equipment, with office and other ancillary facilities, to storage for funeral business retaining office and ancillary facilities; reinstatement of external door and creation of one new external door.

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## Decision

1. I allow the appeal, and grant planning permission for change of use from storage of catering equipment, with office and other ancillary facilities, to storage for funeral business retaining office and ancillary facilities; reinstatement of external door and creation of one new external door at Wood Top Mission Hall, 199 Bury Road and 195a Bury Road, Rawtenstall, BB4 6DJ in accordance with the terms of the application (ref: 2008/0076) dated 23 January 2008, and the plans TRI-0258/1/0 - /6/0 submitted with it, as amended by the additional site layout plan and letter dated 10 April 2008 and subject to the following condition:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.

## Clarifications

2. 195a Bury Road is a bungalow set back from the street, and it is used as an office base for a group of funeral directors' businesses. The curtilage of the building includes open land to the north and west, a car park to the east and a drive to the south. To the south of the access, there is an L-shaped building which is used for ancillary garaging (for hearses and limousines) and storage.
  3. The access to no. 195a wraps around the rear no. 197 (a dwelling house in separate ownership), and intersects with Bury Road to the east of that property. The Wood Top Mission Hall, or 199 Bury Road, lies to the west of no. 197 and to the south of the L-shaped building. It faces the street.
  4. Although the planning application forms describe the site address as 195a and 199 Bury Road, the appeal form suggests that it should only be no. 199. The location plan shows no. 199 as the site edged red (the land to be developed) and no. 195a as the land edged blue (that otherwise owned by the appellants).
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5. The appellant suggests that the red and blue lines were drawn as such in order to show that the proposed storage use would be ancillary to the office use. That is an important point, but in my view it is made evident by the application forms and the Design and Access Statement. An additional site layout plan was submitted during the course of the application with a letter dated 10 April 2008; these indicate that parking arrangements would remain as now – ie, that the proposed development would be served by spaces at no. 195a. The proposed new door would be inserted into the L-shaped building, which is within the land edged blue. For these reasons, my decision above incorporates the site address provided on the application forms.
6. Planning permission is required for the development because the use of the Mission Hall for the storage of catering equipment was approved subject to a condition which removed the right to change the use of the premises to any other purpose.
7. Permission was granted on appeal (ref: APP/B2355/A/8/2067188) on 11 September 2008 to change the use of the bungalow from mixed residential and office use to office use (use class B1) only. The decision post-dates the Council's refusal of permission for the proposed development. To protect the living conditions of nearby occupiers, the Inspector imposed a condition preventing vehicles from being parked on or otherwise using the open land to the north and west at no. 195a.

### **Main Issues**

8. I consider that the main issues are the effect of the proposed development on the character and appearance of the surrounding area; the living conditions of nearby occupiers; and highway safety.

### **Reasons**

9. The Mission Hall is a single storey building with a small basement. It has a floorspace of approximately 151m<sup>2</sup> and I saw that the main storage room has a relatively high ceiling. The building is currently accessed by a set of double doors in a porch and another single door on its front elevation. There is a further door opening at the rear of the building; this has been bricked up but is proposed to be reinstated. The new door in the L-shaped building would face that put back in the Mission Hall. It would enable the transfer of goods between the existing access, garages and store to the proposed storage area. The Council does not object to the proposed physical works.
10. The appellant suggests that eight full-time equivalent workers are employed at 195a Bury Road at present and there are two vehicular movements per day over and above those caused by staff. It is stated that these numbers would not change, because the Mission Hall would provide more storage space than is needed. The Council's reasons for refusal, however, are all based on objections that the proposed change of use would intensify vehicular activity and parking.
11. In my view, the requirements of any business can change over time. I agree with the Council that, if permission is granted for a permanent change of use, it would be difficult to prevent more activity at the site. The proposed development would increase the amount of storage space available and could thereby facilitate the employment of more staff and increased numbers of deliveries and collections. Moreover, I saw four funeral cars depart from the site at the time of my visit, and another driver attended 195a Bury Road after parking his van on-street. I consider that the predicted number of vehicular movements would be likely to prove an under-estimate.



12. That said, storage in my experience is rarely a labour-intensive use. Since there is an existing store on the site, the appellant would have some economies of scale, and be unlikely to need many new staff. In addition, while the proposed use would cause vehicular trips, it is not proposed to create more hardstanding or garaging. It seems to me that the restricted size of the site would serve as an effective limitation to any major ambitions for intensification. Indeed, I consider that deliveries and collections would often need to take place at times during the day when hearses are off the premises. In my view, the proposed development would be unlikely to cause an excessive or unchecked increase in activity.

#### *Character and Appearance*

13. I consider that drivers delivering to or collecting from the proposed storage unit would seek to park in or besides the L-shaped building in the first instance, because the siting of the proposed doors would make this the most convenient (and private) place for loading or unloading goods. However, the site is laid out so the garages and adjoining part of the access are screened from Bury Road by nos. 199 and 197. They are also separated from the residential properties to the rear of the site, at Andrews Avenue, by the existing bungalow. In my view, any increased activity in this part of the site would have a minimal impact on the character and appearance of the surrounding area.
14. It is also likely that staff or some visitors would seek to park on the paved area to the east of the bungalow. However, local residents suggest that this space is often parked up already and I see no reason to dispute that evidence. It was almost fully occupied at the time of my visit – by six cars and a motorbike. In this situation, I am not convinced that the proposed development could materially worsen the visual impact of cars parked on the site. Moreover, I saw that cars parked beside the bungalow do not appear unduly obtrusive from Bury Road, because they are on lower land than and at least 20m from the frontage.
15. On Bury Road, there is a single yellow line on the south side of the road but parking is unrestricted outside the site. The appellant suggests that the proposed development would not cause an increase in on-street parking, because the existing front doors in the Mission Hall would not be used. I consider that, since there is limited space at no. 195a, there might be times when the proposed development would create a need for on-street parking. It would certainly be difficult to prevent such an occurrence. Again, however, there is a high demand for on-street parking already and I do not consider that a modest increase in this activity would significantly lower the quality of the neighbourhood.
16. I conclude that the proposed change of use could increase vehicular activity but this would either be well-screened or take place in locations which are already dominated by cars. The proposed development would cause no unacceptable harm to the character and appearance of the surrounding area. It would comply with Policy DC1 of the *Rosendale District Local Plan (LP)* and Government guidance in *Planning Policy Statement 1: Delivering Sustainable Development (PPS1)*, which require development to contribute to environmental quality, not be detrimental to existing conditions in the area, and be considered with regard to its intensity, appearance and relation to surroundings.

#### *Living Conditions*

17. I have noted the proximity of the appeal site to 197 Bury Road and properties at Andrews Avenue. The Mission Hall also adjoins a house to the west, 201 Bury Road. It is evident from the representations of adjoining occupiers that noise from

access and parking associated with the existing business can cause disturbance. I can understand, therefore, concerns at the prospect of intensification. However, I have already noted that, as a result of the previous appeal, parking is restricted to certain areas on the site and there would be limited scope for increased activity.

18. I have found that most drivers visiting the proposed storage unit would prefer to park in or next to the garages. In my view, any increased vehicular activity here would not cause unacceptable disturbance to adjoining occupiers, since both the Mission Hall and the L-shaped building are screened and at a distance from nearby properties. I also consider that a moderate increase in the amount of traffic passing at slow speeds on the access would be unlikely to create unacceptable levels of noise.
19. I accept that cars parked to the east of the bungalow lie in view of the dwellings and gardens at Andrews Avenue and 197 Bury Road. There is scope for noise and disturbance caused by the manoeuvring of vehicles and doors slamming, and for associated problems such as fumes, light pollution and overlooking. Similarly, the sounds of on-street parking could carry to 197 and 201 Bury Road. However, I do not consider that the proposed development would lead to so much more activity in these areas as to significantly alter the living conditions of nearby occupiers.
20. Moreover, the appellant's email of 25 February 2008 suggests that the existing hours of operation are usually 08.00 to 18.00 hours, Monday to Friday. There is no condition restricting the hours of the permitted office use and so ancillary collections and deliveries could take place outside the hours indicated. However, while it seems that cars are often kept on the site at weekends, there is little evidence of significant levels of activity outside of normal working hours. Given the nature of the appeal business (and most others that are primarily office-based), I consider it unlikely that the proposed development would lead to increased noise or disturbance from vehicular movement at unsocial times.
21. I conclude that the proposed development would not cause unacceptable harm to the living conditions of nearby occupiers. It would comply with LP Policy DC1, which requires development to be considered with regard to its relationship to existing land uses, and the likely level of noise nuisance and other environmental pollution. It would also comply with PPS1, which requires development to be appropriate to its context and address the connections between people and places.

#### *Highway Safety*

22. I saw that there is generally good visibility from the appeal site access in both directions along Bury Road. However, vehicles parked on-street can impede views of oncoming vehicles to the right. Drivers seeking to exit the site sometimes need to pull forward in order to see and be seen, and in so doing can cause a risk of collision. I accept that the proposed development could increase the likelihood of on-street parking taking place as well as the number of movements out of the site. Vehicles driven from the site in association with the proposed storage use would be likely to include vans as well as cars.
23. However, the Highways Authority did not object to the proposed development. I agree with the appellant that the lack of yellow lines on this side of Bury Road indicates that on-street parking does not normally cause an unacceptable hazard. It does not unduly impede visibility at Andrews Avenue. Bury Road is a link road to the town centre, but in this area it is subject to a 30mph speed limit and it provides access to various private drives and side streets, so drivers expect others to turn on and off the carriageway. In my view, the proposed development would

not give rise to such an increase in traffic as to create or exacerbate unacceptably dangerous conditions for pedestrians or drivers.

24. It has been suggested that existing employees at the site park haphazardly on-street and block local residents' drives. Such unneighbourly behaviour would rightly cause concern, but I am not persuaded that it would be the inevitable result of the existing or proposed uses. Overall, I find that the proposed development would not cause an unacceptable loss of highway safety. It would comply with LP Policy DC1, which requires development to be considered with regard to its relationship to the road network and the likely scale and type of traffic generation; arrangements for servicing and access; and car parking provision.

#### **Other Matters**

25. I have had regard to the prospects for the Mission Hall if I were to refuse permission for this scheme. It would be unlikely to revert back to a use for catering storage in the short term. At some point, however, it would be in both the appellant's and the public interest to see the hall returned to active use. If the property is divorced from 195a Bury Road, it would lack a curtilage, and I consider that a separate (storage) use could require the employment of more staff and more on-street parking than the proposed development. There would be no material benefits with regard to any of the main issues before me which might justify dismissing this appeal.
26. Local residents fear that the Mission Hall contains asbestos and the development would cause a risk of fire. These are matters for Building Regulations. I have had regard to all the other matters raised but none alter my decision.

#### **Conditions**

27. In my view, it is unnecessary to impose conditions requiring that the development is carried out in accordance with the submitted plans and particulars, or that the building materials are as stated, since that would duplicate the terms of the permission. I also consider it unnecessary to restrict the hours of construction, since the only physical works would be the installation of two doors, in a part of the site which is well-separated from nearby dwellings.

*Jean Russell*

INSPECTOR



# Appeal Decision

Site visit made on 4 March 2009

by **Clive Sproule BSc(Hons) MSc MIEEnvSc**  
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Decision date:  
3 April 2009

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## Appeal Ref: APP/B2355/A/08/2086993

### Fancy Fingers, 221 Bacup Road, Rawtenstall BB4 7PA

- 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 Ponke Miah against the decision of Rossendale Borough Council.
- The application Ref 2008/0206, dated 6 May 2008, was refused by notice dated 11 September 2008.
- The development proposed is a hot food takeaway with delivery service.

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### Decision

1. I allow the appeal, and grant planning permission for a hot food takeaway with delivery service at Fancy Fingers, 221 Bacup Road, Rawtenstall BB4 7PA in accordance with the terms of the application, Ref 2008/0206, dated 6 May 2008, and the plans submitted with it, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall not commence until a scheme for the sound insulation of the premises has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in accordance with the approved details prior to the commencement of the development hereby permitted. The sound insulation shall be maintained and retained thereafter.
  - 3) The premises shall not be open for customers outside the following hours:  
11:30 – 22:00hrs Sundays  
11:30 – 22:30hrs Mondays – Fridays  
11:30 – 23:00hrs Saturdays
  - 4) The development hereby permitted shall not commence until full details of the fume extraction and filtration system to be installed at the premises, including a means of odour control and the colour of any external ducting, (notwithstanding any such details previously submitted) are submitted to and approved in writing by the Local Planning Authority. The system shall be installed in accordance with the approved details prior to the commencement of the development hereby permitted and shall be maintained and retained thereafter. The fume extraction and filtration system shall be used during the operation of the hot food takeaway.

- 5) The development hereby permitted shall not commence until a scheme for the control of litter associated with the use has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an external litter bin which shall be provided in accordance with the approved details. The external litter bin shall be available for customer use during the operation of the hot food takeaway.

### **Main issues**

2. These are the effect of the proposed development on: (a) the living conditions of local residents in relation to litter, odour, anti-social behaviour and noise and disturbance; (b) highway safety; and (c) the vitality and viability of Rawtenstall Town Centre.

### **Reasons**

#### *Living conditions*

3. The appeal site is within a row of properties on the south side of Bacup Road that for the most part have ground floor commercial uses that offer a diverse range of retail and other services. These include two restaurants that are located toward the junction with Bocholt Way.
4. Local living conditions could be affected by odour and litter associated with the proposed development. However, planning conditions and other regulatory mechanisms can control these effects.
5. It is more difficult to control the noise and disturbance associated with customers arriving at and leaving a hot food takeaway. The residential properties that would be most likely to be affected by the proposed development would be those facing onto Bacup Road. However, this is an area where a certain degree of noise and disturbance associated with retail and other uses can reasonably be expected to occur.
6. The appellant wishes to operate the takeaway until 22:30hrs on weekday nights, 23:00hrs on Saturdays and 22:00hrs on Sundays. This would notably reduce the potential use of the takeaway by people returning home from late night licensed premises. In addition, it has not been demonstrated that this location would attract significant numbers of people who would be likely to be involved in acts of anti-social behaviour.
7. It is my view that if the opening hours of the proposed development were to be controlled, the hot food takeaway would not add significantly to the noise and disturbance already created by businesses in vicinity of the appeal site. I find therefore that the proposed development would not be unacceptably harmful to the living conditions of local residents and would comply with LP policy DC.1.

#### *Highway safety*

8. I visited the area around the appeal site in the afternoon and evening. Parking levels were higher in the evening both within the restaurant car parks and toward the residential housing to the west of the appeal site. However, on both occasions there were frequent parking opportunities and I note that parking capacity increases around the appeal site after 6pm when parking restrictions end on sections of Bacup Road.

9. Although hot food takeaways typically have a high number of visitors who may seek to park vehicles outside the premises, the numbers of such vehicles parked at any one time would normally be relatively low. In addition, the proposed delivery service would be expected to reduce the numbers of people visiting the takeaway and the associated parking demand.
10. Parking levels would be expected to be higher at the weekends when the restaurants are potentially at their busiest. Nevertheless, the Highway Authority has not objected to the proposed development and it has not been demonstrated that the takeaway would cause parking pressures that would exceed local parking capacity. I therefore conclude on the second main issue that the proposed development would not be unacceptably harmful to highway safety and would comply with LP policy DC.1.

*Vitality and viability*

11. The third reason for refusal also refers to LP policy DC.1, which seeks to address the relationship between existing and proposed uses. However, it does not specifically refer to the protection of retail shop frontage and representations have highlighted that the Council does not have a planning policy that focuses on hot food takeaway proposals.
12. The appeal site and the commercial uses around it lie outside Rawtenstall Town Centre as indicated on the LP proposals map for this area. The Council has also referred to the *Rawtenstall Town Centre Area Action Plan – Revised Preferred Options Report*, which notes the importance of pedestrian access to the centre of Rawtenstall along Bacup Road. It identifies the appeal site to be within an area where a mix of uses would be encouraged and this reflects the existing circumstances around No.221.
13. The proposed use would be the only dedicated hot food takeaway on this section of Bacup Road. Although the Council considers that this proposal would lead to an over-concentration of hot food takeaways in both Rawtenstall and the Borough as a whole, convincing evidence has not been supplied to support this view.
14. Nor has it been demonstrated that the proposal would have an unacceptable effect on the vitality and viability of the Town Centre. The appeal site has been vacant for some time. The proposal would bring No.221 back into use and add to the business activity in this location. I consider that the nature of the proposed use and its relationship to the retail and other commercial uses around it would be appropriate in this location. Consequently, I find that the proposal would not harm the vitality, viability and regeneration of Rawtenstall Town Centre and in this respect it complies with LP policy DC.1.

*Other matters*

15. My attention has been drawn to a recent appeal decision (Ref: APP/B2355/A/08/2076456) that considered a proposal for a hot food takeaway in one of the other settlements within the Borough. However, full details regarding that case are not before me. It has not been demonstrated that the two sites have similar circumstances. Every appeal is considered on its individual merits within the context of relevant planning policy and that is how I have dealt with this case.

16. Rising levels of obesity have been noted to have implications for the health of adults and children. Nonetheless, takeaway owners can make choices regarding their menus just as customers can choose when and what to buy. It is therefore my view that it has not been established that a hot food takeaway at No.221 would be detrimental to the health of the local population.
17. Representations have been made to the effect that local residents' rights under the European Convention on Human Rights would be violated if the appeal were to be allowed. I do not consider them to be well-founded because I have found the proposed development would not be unacceptably harmful to the living conditions of neighbours. As a result, there will be no violation of local residents' human rights.

### **Conditions**

18. To protect the living conditions of the occupiers of the residential accommodation immediately above the hot food takeaway, I shall impose a condition to address the provision of sound insulation. To protect the living conditions of local residents I shall impose conditions to restrict the hours of operation, require the provision of odour control equipment and a scheme to control litter.
19. The proposed use is within a row of commercial properties that front onto a public highway where delivery activity can reasonably be expected to occur. Given the scale of the proposed development, the on-street parking capacity and that the hours of operation would restrict the timing of deliveries from the premises, I consider that a condition to address deliveries is not necessary.
20. I also consider that given the neighbouring uses and the scale and nature of the modifications required to establish the proposed use, a condition is not required to address the hours of conversion works.

### **Conclusion**

21. For the reasons above and having considered all other matters raised, I conclude the appeal should be allowed.

*C Sproule*

INSPECTOR



# Appeal Decision

Site visit made on 4<sup>th</sup> March 2009

by **Jonathan G King** BA (Hons) DipTP MRTPI

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

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Decision date:  
12 March 2009

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## Appeal Ref: APP/B2355/A/08/2089966

**248 & 248A, Newchurch Road, Bacup, Lancashire, OL13 0UE**

- 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 Khan against the decision of Rossendale Borough Council.
- The application Ref 2008/0654, dated 22<sup>nd</sup> September 2008, was refused by notice dated 11<sup>th</sup> November 2008.
- The development proposed is the change of use of existing shop (ground floor) with apartment above to A5 hot food takeaway / A3 café (ground floor) with ancillary storage above.

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### Decision

1. I dismiss the appeal.

### Main issues

2. The main issues in this case are the effect of the proposed development on:
  - (a) highway safety;
  - (b) the living conditions of residents living in the vicinity of the site; and
  - (c) the character, vitality and viability of the area.

### Reasons

#### *Highway safety*

3. Though the Council's Planning Officer concluded at the time of considering the application that there would be no detriment to highway safety, it is now suggested that the competition for spaces from local residents and other hot-food outlets in the vicinity would lead to double parking and congestion.
  4. Many patrons of hot-food takeaways can be expected to travel by car and to look to park close by. This can lead to local parking pressure, particularly in the evening, in mixed residential / commercial areas such as this which rely on street-parking. Moreover, Newchurch Road, which carries the A681, appears to be heavily trafficked. No dedicated parking arrangements are proposed in this case. Vehicles turning off and on to the main road, and manoeuvring while parking could be the cause of hazard to road users.
  5. Although Policy DC.1 of the Rossendale District Local Plan (LP) lists car parking provision as a criterion to be taken into account in determining planning applications, it sets no particular standards; and no such standards have been
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brought to my attention. Nonetheless, outside the shop, and elsewhere on this side of the road, are bays for parking; and a short distance to the east, in Branch Street, is a small public car park. The Highway Authority raised no objection to the proposal, and the Council has produced no evidence about double parking. The premises are presently occupied by a shop / off-licence. That in itself will doubtless give rise to some parking demand which, in my estimation, may be similar to that associated with a hot-food takeaway and similar in its consequences for highway safety. I am not convinced that sufficient evidence exists to support the Council's position that the impact would be materially different. I therefore conclude on this issue that the proposed development is unlikely to harm highway safety interests.

*Living conditions*

6. The southern side of Newchurch Road on which the appeal premises is situated is characterised by a mixture of commercial and residential uses. Opposite, the frontage is entirely residential. The quality of life of those living on this stretch of Newchurch Road is to an extent already diminished by the noise of passing traffic. It is not, in my view, an environment entirely comparable with a wholly residential neighbourhood. But neither is it comparable with a town centre where one might expect a great deal more activity for most of the day and well into the evening. It is still a location which is sensitive to noise and disturbance; and residents should have a reasonable expectation to be able to enjoy their homes in relative peace and quiet, particularly at late hours.
7. The proposed hours of opening included in the application are 08:00 – 00:30 hrs each day, though I understand that prior to determination, this was amended to 08:30 – 23:00 hrs Sundays to Thursdays and 08:30 – 23:30 hrs on Fridays and Saturdays, and the Council recommends further limiting the closing times to an hour earlier. The proposed closing times are later than normally associated with shop hours, and the premises might well benefit from trade around the closing time of public houses. I have no reason believe that a takeaway would give rise to serious public order problems. Nonetheless, noise and activity from patrons is commonly associated with hot-food takeaways, and I appreciate that it could be a source of nuisance, disturbance and inconvenience to residents by reason, for example, of cars arriving and departing and their doors slamming; and from the boisterous activities of groups of people who may congregate in the vicinity late into the evening.
8. A fume extraction system is proposed, ducted to a vent above roof level. I have no reason to doubt its effectiveness; and it would be possible to require appropriate installation, operation and maintenance by means of a planning condition. I am therefore satisfied that the potential for cooking smells, though a reasonable concern, may be adequately controlled. Litter, particularly food waste, is unpleasant and can make a locality unattractive for the general public and those living nearby. It is something that can be addressed by good management and enforced under other legislation, but it is hard to control in practice.
9. Taken alone, I am reasonably satisfied that, subject to the imposition of suitable conditions, the proposed takeaway could satisfactorily be incorporated into this mixed-use area. However, it would not be alone. Between the corner of Branch Street (No 232a) and No 252, a distance of little more than 100

metres, there are already a café / takeaway, a tandoori takeaway, a fish and chip shop, and a pizza / kebab shop. It is apparent from representations that the living conditions of some local residents already suffer as a result of these uses and their concentration into such a small area. The appeal premises would be the fifth hot-food takeaway on this short length of the road, which I regard as too great a concentration. The cumulative impact of so many similar uses into this area would, in my view, be harmful and unacceptable.

*The character, vitality and viability of the area*

10. I appreciate the argument that it would be better for the area for the premises to be occupied rather than to be vacant, particularly as there are other vacant shops nearby. However, although the appeal statements describe the premises as being empty, at the time of my inspection they were occupied by a shop. Not only does this appear to demonstrate some demand for local shopping but I consider that if another café / takeaway were to replace this use, it would diminish the character, vitality and viability of the area. Planning Policy Statement 6 *Planning for Town Centres* (PPS6) advises local authorities to seek to protect existing facilities which provide for people's day-to-day needs. I note the reference to national, sub-regional and emerging local policies, and to the findings of the Rossendale Employment Land Study, particularly with respect to the sustainable location and the promotion of economic activity in an area which clearly would benefit from it. I do not underestimate the importance of these matters, but I doubt the value of an additional café / takeaway to the local economy, particularly if it were to result in the loss of a shop. Similarly, the assertion that its provision would help boost social integration and communication is somewhat fanciful.
11. With respect to both my second and third issues, I understand that there is no local policy that presumes explicitly against concentrations of particular uses in mixed use areas. Nonetheless, LP Policy DC.1 says that all new development is expected not to be detrimental to existing conditions in the surrounding area, and includes within its list of development criteria the *location and nature of proposed development, including its relationship to existing ... land uses, and the likely level of ... noise nuisance*. These are relevant to the present case. Moreover, PPS6 recognises the tension between providing appropriate leisure facilities and protecting the quality of life of those living nearby. In particular, it says that planning policies should have regard to the cumulative impact of leisure developments on the amenities of residents. This too is material to my decision, notwithstanding that the site is not within a defined town centre.
12. In reaching these conclusions, I have had regard to all other matters raised in support of the proposed development, including the fact that the Council's officers recommended granting permission. Notwithstanding my conclusion on the first issue, I conclude on balance that the impact of the proposed development, taken cumulatively with the effects of the existing takeaway premises in a concentrated area, would be harmful to the living conditions of local residents and to the character, vitality and viability of the area. Consequently, the appeal fails.

*Jonathan G King*

Inspector