



Appeal Decision

Site visit made on 12 October 2010

by **Christopher Thomas** BSc (Hons) Dip
TP MRTPI

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

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Decision date:
25 October 2010

Appeal Ref: APP/B2355/A/10/2131754

7 Greens Lane, Bacup, Lancashire, OL13 0JL

- 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 Anthony Ward against the decision of Rossendale Borough Council.
- The application Ref:2009/0605, dated 5 December 2009, was refused by notice dated 22 January 2010.
- The development proposed is separation of an existing large family home into two separate 3 bedroom properties.

Decision

1. I dismiss the appeal.

Main issue

2. The main issue in this appeal is whether the proposal would be contrary to local planning policies which seek to restrict development outside the defined Urban Boundary to affordable or special needs housing or for agricultural or forestry workers.

Reasons

3. The appeal property is an extended, semi-detached house with a significant area of grounds attached, situated in a countryside location. In addition to the adjacent semi-detached house there are three other houses in the small enclave of which the appeal property forms part. It is approached from the built-up area on the edge of Bacup along the narrow, roughly surfaced Greens Lane.
 4. The proposal envisages the subdivision of the existing house into two dwellings with separate curtilages, which would create an additional dwelling in a rural location outside the defined Urban Boundary of Bacup. This would be contrary to saved policy DS.1 of the Rossendale District Local Plan (LP) which indicates that the Council will seek to locate most new development within the Urban Boundary, and will resist development beyond it. The exceptions for development needed for the purposes of agriculture, forestry or other uses appropriate to a rural area, referred to in saved policy DS.5, have not been argued in this case. Nor have arguments based on the need for affordable or special needs housing been advanced.
 5. Notwithstanding the LP provisions, I have also given substantial weight to the more recently adopted housing strategy set out in the Council's Interim Housing Policy Statement (May 2010), which has superseded the 2008 version referred to in the decision notice. This underlines that the Council's general housing policy aims to restrict new residential development outside the Urban
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Boundary. Whilst it deals with the subdivision of existing buildings into self-contained residential units it makes clear that this must be undertaken within the context of adopted development plan policies which, as already indicated expect new housing development, in the main, to be located within the Urban Boundary. So, even though the proposal would involve the subdivision of the existing dwelling without requiring substantial new construction, nevertheless the additional dwelling thus created would be located outside the Urban Boundary, without the justification of meeting a rural, affordable or special housing need, and this would be contrary to the relevant LP policies I have identified.

6. I have noted that paragraph 31 of Planning Policy Statement 3 (PPS3) *Housing* seeks to ensure that effective use is made of the existing housing stock, but the rural location of the appeal property, where accessibility is constrained, weighs heavily against any presumption in favour of the proposal on these grounds.
7. Whilst the appellant asserts that there is an increasing demand for the size of property which would be created, no evidence has been brought before me to bear this out and I have therefore given this little weight.
8. I note that the current property is too big for the appellant's needs and that a close relative would be interested in purchasing one of the newly created properties were this appeal to be allowed, but these are not planning considerations to which I have been able to give weight in reaching my decision.
9. I have taken into account all other matters raised in the representations, including the lack of objection from neighbouring property owners, but there are no sufficiently compelling planning reasons which outweigh the conclusion I have reached on the main issue that the proposal would be contrary to LP saved policies DS.1 and DS.5.
10. For the reasons I have given, therefore, this appeal has been dismissed.

Christopher Thomas

Inspector



Appeal Decision

Site visit made on 14 September 2010

by **Brendan Lyons** BArch MA MRTPI IHBC

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Decision date:
6 October 2010

Appeal Ref: APP/B2355/A/10/2131434

Hey Head Farm, Rochdale Road, Bacup, Lancashire OL13 9XF

- 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 Paul Harrison against the decision of Rossendale Borough Council.
- The application Ref 2010/0204, dated 15 April 2010, was refused by notice dated 2 June 2010.
- The development proposed is a part garage/part agricultural building.

Decision

1. I dismiss the appeal.

Main issues

2. The main issues are the proposal's effect on the character and appearance of the countryside and on the living conditions of local residents.

Reasons

3. The appeal site comprises the yard and access road of a farm that stands in open countryside near the town of Bacup. It is proposed to expand the yard area by cutting into the adjacent hillside and to erect an L-shaped building, one wing of which would be used to house cattle and the other to provide garaging for 3 HGVs and 2 trailers.
 4. The proposed building would be similar in construction and materials to the approved agricultural building now under construction to the west of the site and to the two existing buildings that enclose the west side of the yard, but it would be considerably larger in area and have a taller ridge height at one end.
 5. Policy DS.5 of the Rossendale District Local Plan (LP) seeks to restrict new development outside the urban boundary to that needed for agriculture, forestry or other uses appropriate to a rural area. The supporting text explains that the countryside is seen as an asset that provides an attractive setting for urban areas and for leisure pursuits and tourism.
 6. The cattle housing would occupy the smaller portion of the building and would be sited adjacent to the earlier approved building. The Council offers no evidence to dispute the appellant's submission that the housing is needed in connection with a contract for cattle rearing. I consider that this aspect of the proposal would be for agriculture and would comply with LP Policy DS.5.
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7. The storage of the HGVs and trailers relates to a haulage business operated by the farmer, which is presented as a farm diversification enterprise. National policy guidance supports economic development in rural areas, including farm diversification, but is founded on the protection of the countryside for its intrinsic character and beauty. PPS7¹ advises that a supportive approach to farm diversification should not result in excessive expansion and encroachment of built development into the countryside. Policy EC6 of PPS4² advises that economic development in the open countryside should be strictly controlled, with preference for the conversion of existing buildings. Support for farm diversification is directed to business purposes that are consistent in their scale and environmental impact with their rural location.
8. I accept that the finished building, because of its similarity in treatment to the neighbouring agricultural buildings, and despite its larger size, would not appear as a greatly incongruous element in the group. The existing buildings would partly screen it in views from the lower lying public road. I also accept that in such views, the building would be considerably less prominent in the landscape than the approved egg unit, which stands in an elevated position and only half of which has yet been built.
9. Nevertheless, the addition of a significant element of new building, which would also involve cutting into the natural landform, would represent encroachment of built development into the countryside. The building would be intrusive in views from the nearby public footpaths, and would not be well screened by the proposed planting. The comparison with the size of building allowed under agricultural 'permitted development' provisions does not carry great weight, as the full allowance might not be available to a building on the appeal site and different considerations apply to non-agricultural uses.
10. Furthermore, the visual impact of the operation of the haulage use would not be fully mitigated by the provision of a building for garaging the vehicles. Vehicles would be likely to be parked and manoeuvred in the yard for some time on arrival at the site before being garaged, and on departure. A condition requiring vehicles not to be stored in the open would not be effective in these circumstances. The daily operation of the proposed use would be very different from the appeal on boat and caravan storage referred to by the appellant, as once stored these are usually left immobile, often for some considerable time, before being taken away again.
11. Although the appeal submission assumes that each HGV would leave in the early morning and not return until night, their movements would not be regulated and they could return to the site more frequently. Other vehicles might also visit to collect or deliver trailers. The appellant states that one vehicle would be used to deliver feed to the farm several times a week. As a result, a condition that sought to prevent loading and unloading within the yard would not be reasonable or enforceable.
12. For the above reasons, I consider that the concerns that led to the dismissal at appeal in March 2010³ of a previous proposal to park and store 5 HGVs and 3 trailers in the open yard, and the upholding of an enforcement notice, would

¹ Planning Policy Statement 7: *Sustainable Development in Rural Areas*

² Planning Policy Statement 4: *Planning for Sustainable Economic Growth*

³ Appeal Refs. APP/B2355/A/09/2115239 and APP/B2355/C/09/2117553

- not be fully addressed by the current proposal. The proposed building would be less detrimental to the character of the countryside than the previously proposed open storage, but would in itself represent an incursion into the landscape, whose impact would not be mitigated by planting, while vehicles would still regularly be apparent.
13. The current proposal would rely on the development of new building in the open countryside and would result in adverse impacts on the character and beauty of the area. I consider that the nature and scale of the proposal would not be appropriate to the rural area, contrary to LP Policy DS.5 and that other material considerations would not justify a decision contrary to policy.
 14. It is common ground that vehicles from the site must pass the nearby primary school and through the Pennine Road housing estate to reach the wider highway network. The estate is already affected by the approved high level of heavy goods traffic from the nearby quarry, but this is restricted by planning conditions to the period of the normal working week and Saturday mornings. The current appeal seeks approval to operate seven days a week from 7.00am to midnight. There is no accurate prediction of the number of vehicle movements likely to be added by the appeal proposal. However, it is clear that the period during which residents would be affected by goods traffic would be considerably extended, potentially late at night including weekends and holidays. I consider that the likely adverse impact on residents' living conditions provides further evidence of the unsuitability of the site's location for the proposed development.
 15. I note that the previous Inspector also had concerns about this issue. His conclusion, on the balance of the evidence before him, was that the proposed use would not be detrimental to residents, but this was only subject to a condition linking the hours of operation of the appeal site to those permitted for the quarry. No such condition is proposed in the present case.
 16. The adverse impact on living conditions would be contrary to LP Policy DC1, which requires proposals not to be detrimental to conditions in the surrounding area.
 17. I acknowledge the economic benefits of farm diversification. However, both national and local policy place a high value on the protection of the countryside. I consider that the nature and scale of the proposal would not be appropriate to the rural location close to the edge of the town, where the leisure benefits of the countryside are particularly important and where residents would be adversely affected. Having taken account of all matters raised, I conclude that the appeal should be dismissed.

Brendan Lyons

INSPECTOR

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Appeal Decision

Site visit made on 31 August 2010

by **John Braithwaite** BSc(Arch)
BArch(Hons) RIBA MRTPI

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Decision date:
29 September 2010

Appeal Ref: APP/B2355/A/10/2129147

Scarr End Farm, Weir Bottom, Bacup OL13 8QB

- 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 Gary Davis against the decision of Rossendale Borough Council.
- The application Ref 2010/0142, dated 7 March 2010, was refused by notice dated 19 May 2010.
- The development proposed is change of use from farm shop with majority of own produce to Class A1 retail for farm shop with own produce plus other food and drink items together with other relevant non food items.

Decision

1. The appeal is dismissed.

Reasons

2. The main issue in this appeal is whether the proposed Class A1 retail use would accord with national planning policy on farm diversification and with local planning policy on development in the countryside.
3. National planning policy on the subject of farm diversification is set out in Planning Policy Statement 7 'Sustainable Development in Rural Areas' (PPS7). Under the heading 'Farm diversification' and in paragraph 30 it is stated that "Recognising that diversification into non-agricultural activities is vital to the continuing viability of many farm enterprises local planning authorities should..." amongst other things, "...be supportive of well-conceived farm diversification schemes for business purposes that...help to sustain the agricultural enterprise...".
4. Further relevant national planning policy is found in Planning Policy Statement 4 'Planning for Sustainable Economic Growth' (PPS4). PPS4 policy EC13 states that "...local planning authorities should..." amongst other things "...respond positively to planning applications for farm shops which meet a demand for local produce...".
5. Local planning policy is set out in the Rossendale District Local Plan (LP), which is part of the Development Plan for the area. Saved LP policy DS.5 states that in the countryside development will be restricted to that needed for the purposes of, amongst other things, agriculture.
6. Scarr End Farm is about 300 metres outside Weir Bottom and is in the countryside as designated in the LP. The proposed Class A1 use is being promoted on the basis that it would be a farm diversification scheme.

7. The appeal building at Scarr End Farm is partly in use as a farm shop selling fresh and frozen produce from the farm and a few other grocery items. The use of the building as a farm shop does not have the benefit of planning permission because it is regarded by the Council to be an ancillary use to the agricultural activity on the farm. The Appellant has stated that the shop is not viable and he is seeking to supplement the income of the shop by utilising unused space within the building to display and sell other goods. These goods would be hardwood furniture and artefacts imported from abroad.

8. The Appellant has stated, as previously mentioned, that the farm shop is not viable. He has also stated that "...the farm is at risk of closure with the loss of all livestock". He has not provided, however, in supporting evidence either at application stage or at appeal stage, any information on the viability of the farm and he has not provided information on the financial stability of the farm shop. It is not possible therefore to conclude, with regard to PPS7, that the sale of imported hardwood goods is vital to the continuing viability of the agricultural enterprise.

9. The sale of farm produce, in retail terms, has no relationship to the sale of imported hardwood goods. Customers of hardwood goods might buy farm produce, and the opposite might also occur, but such crossover purchases are not likely to contribute significantly to the viability of either retail element. Consequently, if the farm shop is currently not viable it is unlikely that it would become viable simply because imported hardwood goods were also to be sold from another part of the building. It is possible, if the appeal was to be allowed and the consequent permission implemented, that the sale of farm produce would cease and the sale of imported hardwood goods would continue. It is also not possible therefore to conclude, with regard to PPS7, that the proposed Class A1 use is well-conceived and would, necessarily, help to sustain the agricultural enterprise.

10. Even though the hardwood products might be sourced from fairtrade producers they would be imported and could not be considered to be local produce. Their sale would not therefore, with regard to PPS4, "...meet a demand for local produce...". With regard to LP policy DS.5 and returning to the subject of viability, there is no evidence to indicate that the proposed Class A1 use and the sale of imported hardwood goods is directly needed for the purposes of agriculture.

11. All other matters mentioned in support of the appeal have been taken into account but they do not, either individually or collectively, outweigh the conclusions reached in this Decision.

12. The proposed Class A1 use does not accord with national planning policy on farm diversification in PPS7 and PPS4 or with local planning policy on development in the countryside.

John Braithwaite

Inspector



Appeal Decision

Site visit made on 31 August 2010

by **John Braithwaite** BSc(Arch)
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Decision date:
13 September 2010

Appeal Ref: APP/B2355/A/10/2129366

Land to the rear of 343 Grane Road, Haslingden, Rossendale BB4 4PB

- 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 Mary Greenwood against the decision of Rossendale Borough Council.
- The application Ref 2009/0290, dated 23 June 2009, was refused by notice dated 25 November 2009.
- The development proposed is retention of outbuilding for farriery and farriery storage.

Decision

1. The appeal is dismissed.

Reasons

2. The main issues are; first, the effect of the outbuilding on the character of the countryside; and second, the effect of the use of the outbuilding on the amenities of residents of nearby dwellings.

The first issue – the character of the countryside

3. 343 Grane Road is a mid-terraced dwelling on the north side of the road. To the rear of the dwelling and the terrace is land owned by the Appellant, which is mainly grassed and which slopes up to the north. On the land are a large garage building, two long timber sheds and the outbuilding that is the subject of the appeal. To the west of the land is a track that leads to a farm and several dwellings including Holden Bank Barn and Fish Tenement Cottage.

4. The Development Plan for the area includes the Rossendale District Local Plan (LP). The LP designates the terrace of dwellings as being within the built up area of Haslingden whilst the Appellant's land to the rear of the terrace and the nearby farm and other dwellings are within the countryside. The Council has not identified any relevant saved countryside LP policies and have only referred to saved LP policy DC.1, which sets out general development criteria. Policy DC.1 does require, amongst other things, that all development proposals will be expected to provide a high standard of design.

5. The outbuilding is close to the north elevation of one of the sheds and close to the track. It is about 7.1 metres long and 5.5 metres wide and has a monopitch roof that rises from a height of about 2.4 metres on the south side of the outbuilding to a height of about 3.2 metres on the opposite side. The elevations are mainly fairfaced or rendered blockwork, the roof is profiled metal, and in the north elevation of the outbuilding is a large roller shutter door.

6. The outbuilding has a utilitarian appearance and, given its monopitch roof and materials, is not particularly attractive. However, it is situated in an area of land that includes other utility buildings in a variety of forms and materials and there is a similar variety of buildings on land further to the east behind another terrace of dwellings. Furthermore, trees, buildings and vegetation screen the building and the land on which it is located in views from the west and north, and the land is more closely related to the terraces on Grane Road that are within the built-up area of Haslingden than it is to the countryside to the north and west.

7. Taking into account its location relative to the built up area of Haslingden and to the open countryside beyond dwellings and buildings to north and west, the outbuilding, notwithstanding its utilitarian appearance, does not adversely affect the character of the countryside. The possible removal of the nearby timber shed would not alter this conclusion. The retention of the outbuilding does not conflict with the objective of LP policy DC.1 or with advice in national planning policy referred to by the Council.

The second issue – the amenities of nearby residents

8. The Appellant's son is a farrier and operates a mobile farriery business, and inside the outbuilding is a forge, an essential piece of equipment for a farriery business, and farriery tools and materials. Though he works mainly off-site evidence indicates that the forge has been used in the past and the application is for the retention of the outbuilding and for its use as a farriery and for farriery storage. It must therefore be assumed that it is his intention to use the forge in the future if planning permission were to be granted. The Council's suggestion, which the Appellant has not commented on, that a condition could be imposed to restrict the use of the outbuilding to the storage of farriery equipment cannot be considered because it would change the nature of the development applied for.

9. It is likely, given the heat produced by a forge, that the roller shutter door in the north elevation would be kept open when hot metal is worked. This door is about 25 metres from the nearest dwelling which is to the north of the outbuilding and the repetitive noise of working hot metal with hammers would be disturbing for the residents of this dwelling, at any time of the day. This would also be the case if the roller shutter door were kept shut because the outbuilding does not include any form of sound insulation and even if this were to be provided it would not reduce the harsh sound of metal working to any significant degree. It is likely that the intrusive noise of metal working within the outbuilding would also be disturbing for residents of other dwellings in the vicinity.

10. The use of the outbuilding for farriery storage would not result in any significant noise or disturbance for local residents. However, the working of hot metal and the use of the outbuilding as a farriery would generate noise that would be disturbing for residents of nearby dwellings, given their proximity to the outbuilding. The proposed use of the outbuilding would have a significant adverse effect on the amenities of residents of nearby dwellings and the proposed use of the outbuilding thus conflicts with criteria f) of saved LP policy DC.1.

Other matters

11. The Appellant's son's farriery business provides a service for mainly rural enterprises and businesses and to those who ride and keep horses in countryside locations. The outbuilding and its use are therefore appropriate for its countryside

location and the proposed development does not thus conflict with saved LP policy DS.5 or with advice in national planning policy referred to by the Council.

Conclusion

12. The outbuilding does not adversely affect the character of the countryside. However, the use of the outbuilding as a farriery would have a significant adverse effect on the amenities of nearby residents. The conclusion on the second main issue is of overriding concern and warrants withholding planning permission for the retention of the outbuilding.

John Braithwaite

Inspector

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Appeal Decision

Site visit made on 16 July 2010

by **David Storrie** Dip TP MRTPI

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for Communities and Local Government

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Decision date:
6 September 2010

Appeal Ref: APP/B2355/A/10/2126790

23 Manchester Road, Haslingden, Rossendale BB4 5SL

- 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 Irsan Akhtar against the decision of Rossendale Borough Council.
- The application Ref 2010/0051, dated 12 December 2009, was refused by notice dated 31 March 2010.
- The development proposed is the installation of new shop front and roller shutters.

Decision

1. I dismiss the appeal.

Procedural matters

2. I have taken the description of the development from the decision notice as this more accurately reflects the proposed development, including the proposed roller shutters which have already been installed.
3. The Regional Spatial Strategy was revoked by Ministerial statement dated 6 July 2010 and I have therefore dealt with the appeal on the basis of policy DC1 of the Rossendale District Local Plan (LP) (1995), which covers similar matters.
4. The reason for refusal relates only to the roller shutters and I have considered the appeal on this basis.

Main issue

5. I consider the main issue in this appeal to be the effect of the proposed development on the character and appearance of the area.

Reasons

6. The appeal property is located within a terrace of six commercial properties within Haslingden town centre and the character of the immediate area is commercial. The business is a takeaway and therefore closed for most of the day. At the time of my site visit around midday, the shutters were down.
7. The shutters that have been installed at the premises are solid in form and, although painted blue, do not relate well to the character and appearance of the host building and, when down, present a solid enclosed feature that is out of keeping with shop fronts in the area and for this reason I consider they would be detrimental to the character and appearance of the area. LP Policy DC1 sets out a general requirement that all new developments should be of a high standard of design, contribute to environmental quality and not be

detrimental to existing conditions in the surrounding area. I consider the proposed shutters would be in conflict with the aims and aspirations of Policy DC1.

8. In evidence the appellant says that the shutters replace identical shutters that were not as deep but were solid in form. Whilst this may well be the case, I am informed that no planning permission existed for these previous shutters. In addition, my attention has been drawn to other visually inappropriate shutters that have been installed within the town centre. I have no information on whether these shutters are authorised although the Council say that enforcement investigations are ongoing in respect of other shutters within the town centre. That said, the existence of visually harmful shutters elsewhere in the town centre does not, in my opinion, justify a visually harmful development at the appeal premises.
9. Advice on crime prevention and planning is contained in the Government publication '*Safer Places-The Planning System & Crime Prevention*' (2004). It recognises the need for security and that roller shutters can provide a high level of security however, they can also have a negative effect on the streetscene. Alternatives to solid roller shutters are advocated such as open grilled designs or internal shutters

Conclusion

10. Although the proposed shop front is considered acceptable, I consider the installation of roller shutters to be harmful. As the two are functionally linked, a split decision cannot be issued in this case and the appeal should fail. For the reasons given above, and having regard to all other matters, including the recent appeal decision in respect of roller shutters at 26 Deardengate, Haslingden (APP/B2355/A/09/2115215), I conclude that the appeal should be dismissed.

David Storrie

INSPECTOR



Appeal Decision

Site visit made on 26 July 2010

by **Alan Upward** BA(Hons) MCD MRTPI

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Decision date:
26 August 2010

Appeal Ref: APP/B2355/A/10/2127077

Land at Lower Stack Farm, New Line, OL13 9RU

- 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 B Greenwood against the decision of Rossendale Borough Council.
- The application Ref 2010/0010, dated 10 January 2010, was refused by notice dated 26 March 2010.
- The development proposed is an **outline application (inc access) for residential development on land at Stack Lane, Bacup.**

Formal Decision: I dismiss the appeal.

1. The site comprises 0.3 hectares of formerly agricultural land. The outline application was supported by an illustrative layout showing 9 dwellings in a mix of detached houses and bungalows and terraced houses. The access, as shown on the otherwise illustrative scheme, would be to Stack Lane in the position shown on a scheme for conversion of former farm outbuildings to 3 dwellings, granted planning permission in 2006, and sharing the roadway approved as part of that scheme.

The main issues are

- the implications of the site's location within an area defined as countryside in the local plan;
- the adequacy of housing land supply in Rossendale, and the effect of development upon the objectives of the Council's policies for housing, including concern to avoid an oversupply; and
- the impact of the development on the safety and convenience of road users.

Countryside status

2. Following revocation of the Regional Spatial Strategy the development plan for the area comprises the 'Saved' elements of the Rossendale Local Plan (1995). On its Proposals Map the appeal site falls within an area defined as "Countryside" between the urban boundaries of Bacup and Britannia. Within such locations Policy DS5 restricts development, in line with longstanding national policy to protect the countryside for its own sake, to that needed for the purposes of agriculture, forestry, other appropriate rural uses, or the re-use of buildings. Residential development of this site with an indication of 9 dwellings would be outside such categories and contrary to DS5. The Council's Interim Housing Policy Statement May 2010 [IHPS], intended to clarify the approach to housing applications pending completion of the LDF process, retains the restrictive approach to land outside urban boundaries, whilst adding "affordable and/or supported housing" to the categories of permissible development. This appeal proposal would not fall within such a category. The later text under the heading of "Release of Greenfield Sites" appears to allow for the possibility of support for small scale greenfield proposals (5 dwellings or less) in appropriate and sustainable locations. This is difficult to correlate with the express General Housing Policies at Section 2, but it is doubtful that it could be seen as relaxation of restraint policy for the countryside.
3. In terms of the gap between settlements, the situation on the ground has changed with the residential development of a large area contained within a 1975 planning permission for land immediately to the north of the appeal site. However, the policy status of the land remains unchanged pending re-consideration of such questions in the Council's forthcoming Local Development Framework. This land lies to the south of the new "Wainhomes" housing in an area with some roadside ribbon development facing New Line. Whilst such factors would need to be taken into account in any future definition of an urban boundary, it could not be assumed that

'rounding off' to the A6066 would be the end result. The balance of developed and open land uses along this edge of the built up area would need to be carefully assessed. As things now stand, the appeal site and other open areas, including the amenity space alongside upper Stack Lane and the line of the disused railway tunnel provide a semi-rural aspect linked with countryside at the base of the valley and the opposing hillside when seen from the new residential estate and Stack Lane itself. This would be markedly eroded by the appeal development.

4. There was some dispute as to whether the whole or a part of the appeal site had originally been included in the 1975 planning permission for the larger site now under development. That matter does not bear directly on the merits of permitting development of this land at this stage. It was not disputed that any extant permission relating to the appeal site would no longer be capable of implementation as a result of the separate permission now granted and implemented for the Wainhomes site following clarification of the status of the 1975 consent by the High Court. The 1995 local plan appears to have preceded this legal process, and its decisions on land use in this area had reversed those taken in the 1970s. It would thus be going too far to claim, as the Appellant has, that the land has been accepted as suitable for residential development.
5. My conclusion is that, notwithstanding the age of the plan and the extent to which circumstances have changed in the area, the appeal proposal is contrary to policy within the local plan, and that there would be some harm to the objectives of the policy to protect countryside at the edge of the urban area.

Housing land supply

6. The question of housing land supply in Rossendale has been considered in various appeals in recent times, and the Appellant submitted copies of a number of Inspector's decisions for the 2008 – 2009 period in support of his contention that a 5 year supply did not currently exist within the borough. I have read those decisions. Although they do not in my view go so far as to "*show that numerous Planning Inspectors have concluded that the council does not have a 5 year supply of deliverable housing land*", some of these decisions identified doubts that a 5 year supply of deliverable housing sites in PPS 3 terms had at the relevant dates been demonstrated. Revocation of RSS has now formally removed the housing provision targets for 2003 to 2021, although the Council's non-statutory IHPS (2010) applies house building rates derived from the North West RSS as it then was.
7. The IHPS continues to assert that a rolling 5 years supply can be demonstrated. The Appellant submitted detailed critiques of a significant number of sites concluding that they were not deliverable within 5 years. The Council have not responded to this specific detailed evidence. This must raise doubts as to the ability of at least some of these sites to contribute to a deliverable 5 years' supply.
8. The current situation differs, however, in that a Strategic Housing Land Availability Assessment (Feb 2009) [SHLAA] has now been produced for the Council expressly as an input to its LDF process. Housing land supply should continue to be approached on the basis of "Plan, Monitor and Manage". Where this Appellant's criticisms of individual site's deliverability were found to be valid, it would be the Council's task to review its 5 years supply informed by the SHLAA findings. Although the Appellant criticised the SHLAA's conclusions on the basis that many of its sites were greenfield land, that study concluded that the first 5 years supply of deliverable land could be provided by a combination of sites with planning permission and its Category 1a PDL sites which would meet criteria of suitability, availability and achievability. My conclusion is that housing land is capable of being managed to ensure a rolling 5 years supply.
9. That would not mean of course that additional sites, such as the appeal site, should necessarily be refused. PPS3 still requires the Council to consider whether a proposal would undermine their policy objectives. I accept their continuing concerns at the implications of an excess of site provision, particularly on greenfield land, for housing market renewal in Rossendale, for the enhancement of the existing built environment of the borough and the provision of sustainable residential development. The extent to which these objectives would require deliverable supply to be constrained to little or no more than the 5 year figure is a matter for careful judgement, and perhaps questionable.
10. The appeal site relates well to the urban boundary of Bacup as a Regeneration Priority Area, and was considered as a development site in the SHLAA. Nevertheless, my conclusion is that the

housing land supply position, and the mechanisms currently in place to manage the situation, do not provide a compelling reason to permit the development of the appeal site at this stage in the face of other objections to its release.

Access implications

11. The outline application expressly sought approval at this stage of "access". The submitted plan showed an illustrative layout for the site itself and a link to Stack Lane as an adopted highway. In relation to this application, "access" means not just the point of a connection from the defined site to an adopted highway. The amended GDPO indicates that it "*means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network....*". Having regard to the nature of Stack Lane as a roughly surfaced route linking at its northern and southern ends with distributor roads, and with very limited use by vehicular traffic, "access" should for the purposes of this proposal encompass the means by which site traffic and pedestrians reach these latter elements of the surrounding network. The Design and Access Statement which accompanied the application referred also to highways and drainage works to Stack Lane agreed in association with the planning permission for conversion of farm buildings to 3 dwellings. These works involved the formation of a 1.6 metre wide footway along the western, grassed margin of the Lane between the site entrance and New Line (with the land involved included in the site of that application), together with some drainage measures in the vicinity of the New Line junction and a street lighting column. At the time of my site visit none of these works had been carried out. As shown on the plan for the barn conversion scheme submitted here, Stack Lane immediately to the south of the new site entrance would be reduced in effective width from 3 metres to 2.6 metres.
12. The appeal application made no express proposals for further works to Stack Lane. In the appeal representations it was suggested that the Appellant was "*content to accept a Grampian condition regarding any further improvements to the adopted highway*". A "TRANSPORT STATEMENT" prepared by consultant engineers was submitted with the appeal representations. This indicated that "*Stack Lane will be widened in the vicinity of the site access to provide a carriageway a minimum of 4.1m wide. The proposals will include resurfacing the carriageway between New Line to just beyond the site access*". Notwithstanding that the text of the Transport Statement then went on to indicate that "*The proposed site layout is included in Appendix 2*" this appendix is a copy of the illustrative layout showing no works to Stack Lane over and above the agreed footway construction. There would be doubt as to the extent of widening to 4.1m. However, the summary section separately suggested that the "*application would seek to improve on this (ie the conversion permission) with a resurfaced carriageway between New Line and the site access which is a minimum of 4.1m wide*".
13. The above comments are drawn from a separate statement by external consultants submitted on the Appellants' behalf at the appeal stage. There remain in my mind doubts as to the nature and extent of highways works now being proposed in association with the development, and thereby the extent to which outstanding details could be dealt with by a *Grampian* condition of planning permission. There was no plan which sought to demonstrate the practicability of the intentions outlined above by translating them into practice along this section of highway.
14. Bearing these matters in mind, I have significant concerns about the adequacy of Stack Lane to serve the proposed development. The road has been accepted as sufficient to serve the permitted conversion scheme which would result (with the existing farmhouse) in a total of 4 dwellings making use of it. The only other properties which rely on Stack Lane for access are frontage dwellings to New Line, 3 of which appear to have rear access provision. Vehicles accessing these dwellings would be likely only to make use of the lower section of the road which has a sealed surface and is somewhat wider. The submitted proposal would involve a significant increase in overall usage of the road, particularly the upper sections where width and surfacing are currently of a low standard. Although the Appellant has recently indicated that, following the revision to *PPS3* on residential density, the scheme need not necessarily involve the 9 dwellings shown illustratively. That scheme was submitted with the outline application for the purpose of establishing the overall principles of the development. It provides a guide to the implications of the proposal.
15. An overall road width of 4.1m might be regarded as sufficient for the number of dwellings now to be served in a suburban housing context. In this case the access ways within the development itself (shown only illustratively of course) have to be combined with an 80 metre long section of

Stack Lane before connecting to the distributor network at New Line. A 4.1 metre width allows for 2 cars to pass each other on these roads, but not for any larger vehicle to pass a car. Notwithstanding the supplied estimates of peak hour trip rates using TRICS database estimates, there would on any occasion be difficulty for drivers using Stack Lane and the site itself where a car met any form of commercial or service vehicle. Difficulties of such a kind would be increased by the overall length of carriageway involved, the right angle junction to be formed at the entrance to the site itself and by road gradients. Stack Lane has a steep gradient overall, which is most severe along the section immediately to the south of the farmhouse. I have seen no analysis of this matter or of any implications for vehicle use. The severe gradients would in my view be likely to add to vehicle manoeuvring difficulties of the kind discussed here along a 4.1 metre wide carriageway. The implications would be more serious if sections of Stack Lane were to remain below that figure at single lane width.

16. At its junction with Stack Lane the site road would take the form of a 4.1m wide shared surface. There would be no separate provision for pedestrian connections beyond the site. Shared use of the carriageway at the junction point would be potentially hazardous for pedestrians in view of the road dimensions on each side and the geometry of the link. Beyond this point people on foot could seek to cross Stack Lane to use the new footway to be created. As now formally submitted, I do not consider that a satisfactory pedestrian facility has been designed into the proposals as part of the site's access.
17. New Line is classified as A6066. Detailed proposals were shown for the section of Stack Lane immediately adjoining its junction with this road on the plan attached to the residential barn conversion permission. These involved some narrowing of the carriageway at the junction point to allow for the new footway to be formed. As drawn, the carriageway would then be something like 4.4 metres wide. The submitted TRANSPORT STATEMENT indicated that major road visibility would be satisfactory at 2.4m x 60m to the east and 2.4m x 90m to the west. There was no measured speed for vehicles travelling along New Line. Having regard to the guidance now to be derived for Stopping Sight Distances in *DfT Manual for Streets [MFS]*, such distances would be satisfactory for a major road subject to a 30 mph speed limit.
18. As I saw the site, visibility to the west (the approach side) would clearly meet the figures claimed. Although the Council expressed concern at the implications for major road visibility of parked cars in front of the terraced houses to the west, MFS suggests that such parking in visibility splays is quite common in built up areas, "*yet it does not appear to create significant problems in practice*".
19. The 60m visibility to the east was stated to be taken to the centre-line of the carriageway contrary to the recommendation in MFS that the distance along the main arm should be measured from the kerb line. The alternative of a left hand visibility splay to the centre line is allowed for if vehicles approaching from that side are unable to cross the centre line. It was not suggested that this was the case at this junction. There was no measurement of major road visibility to the kerb line, although it would in the circumstances of this site be substantially less. It appeared to me that visibility would be more in the order of 2.4m x 20m on this basis. This would be substantially below the SSD figure of 39m advised in MFS for 30mph. It raises concern about the safety of this junction for the increased level of usage now proposed. The narrow width of Stack Lane at the junction adds somewhat to my concerns. Although sufficiently wide for 2 cars to pass one another at the junction point, the "swept path analysis" for medium sized cars shown in the TRANSPORT STATEMENT would require precision on the part of drivers meeting at this point. It also takes no account of the effect upon drivers leaving Stack Lane of the stone retaining wall which directly abuts the carriageway at the corner.
20. Drawing matters together in relation to access considerations, my conclusion is that the proposal has not demonstrated that safe and convenient access would be provided both for vehicles and pedestrians, having regard to the scale of increase of usage of Stack Lane now being proposed. In this regard the scheme would conflict with development criteria in Saved Policy DC1 of the Rosendale Local Plan.

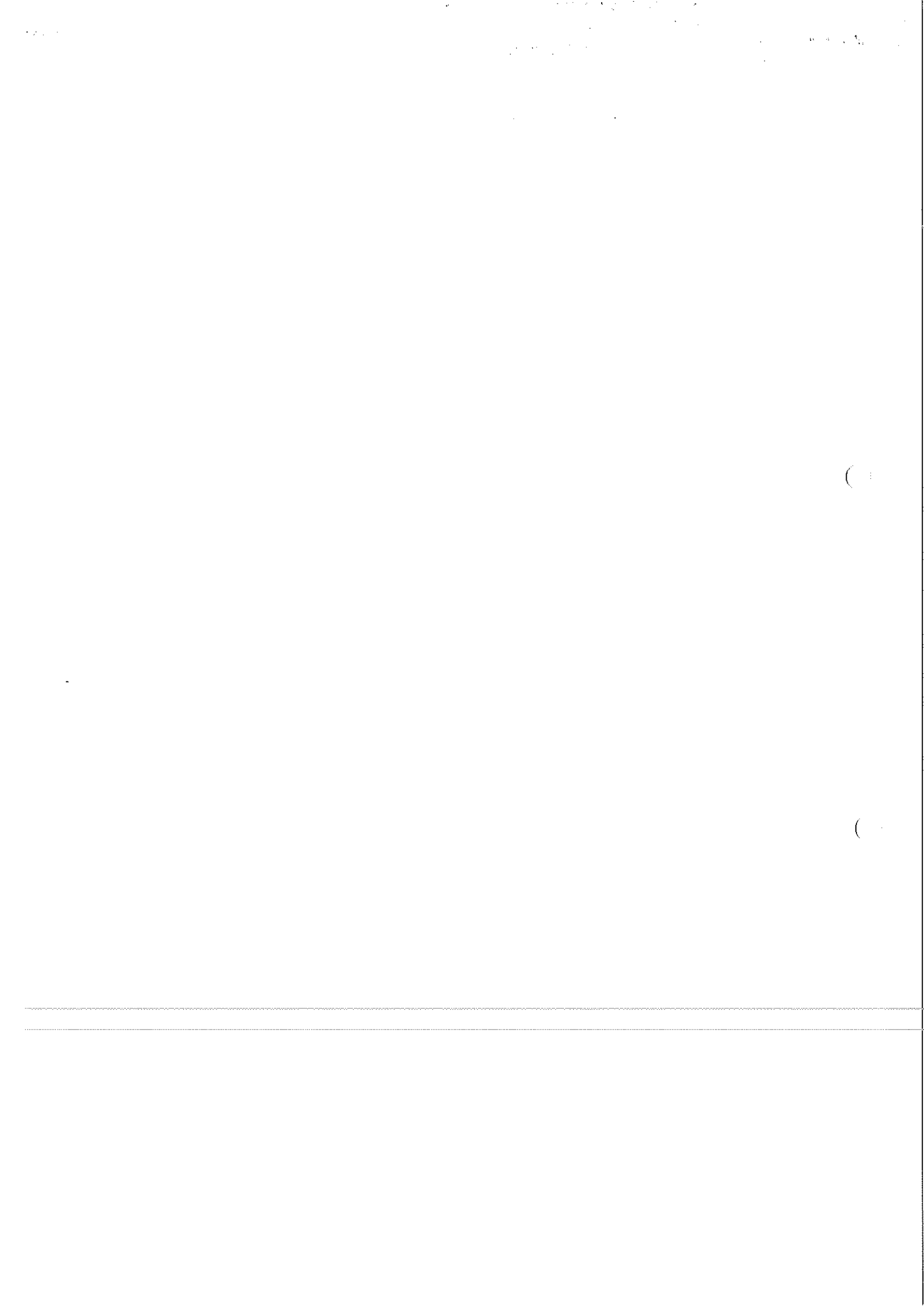
Overall conclusions

21. In overall terms, my conclusion is that the site conflicts with development plan policy for an area defined as countryside, and development would cause some harm to the character and appearance of this zone along the southern margin of the built up area of Bacup; safe and convenient access to the site has not been demonstrated; and the housing land supply position

within Rossendale does not provide a compelling reason to permit its development to over-ride these concerns. The appeal will therefore be dismissed.

Alan Upward

INSPECTOR





Appeal Decision

Site visit 16 July 2010

by **David Storrie Dip TP MRTPI**

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Decision date:
20 August 2010

Appeal Ref: APP/B2355/A/10/2127623

Makingate Barn, Cribdenside, Haslingden, Lancashire BB4 5UB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to approve an application for a non-material amendment to a planning permission under section 96A of the Act.
- The appeal is made by Mr Lee Reynolds against the decision of Rossendale Borough Council.
- The application Ref 2010/0166, dated 27 March 2010, was refused by notice dated 28 April 2010.
- The relevant planning permission, Ref 1998/443, was granted on 9 December 1998 for the erection of new external porch and conservatory.
- The changes for which approval was refused are to the conservatory (as shown on the un-numbered drawing entitled *amended proposal for conservatory*).

Application for Costs

1. An application for costs was made by Mr Lee Reynolds against Rossendale Borough Council. This application is the subject of a separate decision.

Decision

2. I dismiss the appeal.

Main issue

3. Pursuant to section 96A(1) of the 1990 Act (as amended), a local planning authority may make a change to any planning permission if the authority is satisfied that the change is not material. In making that decision, regard must be had to the effect of the change, together with any previous changes made under the section, on the planning permission as originally granted. The provisions apply equally to a decision made on appeal.
4. The main issue therefore is whether the changes proposed are material.

Reasons

5. *Materiality*. Departmental guidance¹ advises that there is no statutory definition of 'non-material'. This is because it is so dependent on the context of the overall scheme – what may be non-material in one context may be material in another. That advice in turn reflects the approach taken in *Burroughs Day v Bristol City Council [1996] 1 P.L.R 78*, albeit in the more specific context of section 55(2)(a). There the question was whether works to a listed building constituted development requiring planning permission. The

¹ CLG Guidance "Greater flexibility in planning permissions" Nov 2009

11. The Oxford dictionary definition of conservatory is '*a room with a glass roof and walls, attached to a house at one side and used as a sun lounge or for growing delicate plants*'. I see no reason to disagree with this general definition. In my opinion a common feature of a conservatory is the amount of glazing used in the construction with the glazed roof distinguishing it from other structures.
12. *Conclusion.* To my mind the use of natural slates on the roof would result in the building no longer being considered as a conservatory. I conclude that such a change in the type of building is so different from that approved that it therefore cannot be considered to be non-material. For this reason the appeal fails. Whilst I note that a different roof may be constructed after the conservatory is erected, this does not alter my view on whether the proposed change before me is considered to be material.
13. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Storrie

Inspector



Appeal Decision

Site visit made on 22 June 2010

by **Julie Dale Clark** BA (Hons) MCD DMS
MRTPI

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Decision date:
10 August 2010

Appeal Ref: APP/B2355/A/10/2126708

High Valley Stables, Conway Road, Higher Cloughfold, Rawtenstall, Lancashire

- 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 K Howleson against the decision of Rossendale Borough Council.
- The application Ref 2010/0041, dated 20 January 2010, was refused by notice dated 7 April 2010.
- The development proposed is change of use of former equestrian building to dwelling.

Procedural Matters

1. Since the submission of this appeal a revised Planning Policy Statement 3 (PPS3) Housing has been published and the Regional Strategies have been revoked. The views of the Council and the appellant have been sought on these matters and their comments have been considered as part of my assessment of the appeal.

Decision

2. I dismiss the appeal.

Main issues

3. I consider that the main issues are:-
 - the appropriateness of the conversion of this rural building to residential use, having regard to local and national policies;
 - whether the introduction of a dwelling in the countryside would be consistent with local and national policies, having regard to the Council's ability to manage the supply of housing land;
 - the effect of the detailed design of the conversion on the character and appearance of the area;
 - the effect on protected species.

Reasons

4. The stables, ménage and septic tank were constructed sometime after planning permission was granted in 2002 although the plans submitted with the appeal documents for the approved stables differs from the building on site now. It seems the approved details comprised a mix of steel sheeting and stonework to

the walls but the building now has stone walls with corrugated steel sheeting to the roof only. The stables and ménage are no longer in use and the building stands empty.

Appropriateness for conversion to a dwelling

5. National guidance in Planning Policy Statement 4: *Planning for Sustainable Economic Growth* (PPS4) supports the conversion and re-use of appropriately located and suitably constructed existing buildings in the countryside for economic development (policy EC6). However, whilst the re-use of buildings in the countryside for economic development purposes will usually be preferable, residential conversions may be more appropriate in some locations and for some types of building (policy EC12).
6. Policy DS.1 of the Rossendale District Local Plan (LP) establishes that the Council will seek to locate most new development within the defined urban boundary. Outside the urban boundary policy DS.5 restricts development to that needed for agriculture, forestry or other uses appropriate to a rural area or the rehabilitation and re-use of buildings which complies with policy DC. 1 (C.6 is also referred to but has not been saved and so no longer is relevant). DC.1 lists a general set of development criteria. The Council has adopted a Supplementary Planning Document (SPD) *Conversion and Re-Use of Buildings in the Countryside* dated February 2010 which expands on the Local Plan policies.
7. The SPD sets out criteria for conversion of rural buildings (in paragraph 4.1) and further criteria for conversion for residential use (in paragraph 4.2). Included is that every reasonable attempt has been made to secure business/commercial re-use and that these uses are not viable. Alternatively, if it can be proven that there is a need to provide accommodation for an agricultural or forestry worker there is no need to consider whether the building is suitable for a business use.
8. The SPD advises that evidence should be presented of the efforts that have been made to secure business re-use during the previous 12 month period. It suggests that evidence could include conversion costs for employment versus residential use; estimated yield of commercial uses and projected eventual income; marketing history of the building for employment uses of no less than 6 months; and a list of other vacant / available purpose-built and converted premises in the area with better proximity to local centres and services for both residential and employment uses.
9. A letter from a local estate agent states that the premises have been actively marketed for business / commercial use and for stabling since October 2009 (letter dated 14 January 2010). A later letter states that marketing continued for six months (letter dated 20 April 2010). The agent states that the access is via an unadopted track, it is remote from the town centre and the main commercial areas of the Borough and it has little to attract it for general business or commercial purposes, particularly when there are more accessible properties on the market in the areas town centres. As such no formal offers have been made.
10. The estate agent's first letter sets out that the site has been advertised in its Rawtenstall branch and 5 other north Manchester outlets, it has been listed on

the company's web site and associated portals including 'Rightmove', and advertised in the Rossendale Free Press. As no formal offers have been made for commercial or business use the agent considers that there is no commercial return and therefore conversion costs would be unviable. Together with the estate agent's letter, the appellant has included press adverts from a local paper dated 6 November 2009 and 5 March 2010 together with the sales particulars.

11. The sales particulars advertise the site as an equestrian centre including a modern barn, stabling for 11 horses, a ménage and 8 acres of grazing land. There is no mention of an alternative employment use. Furthermore, the estate agents second letter states that 10 people have inspected the site (one person twice) and lists the number of times that the web site has been visited and details downloaded. However, there is no analysis as to why the building was not suitable to those who visited it. Furthermore, the marketing report concludes that as there have been no offers for commercial or business uses there is no commercial return and any such conversion costs would be unviable. However, this is a modern building that could be suitable for a number of uses although I note that the location and access of the stables may prove restrictive for some commercial uses. Also, reference is made to better located sites but no information has been submitted about them.
12. In conclusion on this issue, I do not consider that the appellant's case is sufficiently robust. The SPD is a recently approved document and whilst it does not preclude conversions of rural building to residential use it is consistent with national policy that supports economic development. On the basis of the information before me I am not convinced that the most appropriate use of this rural building is residential.

Location of a dwelling / Housing land provision

13. The appeal site is located within the countryside and as discussed above policy DS. 5 restricts development outside the urban boundary although in some circumstances it accepts the re-use of buildings. The Council has also produced an Interim Housing Policy Statement, dated May 2010. This has been produced to provide guidance on how the Council intends to manage the release of housing land prior to the adoption of its Local Development Framework (LDF). This updates an earlier Interim Housing Policy Statement dated July 2008. The Interim Policy Statement follows the thrust of LP policy DS.5 in terms of restricting new residential development outside the urban boundary of settlements in Rossendale for agricultural or forestry workers and also for affordable or supported housing.
14. The appellant argues that the Council has not got a five year supply of housing land as required by PPS3. The actual provision required was set out in the North West of England Regional Spatial Strategy to 2021 but Regional Strategies have now been revoked. The Council indicates that it monitors its supply through the LDF Annual Monitoring Report and its housing targets have been consulted on as part of the Core Strategy consultation process.
15. However, whether the Council has a five year supply of housing land is not, in my view, a determining factor in this case, at this time. Whilst I have considered this as a material consideration, the proposal would be for just one

dwelling and I do not consider that it would undermine the Council's ability to plan, monitor and manage its supply of housing across the Borough in accordance with PPS3.

16. The site is outside the urban area and there is no suggestion that the dwelling would accommodate agricultural or forestry workers or provide affordable and/or supported housing. However, the Interim Housing Policy Statement accepts that small scale Greenfield proposals will be considered and supported on their merits in appropriate and sustainable locations. Although this site is outside a settlement, the Council has not argued its unsustainability. Furthermore, as discussed above, the Council's SPD accepts conversion of rural buildings subject to establishing that a non-residential use is not needed or unviable.
17. In conclusion on this issue, whilst the proposal would introduce a dwelling in the countryside I do not consider that it would be inconsistent with local and national policies in terms of the Council's ability to manage the supply of housing land. Furthermore, I do not consider that it would set any kind of precedent for new dwellings in the countryside.

Character and appearance of the area / Design

18. LP policy DC.1 establishes that, in general, the Council will expect all development proposals to provide a high standard of building and landscape design, contribute to environmental quality and not be detrimental to existing conditions in the surrounding area. A set of criteria are listed against which development will be assessed which includes amongst other things, visual appearance and relation to surroundings. The SPD for the conversion and re-use of buildings in the countryside provides some advice on details such as window openings.
19. The building was constructed relatively recently i.e. sometime after planning permission was granted for stables in 2002. It is a simple single storey stable building. The proposed conversion introduces a number of uniform window openings, most notably in the west and east elevations. The resulting building would appear as a fairly traditional bungalow with little reference to its original function. I accept that as a fairly modern building it lacks any special features that an older more traditional rural building may display and I also note that surrounding land levels restrict views of the building. However, given this rural location I consider that the character and appearance of the area would be harmed by introducing a building that paid little respect to its original function. As such this would conflict with LP policy DC.1 and the SPD.

Protected species / Bats

20. The Council has included the lack of an appropriate bat survey as a reason for refusal. Bats are a protected species under the Wildlife and Countryside Act 1981 (as amended) and the Conservation (Natural Habitats, &c.) Regulations 1994. Planning Policy Statement 9: *Biodiversity and Geological Conservation* (PPS9) sets out national policy for, amongst other things, protected species.
21. A report was submitted with the planning application but there is no indication as to the relevant qualifications of its writer and other than to state that there are no signs of bats it provides little information about the potential for their

presence. It mainly sets out the legislative position and general information about bats.

22. The appellant has not made it clear why an appropriate bat survey has not been submitted but on the other hand the Council has not indicated why in this case a bat survey is required. The Good Practice Guide to PPS9 provides guidance for species surveys which in some cases can be dealt with by a condition or a planning obligation accompanying a planning approval whilst in other cases a survey(s) is required prior to the determination of a planning application.
23. I have considered this issue in the light of Circular 11/95 *The use of conditions in planning permissions*. On the basis of the evidence before me, there is nothing that convinces me that the lack of an appropriate survey is a justifiable ground for refusal. In my view, a condition could ensure appropriate surveys and any resulting mitigation be carried out prior to the commencement of any work and at the right time of year, in accordance with PPS9. This would ensure that there would not be a harmful effect on protected species.

Other Matters

24. The appellant has submitted a considerable amount of information about other planning applications and appeals that have involved some of the issues I have raised above. I have considered these and all other matters raised but non cause me to alter my conclusion.

Conclusion

25. I have found that the issue of housing land supply and the Council's ability to manage it in terms of the location of development is not a determining factor in this case. I have also found no compelling reason why planning permission should be withheld due to the lack of an appropriate bat survey. I have found that due to little regard having been paid to the original function and appearance of the building, the design of the conversion would be harmful to the character and appearance of the countryside. Also, whilst I accept that some marketing has been carried out I do not consider that a sufficiently robust case has been put forward to allow the conversion of this rural building to a residential use as opposed to an economic one. As such I conclude that the proposal would conflict with local and national policies as set out above.

J D Clark

INSPECTOR

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Appeal Decision

Site visit made on 22 June 2010

by **Julie Dale Clark** BA (Hons) MCD DMS
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Decision date:
15 July 2010

Appeal Ref: APP/B2355/A/10/2126947

239 Bacup Road, Rossendale 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 Rias Khan against the decision of Rossendale Borough Council.
- The application Ref 2009/0621, dated 12 December 2009, was refused by notice dated 24 February 2010.
- The development proposed is change of use to A5 hot food takeaway (Reapplication).

Procedural Matter

1. The Council refer to policies in the Regional Spatial Strategy. As of July 2010 Regional Strategies were revoked and so these policies are no longer applicable. However, in this case I consider that the most relevant policy is DC.1 of the Rossendale District Local Plan. The Council also refer to the Interim Policy Statement: Hot Food Takeaways. The revocation of Regional Strategies does not therefore affect my consideration of this appeal.

Decision

2. I dismiss the appeal.

Main issues

3. I consider that the main issues are:-
 - whether the proposal would lead to an over concentration of hot food takeaways in the area;
 - the effect of a hot food takeaway on the living conditions of nearby residents and on the character and appearance of the area;
 - the effect of parking and traffic.

Reasons

4. Policy DC.1 of the Rossendale District Local Plan (LP) sets out general criteria for development against which planning applications will be considered. Of the list of criterion in the policy, I consider the most relevant in this case to be (a) the location and nature of the proposed development, including its relationship to existing and other land uses; (b) the size and intensity of the proposed development; (c) the likely scale and type of traffic generation; (d) likely level
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of air and other environmental pollution; (i) car parking provision; and (l) visual appearance and relation to surroundings.

5. The Council's Interim Policy Statement: Hot Food Takeaways – Consultation Document is dated 17 June 2009 and was subject to public consultation between 18 June 2009 and 31 July 2009. The document indicates that the Council anticipated adopting it in October 2009. In the Council's statement (Officers delegated report) the Interim Policy Statement is referred to as being adopted in June 2009. This would seem to be an error as adoption during the consultation period is unlikely. No other information has been submitted to confirm whether it has been adopted or not. Given that the status is not clear from the documents submitted with the appeal, this limits the weight I can give it. Nevertheless, I consider that it provides a useful guideline to the Council's approach to hot food takeaways.
6. The appeal site is within a terraced row of mainly commercial properties on the southern side of Bacup Road. There are also residential properties including two houses in this row, the nearest of which is No 243, two doors away. It would also appear that upper floor accommodation would be retained above the proposed takeaway. There is another terrace to the east which is occupied by two restaurants. Another terrace to the west includes a mix of commercial premises including one take-away. There are terraced residential properties to the north; the gables of these face Bacup Road.

Over concentration

7. The two restaurants in the adjacent terraced block to the east of the appeal site, Ashoka and Nino's appear to take up the whole block from Nos 245 and 255 Bacup Road. The takeaway in the western block is a single unit. It is not clear whether the restaurants also provide a takeaway service (conflicting views have been made about this) but policy HFTA 1 of the Interim Policy Statement, which relates to over concentration, is intended to have some relevance for restaurants and takeaways.
8. Policy HFTA 1 raises concerns about the effects of the over concentration of hot food takeaways on the vitality and viability of a town centre, neighbourhood centre or local retail parade. From my observations, this area does not appear to be unviable and most of the premises seem to be in use. No evidence has been submitted that would suggest that the vitality and viability of the area is currently under threat. The existing property is vacant and is described as previously being in residential use which would not have contributed to the vitality and viability of the commercial mix in the three blocks of terraced properties.
9. From the submitted plans the proposed hot food takeaway would be limited to the ground floor only and given that this proposal would not result in a decline of an existing commercial unit I see no reason why this use would harm the commercial nature of the area. This would be the only takeaway in this block and although there is one other takeaway to the west and two restaurants to the east I do not consider that this proposal would represent an over concentration in the area.

Living conditions and the character of the area

10. The appellant indicates that the fume extraction / ventilation system would utilise the existing chimney which would enable odours, fumes and noise from the commercial kitchen to extract above the rooftops. In the Council's view, based on the information submitted, the proposal would lead to odours and noise that would be harmful to nearby residents. Furthermore, the Council consider that the character and appearance of the property and the area would be harmed, based on the lack of information about size, design and finish of the fume extraction / ventilation equipment. The Interim Policy Statement indicates in its justification to policy HFTA 8 that this information should have been submitted with the application whilst the appellant considers a condition could address any concerns.
11. I have considered whether a condition would address this matter bearing in mind Circular 11/95 *The use of conditions in planning permissions*. A condition could successfully deal with details of fume extraction / ventilation but in this case there are matters that give me cause for concern. In particular, there will be first floor living accommodation above the takeaway. According to the submitted plans there would be a staircase to first floor staff accommodation. This shows a link through to the ground floor takeaway but from the information submitted I see no reason why the layout would specifically link this accommodation to the takeaway. Also there is a dwelling at No 243 which although two doors away, is physically close to the appeal site and any effects from the proposed takeaway could be exacerbated by the proximity of No 243 to the restaurant in the next block. To a lesser extent I also acknowledge the concerns raised by the two neighbouring businesses about the effects of cooking smells (i.e. the physiotherapy clinic and clothes shop).
12. Without details of the internal arrangement and the fume extraction / ventilation system I do not have sufficient information that demonstrates that the chimney would be able to accommodate a suitable system. Policy HFTA 2 of the Interim Policy Statement advises that takeaway establishments will not normally be granted where there is a residential unit of accommodation directly above or adjacent to the proposed takeaway. Although I have given limited weight to the Interim Planning Statement this adds to my concern about fume extraction / ventilation and in this case I do not consider that a condition is appropriate.

Parking and Traffic

13. The appellant has indicated that eight car parking spaces could be provided in the nearby car park to Ashoka's Restaurant, which is owned by the appellant. The application site does not include any part of the car park and there is no mechanism in place which would secure these places. However, I note that as both Ashoka's and Nino's have their own dedicated parking provision this must lessen the demand for on street parking to some degree. I note that the nearby residential properties have no or limited off street parking provision. I note neighbours concerns about parking but also note reference to part of this problem often being about illegal parking. If vehicles are parked illegally then that is a matter for law enforcement. I note that the County Council Engineers do not object to the proposal.

14. There is available parking on Bacup Road where roadside parking is restricted to one hour between Monday and Saturday 8am – 6pm. From the representations made the greatest problem would arise in the evening when there is already congestion from residents parking and that associated with the restaurants. I have already noted that at least some of the demand for the restaurants could be accommodated in their car parks and visitors to the takeaway could park on the main road. In the evening there would be less demand from other commercial uses that open during the day and I am not convinced that parking and traffic associated with this takeaway would make such a significant contribution to the existing situation that highway safety or residential amenity would be unduly harmed. Given the urban location of the appeal site I have also taken into account that not all customers would visit the takeaway by car. Therefore, I do not consider that the proposal would have a harmful effect with regard to parking and traffic.

Other Matters

15. The Council has expressed concern about the opening hours proposed by the appellant and the effect on the living conditions of nearby residents. The application form indicates opening times of 1200 – 2200 Monday to Saturday with the hot food takeaway being closed on Sundays and Bank Holidays. The Design and Access Statement submitted with the planning application indicates opening times of 1600 – 2200 Monday to Saturday and closed Sundays and Bank Holidays.
16. Policy HFTA 7 of The Interim Policy Statement advises that opening hours for hot food takeaways within 30 metres of residential properties should be restricted to 0800 – 2200 Monday to Saturday with one hour at the start of the day to prepare food and one hour at the end of the day to pack up and tidy away. Opening on Sundays and Bank Holidays would not normally be permitted. The suggested opening hours would fall within this timeframe. It is unclear therefore why the Council has raised this as a concern.
17. I have considered all other matters such as anti-social behaviour, the general number of hot food takeaways in the wider area and the suggestion that the use would be better suited in the town centre. None of these alter my conclusion.

Conclusion

18. I conclude that I do not consider that there is an over concentration of hot food takeaways or eating establishments in this area and the vitality and viability of the area would not be harmed. I also conclude that there would not be a harmful effect arising from parking and traffic associated with this proposal. However, due to the lack of information submitted with regard to a fume extraction / ventilation system I conclude that the proposal could be harmful to the living conditions of nearby residents and on the character and appearance of the area contrary to LP policy DC.1.

J D Clark

INSPECTOR



Appeal Decision

Site visit made on 22 June 2010

by **Julie Dale Clark** BA (Hons) MCD DMS
MRTPI

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Decision date:
2 July 2010

Appeal Ref: APP/B2355/D/10/2128175

562 Market Street, Whitworth, Rossendale, Lancashire OL12 8JW

- 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 Peter Whitworth against the decision of Rossendale Borough Council.
- The application Ref 2010/0075, dated 4 February 2010, was refused by notice dated 8 April 2010.
- The development proposed is to erect decking to front of property.

Decision

1. I dismiss the appeal.

Reasons

2. The appeal site is a mid terraced property set back and elevated from the road. The houses have steps up to the front door and tiered front gardens and stone walls. Market Street is a busy main road (A671) and I note that the appellant has erected the decking to create a secure area for his children to play. However, the structure comprising the timber decking and balustrade is a very prominent feature that does not reflect the character or appearance of the traditional style stone fronted terrace. Whilst I appreciate the reason for the decked area I do not consider that it is appropriate on this property in this location and allowing it would set an undesirable precedent.
3. The Council also express concern that use of the decking would affect the privacy and outlook of neighbouring properties. The position of the decking is in front of a window to No 562, between its front door and that of No 560. Occupiers of neighbouring properties would certainly see the decking as it is very prominent in the street. However, I do not consider that neighbours outlook from their homes would be unduly harmed and I see no reason why the privacy of neighbouring properties would be affected.
4. Of the policies referred to the most relevant is Rossendale District Local Plan saved policy DC.1. Criterion I) relates to visual appearance and the relationship of development to its surroundings. Although I have found no harm from the development in relation to the effect on the occupiers of neighbouring properties I have found that the decking is harmful to the character and appearance of the area and therefore conflicts with criteria I) of DC.1.

J D Clark
INSPECTOR

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Appeal Decision

Site visit made on 11 June 2010

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

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Decision date:
23 June 2010

Appeal Ref: APP/B2355/A/10/2124034

Deansford (formerly Cherry Tree), Dean Road, Haslingden, Rossendale, BB4 4DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Shardale Ltd against the decision of Rossendale Borough Council.
- The application Ref 2009/0467, dated 30 September 2009, was approved on 30 November 2009 and planning permission was granted subject to conditions.
- The development permitted is change of use to residential institution (Use Class C2) for 10 people as a specialist alcohol therapeutic facility.
- The condition in dispute is No 7 which states that: the use hereby permitted shall cease within 1 year of being implemented.
- The reason given for the condition is: to enable the Council to assess and control the use hereby approved in terms of its impact on the occupiers of adjoining properties in the interests of residential amenity pursuant to Policy DC1 of the Rossendale District Local Plan.

Application for costs

1. An application for costs was made by Shardale Ltd against Rossendale Borough Council. This application is the subject of a separate Decision.

Decision

2. I dismiss the appeal.

Main issue

3. The main issue of the appeal is whether or not the disputed condition, which provides for a temporary 'trial period' permission, is reasonable and necessary to protect the living conditions of neighbouring residents, having particular regard to noise/disturbance.

Reasons

4. Dean Road is a quiet cul-de-sac. The appeal property, which has very limited outdoor space, is surrounded, at close proximity, by residential properties, including sheltered accommodation at Helmcroft Court. The property's existing useable outdoor amenity space is to be further reduced by the provision of five parking spaces.
 5. In the recent past the property was used as a residential home for up to eight children and it is common ground that this resulted in disturbance to local residents which may have, at least in part, accounted for the home's closure. I accept that, as a general rule, there is likely to be less potential for noise and
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disturbance arising from the adult residents of the proposed facility than from children. However, I have borne in mind that, in terms of the number of residents at least, the development would be an intensification of the use of the property. Moreover, given that the residents (who are likely to stay for between three and 18 months) would only be permitted to leave the property on pre-arranged visits under staff supervision (once per week is indicated), it appears to me that throughout the year significant use would be likely to be made of the facility's outdoor space.

6. I appreciate that the Council's officers recommended approval of the application without the disputed condition and that the appellant's staff have extensive knowledge of the market in which the facility would operate. I also agree with the appellant that it would be inappropriate to restrict a planning permission on the basis of unfounded fears. One cannot be certain about the effects of the proposed use in any particular location. However, taking account of the number of residents, the very limited outdoor space and the proximity of neighbouring residential properties (in particular Helmcroft Court which is only a few metres from the property's garden), I consider that there is a real possibility of normal day to day use of the garden by the facility's residents causing unacceptable disturbance to the occupants of neighbouring dwellings, contrary to policy DC1 of the adopted *Rossendale District Local Plan*. Other than the disputed condition it appears to me that there are no conditions which could overcome this potential problem.
7. In view of the problems at the site in the past, the appellant argues that the proposed facility must be seen as preferable to the reuse of the property as a children's home. This may be so although the previous children's home closed and I have seen no evidence to support the appellant's assertion that such a use "will be reinstated" if the current proposal does not proceed. Nor does the past existence of a use which caused problems justify permanent approval of another use which may also cause demonstrable harm.
8. Although not directly raised by the Council, the traffic and parking implications of the scheme are concerns of many local residents. It appears to me that the five parking spaces would be sufficient for the facility's staff given that residents would not be permitted to bring cars to the site. However, the appellant's Business Plan indicates that visits by friends/relatives of residents would take place on Saturday afternoons. Whilst I recognise that such visits would be discouraged, given the likely length of stay it seems to me that there would be a realistic possibility of most residents receiving a weekly visit. To my mind, the arrival and departure of up to 10 cars, belonging to visitors, in the relatively short period of one afternoon would have the potential to cause parking problems in Dean Road and additional disturbance to the local residents, at a time when many of them would be at home. This has added some weight to my decision.
9. I accept that there is a need for an alcohol dependence facility in the area and this clearly weighs in favour of the development. However, the possibility of it causing unacceptable disturbance to, and thus harm to the living conditions of, neighbouring residents is also an important consideration and one which, in my view having regard to the benefits of the scheme, justifies granting permission for a year long, trial period only, giving the opportunity for the Council to assess its actual effects.

10. The appellant argues that the condition has, in effect, nullified the benefit of the permission. *Circular 11/95 – The Use of Conditions in Planning Permissions* indicates 'trial runs' may be appropriate for a use which could be potentially detrimental to existing uses nearby but where there is insufficient evidence to be sure of its effects. However it advises that such a permission should be reasonable having regard to the capital expenditure necessary to carry out the development. Excluding the annual lease, which to my mind is a running cost, the appellant has indicated that the set-up costs of the development would be in the order of £35,000. Whilst there is no indication of whether these costs would be likely to be covered by profit made in the first year, it appears to me that they are very modest set-up costs for a facility of this type and scale. The appellant states that it is required to enter a ten year lease for the premises although I have seen no confirmation of this, which, in any case, is somewhat at odds with its statement that a five year temporary permission might be acceptable.
11. I have given more weight to the other potential difficulties, raised by the appellant, which could arise from the temporary permission. I accept that the disputed condition could make it difficult to attract high quality staff (although it seems unlikely to me that temporary contracts would contravene employment legislation) and could, if permanent approval was not to be subsequently granted, disrupt the treatment of patients. I have also taken account of the other possible problems set out in the letter from David Finney Associates, although I note it does not specifically state that the temporary permission means that the development could, or would, not go ahead.
12. I understand that the Care Quality Commission would have the power to cancel the home's registration if serious problems were to occur. It appears to me that the potential effect of this power is essentially the same as the disputed condition and thus, even without the condition, the problems the appellant identifies with a temporary permission would, to a degree, exist in any case. It is also argued that if the scheme were to proceed on a temporary basis, spurious complaints about it could be made resulting in a refusal of an application for permanent permission. Whilst I appreciate this concern, the appellant could appeal such a refusal of permission, whereas there would be no means of redress through the planning system were a permanent permission to be granted now and problems subsequently to ensue. Nevertheless, I accept that it is a possibility that the temporary permission might result in the appellant deciding not to proceed with the scheme.
13. Ultimately, however, whilst the need for the facility is not disputed, I have seen no evidence to indicate that this is the only suitable site for it in the area. Thus, I conclude that the appellant's concerns about the temporary permission do not outweigh the need to protect local residents against the possible harm which could be caused to their long-term living conditions. For the above reasons, and having regard to the appellant's view about the motives of the Development Control Committee and the discussions which have taken place between the parties since the determination of the application, I conclude that the disputed condition is reasonable and necessary and that the appeal should thus be dismissed.

Malcolm Rivett

INSPECTOR



Costs Decision

Site visit made on 11 June 2010

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

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for Communities and Local Government

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Decision date:
23 June 2010

Costs application in relation to Appeal Ref: APP/B2355/A/10/2124034 Deansford (formerly Cherry Tree), Dean Road, Haslingden, Rossendale, BB4 4DS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Shardale Ltd for a full award of costs against Rossendale Borough Council.
- The appeal was against the grant subject to conditions of planning permission for change of use to residential institution (Use Class C2) for 10 people as a specialist alcohol therapeutic facility.

Decision

1. I refuse the application for an award of costs.

Reasons

2. *Circular 03/2009* advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. Although the reason for the condition on the decision notice cites residential amenity, I agree with the applicant that the Council itself has not clearly demonstrated precisely how the proposed development may have an adverse effect in this respect. Nonetheless, the concerns of local residents have been clearly expressed at both the planning application and appeal stage. Having regard to these I have identified that, taking account of the proposed number of residents, the size of the outdoor amenity space and the proximity of residential properties, there is a real possibility of use of the garden of the facility causing unacceptable disturbance to neighbouring residents.
 4. The applicant indicates that following the refusal of an earlier application for a similar proposal for 15 residents the Council informally indicated that an application for 10 residents would be considered favourably. Whilst authorities should, as far as possible, seek to be consistent in the advice they provide to developers, ~~informal advice is just that and I do not consider it is, by definition, unreasonable for an authority to reach a formal decision on an application which is contrary to previously-given informal advice.~~
 5. Given the scale of the development I am not persuaded that the identified set-up costs of around £35,000 are disproportionate to a one year temporary permission. Although attracting high quality staff may prove more difficult than would normally be the case, I note that the expert view provided by David
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Finney Associates does not specifically state that the facility could or would not proceed as a result of the temporary permission. Moreover, given the harm the proposal has the potential to cause, I do not consider that the lack of a guarantee to its staff of employment for more than a year, or any other cited difficulty of a temporary permission, makes the disputed condition unreasonable.

6. I have therefore found the disputed condition, which provides for a temporary, trial period permission, to be both reasonable and necessary. Thus, whilst I have noted the applicant's views about the motives of the Committee which determined the application and the advice provided to them, I conclude that the Council did not behave unreasonably in granting permission for the scheme subject to this condition. I have also noted the comments of both parties about the post-determination discussions and subsequent planning applications which have been submitted but I am not persuaded that this should alter my decision on this application. Consequently an award of costs is not justified.

Malcolm Rivett

INSPECTOR





Appeal Decision

Site visit made on 11 June 2010

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

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Decision date:
24 June 2010

Appeal Ref: APP/B2355/A/10/2125594

2 Rising Bridge Road, Haslingden, Rossendale, BB4 5BL

- 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 S Mason against the decision of Rossendale Borough Council.
- The application Ref 2010/0052, dated 27 January 2010, was refused by notice dated 24 March 2010.
- The development proposed is change of use from a dwelling to a residential home (planning use C2) for up to and including 13 elderly residents as a home for the elderly and up to and including six children as a children's home.

Application for costs

1. An application for costs was made by Mrs S Mason against Rossendale Borough Council. This application is the subject of a separate Decision.

Preliminary matters

2. Despite the description of the development set out above, the submitted information makes clear that permission is sought for either a home for the elderly or a children's home and I have determined the appeal on this basis.
3. I understand that the property lies in the Green Belt; although the Council does not contend that the reuse of the building (taking account of the parking provision and need for bin storage) would materially harm the openness of the Green Belt or that the scheme is inappropriate development as defined by *Planning Policy Guidance 2: Green Belts*. I have no reason to disagree.
4. A number of residents refer to fencing which has recently been erected at the site. This does not form part of the application I am considering.

Decision

5. I allow the appeal, and grant planning permission for change of use from a dwelling to a residential home (planning use C2) for up to and including 13 elderly residents as a home for the elderly or up to and including six children as a children's home at 2 Rising Bridge Road, Haslingden, Rossendale, BB4 5BL in accordance with the terms of the application, Ref 2010/0052, dated 27 January 2010, subject to the conditions set out in the attached Schedule.
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Main issue

6. The main issue of the appeal is the effect of the proposals on the living conditions of neighbouring residents, having particular regard to privacy and noise/disturbance.

Reasons

7. From the back garden of the appeal property there are views, at a raised level, towards the rear windows of 4 Rising Bridge Road and also, at an angle, towards the courtyard of Glebe Cottages. There is also a more direct view towards the courtyard and some of the windows of Glebe Cottages from an upstairs corridor window of no 2. Use of the currently vacant appeal property would thus lead to some potential for overlooking of no 4 and the Glebe Cottages courtyard and a degree of loss of privacy for these dwellings' residents. Any noise made in no 2's garden (such as loud talking, shouting or the playing of games) would also be likely to be heard in the courtyard and neighbouring gardens or in the neighbouring properties themselves if their windows were open.
8. However, the property's currently permitted use is as a dwelling house and its reuse as such appears to me to be likely if this appeal were to be dismissed. Consequently, the key issue is whether a significantly greater level of disturbance and loss of privacy would be caused to the neighbouring residents by either of the proposed uses than by the property's use as a dwelling house.
9. The property is a large one and I agree with the appellant that, as a single dwelling house, it would be likely to be attractive to a large family, possibly with five or six children. In such circumstances use of the garden, and the potential for any disturbance and loss of privacy arising from it, would be likely to be the same as with the proposal for a residential home for up to six children; potentially more if the parents of the family also frequently used the garden for leisure and entertaining. Similarly, I consider that the potential for loss of privacy from the upstairs corridor window of the property would not be significantly greater with the children's home use than with its occupation by a large single family.
10. The Council argues that if friends of the children's home residents were to be invited to the property many more than six children could play in the garden and I accept that this would be likely to cause significant disturbance. However, it is to my mind unlikely that this would happen on a frequent basis (the home's residents would be just as likely to visit their friends' houses) and, in any case, such a situation could also occur with the property's occupation by a large single family.
11. Concerns are raised about the likely behaviour of a children's home's residents ~~although I have seen nothing which convinces me that they are likely to be noisier or more badly behaved than any other children. Some neighbours state that the home would be for unruly children or ones with behavioural difficulties although I have read nothing to support this. Moreover, such children can and do live in traditional family dwellings. I have noted the details of the crime which a neighbour has attributed to a resident of an existing children's home. However, whilst unfortunate, this is one incident and I have seen no evidence~~

which indicates that criminal behaviour by residents of children's homes in the area is a significant problem.

12. The Council indicates that it has no objections to the use of the property as a home for up to 13 elderly people. Although more than double the number of residents proposed for the children's home, having regard to the fact that they would be likely to make quieter use of the garden than children, I have no reason to disagree with the Council's stance. I am not persuaded the property's use as a home for the elderly would place an unacceptable burden on neighbours to look after its residents or result in any other significant harm.
13. I therefore conclude that neither proposal would be likely to result in significantly more disturbance or loss of privacy for, and therefore harm to the living conditions of, neighbouring residents than the property's currently permitted use as a dwelling house. Thus, the proposals have no conflict with policy DC1 of the adopted *Rossendale District Local Plan* which indicates that development should not be detrimental to existing conditions in the surrounding area.
14. Reference is made to the decision of an Inspector in relation to a previous appeal at the site concerning a proposal for unrestricted Class C2 care home use of the building. Whilst concluding that unrestricted use could lead to unacceptable loss of privacy and disturbance, he indicated that, having regard to the potential capacity of the property, many types of Class C2 use would not cause such problems. As set out above I have identified that a home for up to 13 elderly residents and a home for up to six children are such C2 uses.
15. I am satisfied that the car parking arrangements are satisfactory and that neither proposal would be likely to result in any significant road safety/congestion problems. There is also adequate space to accommodate cycle parking and a bin storage area, both of which can be secured by condition. I have carefully considered all the matters raised in objection to the scheme, including the size of the property, drainage, light pollution, effects on property values, the presence of existing care homes in the area, the motives of the applicant, the possible implementation of the scheme by another organisation and the previous application and appeal. However, I have seen nothing which convinces me that permission for the proposals should not be granted. Nor, for the reasons set out above, am I persuaded that the proposals would result in violation of the Human Rights of any of the neighbouring residents.
16. I recognise that a subsequent application could be made to increase the number of residents at the home although I am satisfied that the Council could successfully resist such a proposal if it were shown to be likely to cause demonstrable harm.
- ~~17. For the above reasons I conclude that the appeal should be allowed. In addition to the standard implementation condition, a condition is necessary to define the plans with which the development shall accord for the avoidance of doubt. For the same reason, and to prevent harm to the living conditions of neighbouring residents, it is also necessary to define by condition the permitted uses of the property. Whilst I have noted the comments of the appellant I consider that conditions concerning parking provision, boundary treatments~~

and bin storage are also necessary to minimise on-street parking and highway safety problems and to ensure the satisfactory appearance of the front of the building. Whilst I recognise that the proposals are not inherently noisy uses the internal arrangements of the property and the use of rooms would be likely to differ from that of a traditional dwelling house. A condition concerning noise insulation is therefore required to protect the occupants of no 4 from unacceptable disturbance from within no 2, although I consider it impractical and unnecessary to insulate no 4 against noises generated outside the adjoining building. Any construction work taking place outside the hours listed in the condition suggested by the Council would be likely to cause unacceptable disturbance to neighbouring residents and thus this condition is also necessary.

Malcolm Rivett

INSPECTOR



Appeal Decision

Site visit made on 11 June 2010

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

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Decision date:
24 June 2010

Appeal Ref: APP/B2355/A/10/2125600

237 Bacup Road, Rossendale, Lancashire, 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 Mrs Sarah McGrail against the decision of Rossendale Borough Council.
- The application Ref 2010/0071, dated 4 February 2010, was refused by notice dated 25 March 2010.
- The development proposed is to change 237 Bacup Road from a lighting shop (A1) to a physiotherapy practice (D1) including changes to the shop front.

Preliminary matters

1. I understand that permission has previously been granted for the change of use and that this application is identical to that already approved other than the majority of the front windows of the property would be obscure, as opposed to clear, glazed. The appellant indicates that she intends to apply film to the inside of the windows to achieve this effect. At the time of my visit the approved scheme had been implemented and the inside of the main ground floor window was covered in white paper, mimicking the effect of the film.

Decision

2. I allow the appeal, and grant planning permission to change 237 Bacup Road from a lighting shop (A1) to a physiotherapy practice (D1) including changes to the shop front at 237 Bacup Road, Rossendale, Lancashire, BB4 7PA in accordance with the terms of the application, Ref 2010/0071, dated 4 February 2010, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) Unless otherwise required by the condition below, the development hereby permitted shall be implemented in accordance with drawing nos C-0088-03 Rev A and C-0088-04 Rev B and shall be retained as such.
 - 3) The development hereby permitted shall not commence until a sample of the obscure glazing/film to be used in the front windows of the building has been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved sample.

Main issue

3. The main issue of the appeal is the effect of the obscure glazing on the appearance of the property and street scene.
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Reasons

4. No 237 is part of a row of mostly commercial premises. Whilst a number of the properties have traditional shop window displays, several do not and their windows are obscured by blinds. The approved and implemented scheme significantly altered the appearance of the frontage of the appeal premises to a more modern style. To my mind obscure, or film covered, glazing would be entirely in keeping with the new frontage, bearing in mind the use of the property. The firm's name and logo printed onto the window relieves what might otherwise be a 'dead' frontage and provides more interest to the street scene than some other premises in the vicinity.
5. I saw on my visit that obscure glazing of windows of commercial premises is not uncommon in the surrounding area. Whilst a larger amount of obscure glazing (relative to the overall size of the windows) may be proposed at no 237 than exists elsewhere, I see no significant harm arising from this. I have noted the suggested use of window blinds as an alternative to obscure glazing although when closed (which they could be at all times) the effect of blinds on the appearance of the property would be much the same as the proposed window treatment. I understand that the Council does not object to the obscure glazing of the upstairs front windows of the property and I have no reason to disagree with its stance.
6. I conclude therefore that the obscure glazing, incorporating the firm's name and logo, would cause no significant harm to the appearance of the property or the street scene. It thus has no conflict with any of the policies/guidance referred to by the Council – most notably policy DC1 of the adopted *Rosendale District Local Plan* which requires development to be of a high standard of design and not detrimental to the surrounding area. With respect to the obscure glazing I also find there to be no conflict with policy HP5 of the plan which seeks to ensure that new shop fronts respect the character of the building to which they are attached and the townscape.
7. For the above reasons I conclude that the appeal should be allowed. In addition to the standard implementation condition a condition is necessary to ensure that the development is implemented, and retained, in accordance with the approved plans for the avoidance of doubt, in the interests of proper planning and to ensure the satisfactory appearance of the development. For the same reasons I am also requiring a sample of the obscure glazing to be approved by the Council. However, given that the main conversion works of the proposal have already been implemented under the previous permission, conditions restricting the hours of construction works and the materials to be used, other than in relation to the windows, are unnecessary.

Malcolm Rivett

INSPECTOR
