

## **C2 – Appendix 1 – Planning Appeals update**

### **Appeals decided since the report taken to January 2015 committee**

14 appeals were determined by the Planning Inspectorate since the writing of the last update report in January 2015.

The following 4 appeals were lodged and awaiting decisions from the Planning Inspectorate when the previous report was brought to committee, but have since been determined:

- 2013/0490 – Land at Swinnel Brook Park, Grane Road, Haslingden, Rossendale BB4 4FN
- 2013/0099 – Land off Wallsclough, Whitewell Bottom, Rossendale, Lancs BB4 9NE
- 2014/0149 & 2014/0150 – 2 Separate planning applications for single wind turbines of 47.5m dealt with via one report and one appeal. (Land to the west of Brex Heights, Far Brex Farm, Coal Pit Lane, Whitewell Bottom, Bacup, OL13 8NN & Brex Farm, Coal Pit Lane, Whitewell Bottom, Bacup, OL13 8NN)
- 2014/0401 - 112 Booth Road, Bacup, Lancashire OL13 0TA

**In respect of 2013/0490** the appeal was a split decision due to both parts of the appeal being functionally and physically different. The appeal for the diversion of the footpath was dismissed, but the appeal for the one park home was upheld.

The proposed length of the footpath fell outside the redline area shown on the location plan delineating the appeal site therefore could not be approved planning permission. With regard to the one park home, originally planning permission was partly refused on flood risk issues, with the EA primarily stating that the appeal site fell within flood risk zone 2/3. However during the appeal, EA withdrew their objection due to the submission of a flood risk assessment which showed minimal flood risk, therefore the council confirmed it no longer wished to pursue this reason for refusal. Site location/urban boundary issues became the main point of concern after conflict of opinion between the Appellant and the Council. After careful examination, the Inspector concluded that the appeal site fell within the urban boundary and not 'open' countryside and therefore was broadly in accordance with CS Policy 1. It was decided that the small parcel of land fell separate and distinct from the countryside causing no material harm to the character and appearance of the site, with the sustainability benefits of existing internal access outweighing its limited flood risk.

4 conditions were attached with the appeal decision: restricting the hours of construction, early construction of car parking for prior use and the carrying out of development must be carried out in accordance with the approved plans and the development shall begin no later than 3 years from the date of decision.

**In respect of 2013/0099** the appeal was dismissed.

The inspector concluded that the proposal would exert an overbearing presence causing significant harm to the character and open appearance of the local landscape, and minor harm in terms of visual impact. With regard to ecology, it was made evident by the LCC ecologist and Lancashire Wildlife Trust that an inadequate level of site based assessment information was submitted at the application stage, with none included at appeal stage. Despite this, the inspector concluded that subject to the suggested condition restricting

works that would affect nesting birds, the proposal would not conflict with section 11 of the NPPF and CS Policy 18. It was concluded that minimal harm would be caused to the undesignated heritage assets and archaeological features, subject to appropriate conditions being attached. Despite the wind turbine contributing to the development of renewable energy and producing around 250,000kWh per annum, the inspector concluded that the proposal would have an adverse effect on the open character of the landscape outweighing the environmental and economic benefits.

**In respect of 2014/0149 & 2014/0150** the appeals are dismissed.

The inspector took visual amenity and the effect of the large scale, man-made proposal on the openness of the landscape character as a main concern as the proposal could be seen from many viewpoints below as breaking the skyline. Furthermore no noise assessment was submitted to indicate the combined effect of the one existing and two proposed wind turbines, so the inspector couldn't conclude that significant noise disturbance would not arise for some neighbouring residents at Springwater Barn and Middle Bank Farm.

In the planning balance, the identified harm to the landscape and likely adverse effects of noise upon the living conditions to neighbours overrides the benefits of the scheme, therefore contrary to CS policies 19 and 20.

**In respect of 2014/0401** the appeal is allowed and planning permission granted for the erection of four number houses, subject to conditions. The main issues to be considered were the effect on highway safety and the effect on the character and appearance of the area.

With regard to highway safety, the inspector concluded that there were no obvious issues with the site access as the proposed widening of the road enables 2 cars to access the site at once. Highways Authority also confirmed that there were no issues with visibility despite concerns from the council over restricted views. As there are only plans for four number houses of which provide sufficient off-road parking, there is no concern for a dangerous increase in the traffic flow and no harm to pedestrians. Therefore the proposed development wouldn't have a detrimental impact on highway safety - in compliance with policy 24 of the CSDPD. The Inspector concluded that the character and appearance of the site would not be affected, and not in conflict with Policies 1 and 24 of the CSDPD. The inspector believed the proposed semi-detached and detached dwellings to be in keeping with the variety of houses in the local area; in density, style and materials. Other matters regarding removal of shrubs were disregarded as all to be removed are un-protected and sufficient trees will remain which won't result in a loss of trees or wildlife habitat.

Conditions: required to control the external appearance and landscaping of the proposed development. It is necessary to control the surface water drainage of the site, and in the interests of highway safety it is necessary to ensure that parking arrangements are provided before the appeal dwellings are first occupied. Operation hours are to be restricted to protect the amenity of neighbouring residents.

Costs: Awarded. The Inspector felt unreasonable behaviour was shown through a lack of evidence to demonstrate the committee's reasoning in refusing the application for lack of highway safety and inadequate visibility. Furthermore, there was insufficient evidence for the supposed detrimental effect the proposed development would have on the local character –

just because the scale is greater than previously permitted on the site, doesn't mean its density is out of character.

Additionally, planning appeals which have also been determined since the writing of the last report:

- 2014/0276 – Goodshawfold Barn, Off Goodshawfold Lane, Rossendale BB4 8QN
- 2014/0278 - 34 Anemone Drive, Haslingden, Rossendale BB4 6NJ
- 2014/0148 - Spittens Farm, Roundhill Road, Accrington BB5 3SW
- 2014/0461 – Former Coal Staithe Site, Burnley Road (Opposite Goodshaw Avenue North), Loveclough, Rawtenstall, Lancashire
- 2014/0354 – Agricultural building to South of Grane Road, Haslingden BB4 4AT
- 2014/0334 – The Fisherman's Retreat, Twine Valley Park & Fishery, Bye Road, Ramsbottom, Bury BL0 0HH
- 2014/0246 – Coldwells Cottages, Roundhill Road, Haslingden, Rossendale BB4 5TU
- 2014/0536 – Myrtle Earth Farm, Edge Lane, Cloughfield, Rossendale, Lancashire BB4 7SS
- 2014/0508 – Site of former Alden Cotton Mill, Alden Road, Helmshore, Rossendale BB4 4AQ
- 2015/0025 – Land off Lomas Lane, Balladen, Rossendale BB4 6HY

**In respect of 2014/0276** the appeal is dismissed.

After difference in opinion over the urban/conservation boundary between the appellant and council, the inspector concluded that the appeal site fell within the open countryside so must be determined in accordance with CS Policy 1. The proposal was found to be contrary to local and national policy objectives specifically paragraph 55 of the NPPF, which cautions against isolated new dwellings in the countryside, except in the case where there is a re-use of redundant or disused buildings. The building was still in use and associated with stables so the inspector couldn't conclude that the building was currently vacant or redundant therefore doesn't fall within the framework exceptions.

The changes would cause some harm to the character and appearance of the building and surrounding countryside – the addition of a glazed conservatory would be an incongruous and modern addition reflecting domestic use, exacerbated by other domestic items such as external seating and domestic rubbish. It was pointed out by the inspector that the proposed development would have limited effect on the character of the conservation area. Although the appellant proposed 2 conditions for example removing permitted development rights, the inspector concluded this wouldn't outweigh the harm caused to the character and appearance.

**In respect of 2014/0278** the appeal is dismissed, with main issues relating to the character and appearance of the proposed development and its effect on highway safety.

The majority of the dwellings in the surrounding area are of a similar appearance to the proposed development and are set back from the road giving a feel of spaciousness defining the character of the area. The existing orientation of the appeal site (No.34) in relation to its neighbour (No.36), are indeed very close, with the gap between them narrowing

considerably from front to back, with a proposed distance of 0.3m at its closest point. Emphasised by the difference in ground levels, the inspector concluded that the close proximity was considered out of character therefore contrary to the councils CS policies 1, 23 and 24 and paragraph 64 of the NPPF.

A suggested requirement from the highway authority requests that the new driveway should be 6m in length; however the proposed driveway (4.8m wide and in length) lies directly in front of the principal elevation leaving the inspector concerned as there is no way the driveway could be expanded. This may result in cars overhanging onto the pavement, causing an obstruction to pedestrians and may cause conflict with passing motorists and cyclists. Another concern that the access steps were encroaching on the parking spaces was expressed. The inspector concluded that the proposed parking plans were detrimental to highway safety and in conflict with policies 1, 8, 23 and 24 of the CS, relating to car parking design.

**In respect of 2014/0148** the appeal is dismissed.

In the view of the inspector, the visual effect of the substantial 46.3m standalone structure would be a serious material loss of the openness and character of the landscape as a result moderate weight was attached to this harm. Upon examination the proposed turbine was thought to create greater harm than the LVIA suggested, in contrast to the view of the appellant, the inspector considered the turbine to be an unnecessary extension to the existing Hyndburn wind farm. An intrusive feature on the landscape and closer to nearby settlements, the appeal turbine would appear out of scale in comparison to neighbouring properties creating the cumulative effect of a turbine influenced landscape. Substantial weight must be given to the small amount of energy (217MWh/yr) the wind turbine provides, in accordance with the NPPF. In the balance, the Rossendale CS Policy 19 sets a target of 25% of energy needs to be covered by renewable sources, but considerable weight must be given to protect the greenbelt and restrict inappropriate development. Therefore, the inspector concluded that the economic benefits related to very special circumstances do not outweigh the harm identified – conflicting with CS Policies 1 and 20 which set out to protect the greenbelt.

**In respect of 2014/0461** the appeal is dismissed.

The inspector concluded that the proposed development was of poor design: the poor orientation of the high and narrow proportioned structure which is industrial in appearance, would act as an incongruous feature in the existing street scene. The development would be extremely prominent against a backdrop of open space, failing to respect the context of the surrounding land.

Made reference to by the council, new development must be supporting for the purposes of agriculture. The appellant makes point that the building would make use of storing hay and agricultural machinery associated with the improvement of this land. Although the development supports the requirement of CS policy 21 and the NPPF which aims to support the rural economy, the inspector believes the development fails to satisfy the requirements of CS policies 1 and 24 which aim to promote development which complements and enhances the environment, whilst positively contributing to the landscape.

Giving the requirements of the *framework* considerable weight, the inspector concluded that the matters raised by the appellant wouldn't justify the unacceptable and unsustainable design of the appeal building and its harm on the character and appearance of the relatively open space.

**In respect of 2014/0354** the appeal is dismissed, with an application for costs refused. Main concerns identified by the inspector were whether the resulting dwelling would provide acceptable living conditions given its context, and whether there would be an unacceptable effect on highway safety.

Assessing the living conditions meant evaluating whether the change of use from agricultural to a dwelling would be considered 'undesirable' with site context in mind. Taking advice from PPG on what classifies as 'undesirable' in an agricultural context, the inspector found that active farming can hold negative attributes of noise, smell and dangerous machinery - threatening health. The proposed conversion forms one third of an agricultural building, separated by an internal dividing wall but under the same roof - given the close proximity the inspector considered the occupier to be at greater risk of the potential harm. The inspector considered this appeal in an 'open market', understanding that the future agricultural use of the surrounding land could change with the larger part of the building potentially storing more dangerous and harmful materials. The inspector concluded that as the proposed dwelling isn't physically separate, it wouldn't be possible to protect future occupiers from the potential harm and provide an acceptable standard of living conditions.

With no objections raised from LCC Highways Authority on visibility grounds, the inspector concluded that the proposed development would not create an increased risk to the safety of other road users on the Grane Road. 9 previous road accidents were acknowledged, but the inspector didn't consider the likely generation of an additional 5-6 movements per day as a result of the new dwelling, a substantial change to the current traffic flow.

**The inspector refused an award of costs** as he believed Rossendale Council didn't act unreasonably in refusing the permission for change of use or in maintaining its objections at appeal.

The appellant was against the council taking the Highways Authority's decision of the safety implications of the proposed scheme without question, but the inspector felt it wasn't unreasonable or irrational to do so as they were a responsible consultee. The inspector took into consideration views and evidence from both competing parties and examined which carried the greatest weight in the determination of the appeal. The inspector stated it would be more unusual and irresponsible for the council to disregard the relevant advice from the Highways Authority.

The appellant strongly disagreed with the council's professional opinion on the 'undesirable' aspect of the scheme, but the inspector concluded that their decision wasn't unreasonable given the close relationship of the proposed dwelling and the retained agricultural storage element. Advice from the inspector suggested the council could have addressed the latest PPG advice published 6 weeks before their written statement; however their appeal wasn't materially divergent from that advice.

**In respect of 2014/0334** the appeal is dismissed with an application for costs refused.

The inspector concluded that the 'free-standing' appeal building, which would be disproportionately larger than the original building (79.8% increase in the volume of development), would be classified as inappropriate development in the Green Belt, with its primary purpose of a hotel contrary to policy 89 of the NPPF. Recognising that intrinsic character and beauty is a core planning principle as per paragraph 17 of the NPPF, the council's reasons refusal contend that the proposed development would detract from the visual amenities of the area and character of the present building. The inspector recognised that the building wasn't in an Area of Outstanding Natural Beauty, however is in an area of pleasant undulating open countryside with few other buildings in sight. Situated within an enclosed and isolated part of the landscape, the building is not visually prominent from public vantage points; however the lack of other development in the area suggests new development would have great material impact on the 'openness' of the landscape with additional infrastructure such as roads and car parks encroaching on the countryside.

As the site is accessed from a single track road, the inspector concluded that the development would lead to an increased risk to other road users as other businesses also use this road, and is already in heavy use from other farm vehicles. Further to this, the local highway authority and Bury Council's highways officers raised objections on grounds of the impact on increased traffic.

The Inspector considered the appellant's reasons for 'Very Special Circumstances' to justify development in the Green Belt, but felt they were insufficient and didn't outweigh the harm caused by the proposal's inappropriateness in the countryside. The Inspector concluded that the appellant didn't provide sufficient evidence to prove the new hotel building would be essential to the operation of the current business and that without the proposed scheme the present business would be unprofitable.

**The inspector refused an award of costs** as he felt the council didn't mishandle the application, to which the appellant made no allegations that the council had behaved unreasonably at appeal stage. Acknowledging the competing arguments and considering National Policy, along with the development plan and other material considerations the inspector felt the objections raised by the council were fair and not irrational.

**In respect of 2014/0246** the appeal is dismissed.

The inspector concluded that the proposed development would be unsustainable, as its design would be unsympathetic to the environment and have an unacceptable effect on the character and appearance of the existing building and open landscape. The appeal site is located against a small section of buildings and a backdrop of open land.

Although a sympathetic choice of natural materials was chosen, the inspector made point that an extension to one elevation will result in a building with an altogether different shape – a contrast to the existing simplistic and uncomplicated rectangular shape. The proposed increase in the number and size of some openings on existing elevations, as well as new roof lights and chimneys would change the intrinsic agricultural character that the building currently possesses. The new domesticated appearance created by residential paraphernalia and a parking area would appear suburban in nature and have a significant visual impact on the wider open area.

The proposal would however, be in favour of the NPPF and development plan in some aspects as it makes use of a redundant building, which the appellant states is necessary to stabilise the structure, and is not isolated in location. Nevertheless the inspector concluded that the inconspicuous proposal in its highly visible position would be contrary to CS Policies 1, 23 and 24 which seek, amongst other matters, that development is of the highest standards of design which responds to local character.

**In respect of 2014/0536** the appeal is dismissed.

The inspector concluded that the conversion of an existing agricultural building including an extension to form 1 dwelling was unacceptable. Most particularly, the Inspector concluded that the extent of the alterations would result in a building that is very much domesticated in appearance and would significantly harm the character and appearance of the existing traditional agricultural building. This would in turn significantly harm the character and appearance of the area contrary to policies 1,23 and 24 of the Core Strategy. It also failed to comply with guidance contained with the SPD on Conversion of Building on the Countryside and paragraph 55 of the National Planning Policy Framework.

The inspector also concluded the proposal represents a new isolated building in the open countryside in an unsustainable location relying heavily on the car for which there are no special circumstances. It was therefore contrary to policy 1 of the Core Strategy.

**In respect of 2014/0508** the appeal is dismissed

The Inspector concluded the proposal for construction of one pole barn to contain aquaponics business, to include solar panels on the roof should be refused. This is not withstanding the officer recommendation for approval which was overturned by the committee. The inspector concluded that on balance there is a reasonable case for locating the proposed building outside the urban area and therefore was not in conflict in principle with Core Strategy policy 1 or with the guidance in the NPPF. However, the proposal as framed did not satisfactorily address the potential harm to the shared use of Alden Road. Most particularly the inspector concluded it was not clear that the proposal would not cause harm to the safe shared use of Alden road by all modes of transport. This would be inherently contrary to the project's ambition to be highly sustainable, as well as to national and local policy objectives in support of sustainable development, in particular polices 1, 23 and 24.

Separately, the Inspector noted the site formed part of the Alden Wood and was identified by the Lancashire Biodiversity Action Plan. It appeared there was potential conflict between overhang from a tree and the positioning of solar panels and a dense row of trees to the east of the site casting a shadow over part of the site. In the absence of a detailed study, he shared the concerns of the Council and others that the requirements of efficient solar energy generation could lead to pressure for further works to the surrounding trees. The Inspector further concluded that if there was uncertainty as to the extent of works, there was uncertainty as to the potential adverse impacts on the natural environment.

**In respect of 2015/0025** the appeal is dismissed.

The Inspector considered the erection of a single 'Passivehaus' dwelling with hard and soft landscaping and vehicular access off Lomas Lane. The inspector concluded that the house would not be sensitive to the defining characteristics of the local area and regardless of its distinctive design qualities, it would be inappropriate in this location. Furthermore, planting would not enhance the immediate setting as the site is already in a natural and undeveloped state which is a defining characteristic of the countryside. It would be contrary to policies 21, 23 and 24 which require development to respond to local character, to positively contribute to the landscape and to protect the rural environment.

The inspector also concluded it would not be sustainable in respect of its location and would therefore conflict with paragraphs 30, 34 and 55 of the National Planning Policy Framework.