

REPORT FOR NOTING

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	21 May 2019
SUBJECT:	PLANNING APPEALS
REPORT FROM:	HEAD OF DEVELOPMENT MANAGEMENT
CONTACT OFFICER:	DAVID MARNO
TYPE OF DECISION:	COUNCIL
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	<p>Planning Appeals:</p> <ul style="list-style-type: none"> - Lodged - Determined <p>Enforcement Appeals</p> <ul style="list-style-type: none"> - Lodged - Determined
OPTIONS & RECOMMENDED OPTION	The Committee is recommended to the note the report and appendices
IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	Executive Director of Resources to advise regarding risk management
Statement by Executive Director of Resources:	N/A
Equality/Diversity implications:	No
Considered by Monitoring Officer:	N/A

Wards Affected:	All listed
Scrutiny Interest:	N/A

TRACKING/PROCESS

DIRECTOR:

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

This is a monthly report to the Committee of the Planning Appeals lodged against decisions of the authority and against Enforcement Notices served and those that have been subsequently determined by the Planning Inspectorate.

Attached to the report are the Inspectors Decisions and a verbal report will be presented to the Committee on the implications of the decisions on the Appeals that were upheld.

2.0 CONCLUSION

That the item be noted.

List of Background Papers:-

Contact Details:-

David Marno, Head of Development Management
 Planning Services, Department for Resources and Regulation,
 3 Knowsley Place ,Bury BL9 0EJ

Tel: 0161 253 5291

Email: d.marno@bury.gov.uk

**Planning Appeals Lodged
between 15/04/2019 and 12/05/2019**



Application No.: 63294/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: Mr Sohail Afsar

Location 8 Bolton Street, Bury, BL9 0LQ

Appeal lodged: 03/05/2019

Appeal Type: Written Representations

Proposal Change of use from estate agents (Class A2) to private hire taxi booking office (Sui Generis)

Application No.: 63858/FUL

Decision level: DEL

Recommended Decision: Split Decision

Applicant: Mrs Helen Palfrey

Location 23 Shipston Close, Bury, BL8 1QH

Appeal lodged: 26/04/2019

Appeal Type: Written Representations

Proposal A: Single storey extension at front
B: Two/single storey extension at rear

Total Number of Appeals Lodged: 2

**Planning Appeals Decided
between 15/04/2019 and 12/05/2019**



Application No.: 63358/ADV

Decision level: DEL

Recommended Decision: Refuse

Applicant: Mala Cuisine Ltd

Location: 18-20 Holcombe Village, Ramsbottom, Bury, BL8 4LZ

Proposal: 1 No. internally illuminated fascia sign and 1 no. internally illuminated projecting sign

Appeal Decision: Allowed

Date: 10/05/2019

Appeal type: Written Representations



Appeal Decision

Site visit made on 19 March 2019

by **Laura Renaudon LLM LARTPI Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 10th May 2019

Appeal Ref: APP/T4210/Z/18/3218021

18-20 Holcombe Village, Ramsbottom BL8 4LZ

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Mr P Miah against the decision of Bury Metropolitan Borough Council.
 - The application Ref 63358, dated 26 September 2018, was refused by notice dated 21 November 2018.
 - The advertisement proposed is one rectangular sign and one projecting sign, with the word MALA.
-

Decision

1. The appeal is allowed and express consent is granted for the display of 1 no internally illuminated fascia sign and 1 no internally illuminated projecting sign as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations.

Procedural Matters

2. The description of the proposal was amended by the Council to reflect the proposed internal illumination of both of the signs, and I have dealt with the appeal on that basis.
3. The application was made retrospectively, and photographs of the signs in situ have been provided, but at the time of my site visit the signs had been removed.
4. An additional photograph was submitted following the Council's decision on the application, showing the previous fascia and projecting signs on the appeal building. I am satisfied that no prejudice has been caused by the lack of consultation in relation to this photograph.

Main Issue

5. The main issue is the effect of the signs on the visual amenity of the area.

Reasons

6. The appeal property lies at the centre of Holcombe village, opposite the Shoulder of Mutton public house in the Holcombe conservation area. It is prominently located on the busy B6214 close to the junctions of several roads meeting at the village, which lies on a steep hill above Ramsbottom near Bury.

7. Holcombe is an unspoilt and scattered rural village consisting principally of residential properties. The appeal property is a restaurant, and the appeal concerns the placing of replacement signs to the front of the property that advertise this fact. It is a stone-built 2-storey property of residential proportions, lying close to and opposite Grade II Listed buildings, including Nos 24 – 26 and the Shoulder of Mutton which are both 3-storey buildings constructed of stone.
8. Apart from several road signs nearby, the only other sizeable signs in the immediate vicinity are those relating to the Shoulder of Mutton which are prominent, but not internally illuminated. There are several streetlights nearby, one of which is immediately outside the appeal property, and at the time of my site visit in the late afternoon I saw that the village was well-lit.
9. The appeal proposal is to replace the former maroon-coloured signs carrying the name of the restaurant with two internally illuminated signs of a basic box design which would be positioned as before. The proposed signs are dark grey in colour, with the fascia sign bordered by strips of light grey at the sides, and the projecting sign similarly bordered at the top and bottom. The doors and window frames to the property have been painted in a similar light grey. Each sign would spell the name of the restaurant, the fascia sign horizontally and the projecting sign vertically on each side.
10. The proposed signs would be slightly larger and distinctly more modern than the former signs. The fascia sign would occupy most of the vertical space between the door header and the first-floor window cill, and horizontally most of the space between the ground floor window headers, although it would not conceal any of these attractive features of the building. It would be positioned centrally above the main entrance door, and appears appropriately designed in consideration of the special architectural features of the building. In addition the illumination of the letters would be a subtle approach and appropriate for the building. The projecting sign would be attached to the building itself rather than hanging, as previously. It would be appropriately positioned directly above the secondary entrance door and symmetrically within the fenestration of the northern end of the building.
11. Although larger than the previous signs, the two signs would not be out of scale with their host building, and they would not be unduly obtrusive or adversely affect the character or appearance of the conservation area or the setting of the nearby listed buildings, or harm amenity in any other way. The modern appearance of the signs would distinguish them from the historic property and those nearby. The colour is bland and inoffensive, and the signs would blend well with the matching exterior paintwork of the property. The illumination of the signs at night would not be inappropriate in this well-lit part of the village, underneath a street light.
12. I have taken into account the saved policies EN1/9, EN2/1, EN2/2 and EN2/3 of the Bury Unitary Development Plan of 1997 which seek to control advertisements and to protect amenity, including the preservation and enhancement of conservation areas and the setting of listed buildings and so are material in this case. Given I have concluded that the proposed signs would not harm amenity, there would be no conflict with the development plan.

13. For the reasons outlined above the appeal is allowed. No conditions other than those set out in Schedule 2 of the 2007 Regulations have been suggested and I consider that none are necessary.

Laura Renaudon

INSPECTOR

The Ombudsman's final decision

Summary: Mrs X says the Council fraudulently granted planning permission for development at a property adjoining her own. I propose to close this complaint because I did not find fault by the Council.

The complaint

1. Mrs X says the Council fraudulently granted planning permission for development at a property adjoining her own. Mrs X says:
 - The Council failed to advise her husband and her of amended plans submitted by the applicant.
 - The Council accepted a piece of paper which purported to be a certificate B
 - The plans for a non-material amendment application showed a double door leading on to an adjoining street as existing even though it does not exist.
2. Mrs X wants the planning department to change the way it notifies neighbours of changes to original plans and to obtain verification of further information required in the process of gaining planning permission. She wants the applicant/owner of the adjoining property to reinstate a boundary wall and ensure the extension granted planning permission is built wholly within the property's boundary.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

5. I reviewed the complaint and correspondence provided by Mrs X and the Council. I discussed matters with Mrs X by telephone. I sent a draft decision statement to Mrs X and the Council and considered Mrs X's comments on it.

What I found

The law and government guidance on publicity for planning applications

6. After a local planning authority receives a planning application, it will undertake a period of consultation where views on the proposed development can be expressed. The formal consultation period will normally last for 21 days. Public consultation will involve neighbouring residents and community groups.
7. Following the initial period of consultation, it may be that further additional consultation on changes submitted by an applicant, prior to any decision being made, is considered necessary.
8. Where an application has been amended it is up to the local planning authority to decide whether further publicity and consultation is necessary. In deciding whether this is necessary the following considerations may be relevant:
 - Were objections or reservations raised in the original consultation stage substantial and, in the view of the local planning authority, enough to justify further publicity?
 - Are the proposed changes significant?
 - Did earlier views cover the issues raised by the proposed changes?
 - Are the issues raised by the proposed changes likely to be of concern to parties not previously notified?

Certificates of ownership

9. Submission of a valid application for planning permission requires a completed application form; compliance with national information requirements; the correct application fee; and provision of local information requirements.
10. The national information requirements include plans and drawings; ownership certificate and agricultural land declaration; and design and access statements.
11. An ownership certificate is a certificate applicants must complete that provides certain details about the ownership of the application site and confirms that an appropriate notice has been served on any other owners (and agricultural tenants). The forms of notice are in schedule 2 to the Town and Country Planning (Development Management Procedure (England) (Order) 2015.
12. The planning system entitles anyone to apply for permission to develop any plot of land, irrespective of ownership. However, an applicant is required to notify owners of the land or buildings to which the application relates.
13. If the applicant is the sole owner of the land to which the application relates then the applicant will complete Certificate A. If the applicant is not the sole owner of the land, or any part of the development goes outside land in their ownership, then the applicant will complete Certificate B. The applicant is required to serve notice on each owner of the land.
14. If the applicant knows the name of some but not all the land owners, then the applicant will complete Certificate C. If the applicant cannot trace any of the owners then the applicant will complete Certificate D as well as advertise the proposal in a local newspaper.

Background to complaint

15. Mrs X's neighbour submitted a planning application for a single storey rear extension and a loft conversion with dormer at the rear in January 2018. The Council notified Mrs X of the application at the start of February 2018.

-
16. In Mid-February, the applicant's architect submitted a revised plan showing a change in the roof of the extension from a flat roof to a pitched roof. The Council advised the architect that the change meant the applicant had to serve notice on Mrs X and her husband and provide evidence of doing so by completing a Certificate B.
 17. The applicant's agent sent a completed Certificate B form to the Council at the end of February. The agent said they served notice on Mrs X on 1 February 2018.
 18. The Council had not received any comments on the application from Mrs X during the consultation period. On its expiry, it decided not to publicise the change to the roof of the extension and so there was no further consultation period.
 19. The Council granted planning permission in March 2018.

Analysis

The Council failed to advise Mrs X and her husband of amended plans submitted by the applicant in February 2018

20. I do not find fault by the Council on this point. The law gives the local planning authority discretion on whether to publicise amended applications and consult third parties again. Government guidance on the use of the planning authority's discretion is set out in paragraph 8 of this statement.
21. In hindsight, it is plausible to suggest the Council should have publicised the change given subsequent events and Mrs X's complaint. But with the guidance in mind, I am satisfied the Council considered its discretion properly. As neither Mrs X nor her husband commented on the application during the consultation period, the Council did not consider it necessary to publicise the change to the application.

The Council accepted a piece of paper which purported to be a certificate B

22. Mrs X says the Certificate B provided by the applicant's agent contained only her name and left out her husband's name. It did not refer to the property concerned. It was initialled by the agent rather than signed. The applicant or his agent did not serve notice on her of the intended work before completing the Certificate B.
23. Local planning authorities accept ownership certificates in good faith and do not generally look behind the declarations made by applicants unless they have good reason to do so. For instance, if a third party informs the authority of a defect in an ownership certificate before a decision is made on a planning application then the expectation is that the authority will not decide the application until it enquires into the ownership matter.
24. I note Mrs X considers the Council to be partly culpable because it accepted the applicant/agent's statement that a notice was served on her without making its own checks on the veracity of the agent's claim. But there is judicial precedent that holds it would be too onerous an administrative burden to place on planning authorities to expect them to investigate all ownership declarations.
25. In this case, the Council accepted the Certificate B because it stated Mrs X was the owner and provided a date for when the notice was allegedly served on her. The agent signed the certificate.
26. The certificate could be said to be defective because it did not include all owners of the land such as Mrs X's husband. The applicant or his agent could be prosecuted by the Council. However, the Council would have to prove the

applicant/agent did so knowingly or recklessly. That is a legal judgement which is beyond the purview of the Ombudsman.

The plans for a non-material amendment application showed a double door leading on to an adjoining street as existing even though it does not exist

27. Responsibility for the accuracy of plans lies with the applicant although planning officers are expected to spot gross errors.
28. In this case, the plans showed a double door which Mrs X says does not exist. It may not have been spotted by the planning officer. However, I do not find this was a gross error that amounts to fault. Mrs X is not affected by the alleged error and so there is no significant injustice to warrant further pursuit of this point by the Ombudsman.

Final decision

29. I closed this complaint because I did not find fault by the Council.

Investigator's decision on behalf of the Ombudsman