

# REPORT FOR NOTING

<b>DECISION OF:</b>	<b>PLANNING CONTROL COMMITTEE</b>
<b>DATE:</b>	<b>26 May 2020</b>
<b>SUBJECT:</b>	<b>PLANNING APPEALS</b>
<b>REPORT FROM:</b>	<b>HEAD OF DEVELOPMENT MANAGEMENT</b>
<b>CONTACT OFFICER:</b>	<b>DAVID MARNO</b>
<b>TYPE OF DECISION:</b>	<b>COUNCIL</b>
<b>FREEDOM OF INFORMATION/STATUS:</b>	This paper is within the public domain
<b>SUMMARY:</b>	<p>Planning Appeals:</p> <ul style="list-style-type: none"> <li>- Lodged</li> <li>- Determined</li> </ul> <p>Enforcement Appeals</p> <ul style="list-style-type: none"> <li>- Lodged</li> <li>- Determined</li> </ul>
<b>OPTIONS &amp; RECOMMENDED OPTION</b>	The Committee is recommended to the note the report and appendices
<b>IMPLICATIONS:</b>	
<b>Corporate Aims/Policy Framework:</b>	Do the proposals accord with the Policy Framework? Yes
<b>Statement by the S151 Officer: Financial Implications and Risk Considerations:</b>	Executive Director of Resources to advise regarding risk management
<b>Statement by Executive Director of Resources:</b>	N/A
<b>Equality/Diversity implications:</b>	No
<b>Considered by Monitoring Officer:</b>	N/A

<b>Wards Affected:</b>	All listed
<b>Scrutiny Interest:</b>	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:-**

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**Planning Appeals Lodged  
between 10/02/2020 and 17/05/2020**



**Application No.:** 64722/FUL

**Appeal lodged:** 12/02/2020

**Decision level:** DEL

**Appeal Type:** Written Representations

**Recommended Decision:** Refuse

**Applicant:** EE (UK) Ltd and H3G (UK) Ltd

**Location** Junction of Polefield Approach/Bury Old Road, Prestwich, M25 1WJ

**Proposal** Installation of replacement a 20m monopole, accommodating 12 no. antenna in an open headframe together with the upgrade of the equipment cabinets and ancillary development thereto

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**Application No.:** 64981/FUL

**Appeal lodged:** 13/05/2020

**Decision level:** DEL

**Appeal Type:**

**Recommended Decision:** Refuse

**Applicant:** Ms Stothard

**Location** 7 Miller Street, Summerseat, Ramsbottom, Bury, BL9 5PX

**Proposal** Erection of garden shed at front

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**Application No.:** 65003/GPDE

**Appeal lodged:** 18/03/2020

**Decision level:** DEL

**Appeal Type:** Written Representations

**Recommended Decision:** Prior Approval Required

**Applicant:** Mr Kahed Kapacee

**Location** 5 Brook Drive, Whitefield, Manchester, M45 8FR

**Proposal** Prior notification for proposed single storey rear extension

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**Total Number of Appeals Lodged: 3**

**Planning Appeals Decided  
between 10/02/2020 and 17/05/2020**



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<b>Application No.:</b> 63243/FUL	<b>Appeal Decision:</b> Allowed
<b>Decision level:</b> DEL	<b>Date:</b> 21/02/2020
<b>Recommended Decision:</b> Refuse	<b>Appeal type:</b> Public Inquiry
<b>Applicant:</b> Mrs Barbara Young	
<b>Location:</b> Land North of The Garsdale, Woodhill Road, Bury	
<b>Proposal:</b> Change of use of land to use as a residential caravan site for two traveller families with a maximum of 4 no. caravans/motor homes, erection of amenity building and laying of hard standing	

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<b>Application No.:</b> 64338/FUL	<b>Appeal Decision:</b> Allowed
<b>Decision level:</b> DEL	<b>Date:</b> 26/02/2020
<b>Recommended Decision:</b> Refuse	<b>Appeal type:</b> Written Representations
<b>Applicant:</b> Mr Peter Barrett	
<b>Location:</b> 4 Myrtle Grove, Radcliffe, Manchester, M45 7RR	
<b>Proposal:</b> Two storey extension at side and single storey extension at side/rear	

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<b>Application No.:</b> 64719/FUL	<b>Appeal Decision:</b> Dismissed
<b>Decision level:</b> COM	<b>Date:</b> 10/03/2020
<b>Recommended Decision:</b> Approve with Conditions	<b>Appeal type:</b> Written Representations
<b>Applicant:</b> Harrington House Estates Ltd.	
<b>Location:</b> 79 Bury New Road, Whitefield, Manchester, M45 7EG	
<b>Proposal:</b> Change of use from existing 6 bed HMO (Class C4) to 8 bed (8 person) house in multiple occupation (HMO) (Sui Generis)	

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## Appeal Decision

Inquiry Held on 29 January to 31 January 2020

Site visit made on 30 January 2020

**Mr K L Williams, BA, MA, MRTPI**

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

Decision date: 21<sup>st</sup> February 2020

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**Appeal Ref: APP/T4210/W/19/3227402**

**Land North of The Garsdale, Woodhill Road, Bury, BL8 1XG**

- 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 Barbara Young against the decision of Bury Council.
  - The application, ref:63243 and dated 31 August 2018, was refused by notice dated 26 October 2018.
  - The development proposed is the change of use of land to use as a residential caravan site for 2 Gypsy/Traveller families each with 2 caravans, erection of ancillary amenity building and laying of hardstanding.
  - **Summary of Decision: The appeal succeeds. Planning permission is granted in the terms set out in the Formal Decision.**
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### Preliminary Matters

1. The appellant now seeks to station 2 caravans on the site rather than 4. Any touring caravans required for travelling would be stored off-site. I have therefore determined this appeal on the basis of the stationing of 2 caravans rather than the 4 caravans referred to in the planning application description of development. The number of caravans can be controlled by planning condition.

### The Appeal Site and the Proposed Development

2. The appeal site is to the east of Woodhill road, between the road and the banks of the River Irwell. It is close to the entrance to the Burrs Country Park, which extends along part of the valley and includes land adjacent to the river. The appeal site is broadly rectangular and extends to about 0.1 hectares. A 1:200 scale indicative site layout plan shows an access into the site from Woodhill Road, with a vehicle turning area. It also shows 2 mobile homes and areas of hardstanding. An amenity building would be sited near to Woodhill Road. Areas for tree and shrub planting are shown, together with grassed areas. Further drawings give details of the proposed amenity building and fencing.
3. The site would be occupied by 2 families. Mr and Mrs Sharp and their 5 children would occupy 1 pitch. Mr and Mrs Young and their adult daughter Laurel would occupy the other. Mrs Sharp is Mr and Mrs Young's daughter. The prospective site residents fall within the definition of gypsies and travellers set out in Annex 1 of Planning Policy for Traveller Sites, 2015 (PPTS).

## The Main Issues

4. The site is in the North West Green Belt. The proposed change of use would be inappropriate development in the Green Belt. On that basis the main issues are:
  - i) The effect on Green Belt openness and on Green Belt purposes;
  - ii) The effect on the character and appearance of the area;
  - iii) The effect on highway safety and the free flow of traffic;
  - iv) The need for gypsy and traveller sites in the area, the supply of sites and whether a 5-year supply exists;
  - v) The need for accommodation for those who would live on the site and whether any suitable alternative sites are available;
  - vi) Personal circumstances, human rights and the best interests of children;
  - vii) The overall balance and whether any harm to the Green Belt and any other harm would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify granting planning permission.

### *The effect on Green Belt openness and on Green Belt purposes*

5. The site is small in extent but is open and undeveloped. To the south there is a children's playground with play equipment. To the north there is an area of woodland and the entrance to the Burrs Country Park. The River Irwell is immediately to the east, with woodland to the east of it. The nearby parts of the Green Belt are predominantly open in character. The presence on the land of mobile homes, an amenity building and related vehicles and domestic items would be harmful to the openness of the Green Belt.
6. It is consistent with *Turner v SSCLG and East Dorset Council [2016]* that the openness of the Green Belt can have a visual aspect as well as a spatial one. The principal public views into this site are from Woodhill Road and from the adjacent playground. From Woodhill Road, there are views across the site to woodland beyond. Views from the playground are limited to some extent by existing trees and shrubs on the site's southern boundary. However, the rear of the site can be seen and there is currently a view from there along part of the river valley.
7. The indicative layout plan shows that it would be possible to incorporate some additional planting within the appeal site, which would reduce the visual effect of the development. The site is within a narrow area of countryside extending towards Bury from the wider countryside to the north. It is on the edge of an urban area. In addition to the harm to openness, the development would conflict with the Green Belt purpose of assisting in safeguarding the countryside from encroachment. Nor would it be consistent with the Green Belt purpose of checking the unrestricted sprawl of a large built-up area, although it has not been shown that there is a serious risk of such sprawl in this area. The Council also cites the risk of cumulative harm to Green Belt openness from numerous small incursions. However, it has not been shown by reference to specific sites that this is a significant risk in this area.

8. These harms to the Green Belt weigh against the appellant. Having regard to the modest extent of the site the degree of harm is moderate. The development conflicts with Policy OL1 of the Bury Unitary Development Plan, 1997 (UDP). It sets out that the Council will maintain a Green Belt and ensure that it fulfils its strategic purposes, including assisting in safeguarding the countryside from further encroachment.

*The effect on the character and appearance of the surrounding area*

9. The site is in the River Irwell valley and close to the approach to Burrs Country Park. In addition to woodland, the river valley and a playground there is existing development close to the site. It includes Woodhill Road, housing to the west of the road and a public house. The nearby entrance to Burrs Country Park has a car park and a large sculpture based on a millwheel. The wider surrounding area includes the country park. It is predominantly open but includes areas for car parking, a barn, the remains of mill buildings and former mill workers cottages. On the north side of the river, adjacent to the country park, there is a large caravan park catering for visitors to the area, together with related hardstanding, facilities buildings and a plot with warden's accommodation.
10. The existing caravan site and development related to it are not perceived when close to the appeal site, although they form part of the character of the wider surrounding area. While there is housing development nearby, the immediate area to the east of Woodhill Road is largely open. The entrance to the country park adds visual interest to the area. The introduction of a small caravan site would result in a degree of harm to the character and appearance of the surrounding area. This would be perceived primarily in views from Woodhill Road and would be apparent to visitors to the country park and the playground.
11. The development would conflict with UDP policy OL5/2 in respect of its effect on an open part of the valley and failure to fall within one of specified categories of development. It would also conflict with policy EN1/1 which resists development having any detrimental effect on visual amenity in areas including the Green Belt and river valleys. However, these policies are not fully consistent with the approach in Planning Policy for Traveller Sites, 2015 (PPTS). It envisages that some traveller sites will be in the countryside, so that a degree of harm is not unusual from this type of development. This inconsistency reduces the weight attributable to conflict with those policies. The extent of harm could be reduced by the planting of trees and shrubs. It is not intended that traveller sites should be hidden from public view, but such planting can help to integrate development into its surroundings. Taking this into account, together with the small scale of the site, the degree of harm would be moderate and weighs against the development.

*The effect on highway safety and the free flow of traffic*

12. The Council's decision referred to insufficient information on parking and turning of vehicles within the site to show that harm to highway safety and the free flow of traffic would be avoided. Some local residents are concerned about the effect of traffic movements to and from the site, as are the Friends of Burrs Country Park. Access from the site would be directly onto Woodhill Road. No assessment of traffic movements is submitted but this would be a small site, accommodating two families and the number of caravans stationed on the site

would be limited to 2. The volume of traffic movements associated with the families' vehicles is likely to be low. The evidence does not suggest that larger vehicles, such as lorries or low-loaders would be brought to the site.

13. The layout plan indicates that there would be adequate space within the site for the turning and parking of the likely number of cars and a van. Visibility for drivers at the site entrance is adequate. Woodhill Road is of a good width. There is street lighting and vehicle speed is limited to 20 mph near the site. While no traffic flow figures are submitted, the road near the site is used for access to residential properties, the country park and the caravan site. It is likely to be a busy road at times. Nevertheless, the balance of evidence is that the development would not result in harm to road safety or to the free flow of traffic.

*The need for gypsy and traveller sites in the area, the supply of sites and whether a 5-year supply exists*

14. It is common ground that there is an unmet need for sites for travellers in the area, that there are no sites currently allocated and that the Council cannot identify a 5-year supply of deliverable sites. The Greater Manchester Gypsy and Traveller Accommodation Assessment (GTAA) was published in 2014. It identified an overall need for 15 pitches in Bury in the period 2014 to 2033. Following publication of the GTAA a new private site at Todd Street was developed, which provided 15 additional pitches.
15. A revised GTAA was published in 2018 addressing the period up to 2036. It distinguished between a need for pitches for those meeting the PPTS Annex A definition ("PPTS need") and those who do not but who are nevertheless gypsies or travellers culturally ("cultural need"). The GTAA found a net need 103 pitches in Greater Manchester. In Bury it found an unmet PPTS need for 1 pitch and a cultural need for 2 pitches. Account has also been taken of evidence arising since publication of the 2018 GTAA concerning waiting lists and circumstances relating to some vacant pitches. The Council's assessment of current overall unmet need in Bury is for 12 pitches.
16. The starting point for the appellant's assessment of need is the 32 authorised and occupied pitches in Bury in April 2018. Applying a compound growth rate to this of 2% per annum would result in a net need for 13 additional pitches for the period up to 2036. This is said to be a minimum level of unmet need, taking no account of overcrowding or need arising from those needing to move from "bricks and mortar" accommodation to caravan sites. Aerial photographs of the Fernhill Caravan site are said to show overcrowding, although they are limited to two dates and can provide only a snapshot.
17. The 2018 GTAA did not involve new primary data from original fieldwork but was primarily a desk-based exercise relying on updating evidence collected for the 2014 GTAA. It also reviewed demographic data and took account of available new evidence, including that held by the Council. Data collected in 2014 is not up to date. It was collected before the 2015 PPTS, which introduced a new planning definition of "gypsies and travellers". That definition had the effect of excluding those who had ceased to travel permanently. In these circumstances the 2018 GTAA relied on supplementing information collected in 2014 with post-PPTS surveys from elsewhere in order derive an assumed percentage falling within the PPTS definition.

18. Any assessment of the need for traveller sites requires a range of assumptions. Undue reliance should not be given to the precise figures produced, particularly as the numbers involved are not large. Nevertheless, despite their different approaches, the appellant's assessment and that of the Council are not very far apart. They confirm an unmet need for pitches in Bury.
19. The aims of PPTS include increasing the number of sites permitted in appropriate locations to address under-provision, maintaining an appropriate level of supply and promoting private traveller site provision. PPTS paragraph 10 says that Councils should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against locally set targets.
20. The level of unmet need in this case is significant when compared with the scale of existing provision. There are no sites allocated in the UDP. While policy H1/3 provides criteria for assessing application it gives no specific locations to which development could be directed. Although preparation of a new Local Plan is underway, it is at an early stage and progress on it relies on that of the Greater Manchester Spatial Framework. No firm date for adoption of the new Local Plan is submitted and it is likely to be several years away. Further time would then be required for sites to be developed, if any are allocated. Site allocations are not the only way for sites to come forward. The Council did grant planning permission for the Todd Street site following the publication of the 2014 GTAA. Nevertheless, there has been a long-term failure of policy by the Council to allocate land to meet the needs of gypsies and travellers. There has not been a plan led approach to meeting need. These matters weigh in the appellant's favour.
21. Paragraph 27 of PPTS explains that where an up-to-date 5-year supply of deliverable sites cannot be demonstrated, this should be a significant material consideration when considering applications for a temporary planning permission. It goes on to preclude sites in the Green Belt from this approach. This provision in PPTS does not preclude the absence of a 5-year supply from being a material consideration in respect of applications for permanent planning permission. Nor is that the effect of the judgement in *Swale BC v SSHCLG [2018] EWHC 3402 (Admin)*.

*The need for accommodation for those who would live on the site and whether any suitable alternative sites are available*

22. The 2 families have a personal need for a settled site which would facilitate a good residential environment, with good access to health, education and other services and provide a stable base from which travelling for work can be undertaken. The families currently share a pitch on the Crompton Lodge site at Farnworth in Bolton. Mr and Mrs Young are "doubling-up" on Mr and Mrs Sharp's pitch and have nowhere else to live. The pitch is not extensive and is overcrowded. In addition to a touring caravan occupied by Mr and Mrs Sharpe and their 5 children, a smaller caravan houses Mr and Mrs Young and their daughter, Laurel. There is a utility building on the pitch but it is in a state of disrepair and is said to be unusable. Mrs Sharp explains that repairs have not been undertaken over a long period. She also refers to rats on the plot. The families must rely on the use of toilet and bathroom facilities in a static caravan belonging to a friend on the adjoining pitch.

23. The Crompton Lodge site is on a bus route and within reasonable distances of services and facilities. However, the site appears to provide a poor living environment, with buildings in a poor condition, vacant pitches awaiting refurbishment and waste scattered on the site and the access road. The Crompton Lodge site does not provide a suitable site for these two families. Although the Council say the families could seek a site elsewhere, there is no evidence of any other suitable and available alternative site. The appellant's evidence is that purchase of the appeal site followed a period of about 4 years of unsuccessfully searching for a suitable site.

*Personal circumstances, human rights and the best interests of the children*

24. Two of Mr and Mrs Sharp's children suffer from a serious, long-term and life limiting medical condition. It requires physiotherapy for lengthy periods twice a day, treatment with a nebuliser and a range of other medication. A letter from the Manchester University NHS Foundation Trust stresses the need for these children to have ready access to running water, toilet facilities and shower facilities to allow them to maintain hygiene. Further letters from the Trust set out the resulting care requirements for the children, which are considerable. One of the adult prospective occupiers of the site has 2 serious medical conditions. They are permanent or long term and require regular hospital attendance for specialist care. Another is awaiting surgery for a different serious condition.

25. Occupation of the appeal site would facilitate mutual support, on which these two families rely. It would also facilitate application of medical treatment for the severe condition suffered by two of the children, including the extensive daily treatment they require. That is said to be inhibited by living conditions at Crompton Lodge. A local resident doubts the suitability of the appeal site for children with this condition. Reference is made to the proximity of the river, a canal overspill and grazing animals, with related risks of infection. Other than a general leaflet on the medical condition, no substantive evidence is submitted on these matters. The balance of evidence suggests that, if developed as proposed, the appeal site would provide a much improved and more suitable living environment for these children as well as for other family members.

26. Failure of this appeal would mean that these families would be unable to occupy the appeal site. This would amount to an interference with their human rights under Article 8 of the European Convention on Human Rights, which addresses respect for family life and the home. It is consistent with caselaw that the best interests of children should be a primary consideration in this appeal decision, although not necessarily the determinative factor. There are 5 children in this case. Their best interests would be for the site to be developed as proposed. It would give them the best opportunity for a settled, good quality environment and a stable and secure family life, with access to education, health and other services and opportunity for play and personal development. These matters weigh in the appellant's favour.

*Other matters*

27. The site is close to a medical centre and less than a mile from a primary and nursery school. It is about a mile from Bury town centre where there is a full range of shopping and community facilities. Woodhill Road is on a bus route and the development would not result in unacceptable adverse effects on residential amenity. In these respects the development is consistent with

- criteria in UDP policy H1/3. Although somewhat overgrown, the site is not untidy. The effective use of untidy land, as referred to in PPTS paragraph 26 (a), is therefore not a consideration.
28. The appellant contends that the Council has been inconsistent in its approach to this development when compared with that taken to the development, on Council owned land, of the caravan site on the north side of the River Irwell. That site is also in the Green Belt. Following the initial grant of planning permission for the caravan site, further permissions were granted for its extension and for warden's accommodation. The Caravan Club site is a much larger site and contains many more caravans than would be stationed on the appeal site. However, the Council judged that the Caravan Club site and the related developments comprised appropriate facilities for outdoor recreation and, in that context, preserved the openness of the Green Belt and did not conflict with its purposes. The warden's accommodation was treated as a replacement caravan. The Council therefore concluded that these developments were not inappropriate development in the Green Belt. Those were planning judgements which the Council was entitled to make. On that basis, those developments were materially different from the development in this appeal. These matters do not weigh in the appellant's favour.
29. In addition to its visual impact, the Friends of Burrs Country Park are concerned about the effect of the development on the future development of the park. The park extends to about 36 hectares and is focussed on the remains of water and steam powered cotton mills. Access to the country park has been enhanced by the development of a railway halt. The Caravan Club site provides accommodation for some of the visitors to the country park. UDP policy RT3/1 identifies Burrs as being a particularly important focal point for informal recreation which should be especially safeguarded. The policy does not permit development resulting in the loss of or prejudicing the use of the park. The Council produced the Burrs Country Park Strategy Document in 2015 (BCPS). It is non-statutory but is a material planning consideration.
30. The Friends group was constituted in 2018 and is comprised of local residents and park users. It was set up to provide community management of the park as Council funding is phased out. The Friends suggest that the appeal development would prejudice development of the country park because the appeal site would be suitable for a visitor centre and in respect of a proposed riverside footpath/cycle route. Figure 4 of the BPCS depicts the Development Strategy for the period 2015 to 2029. Although phase 1D is the development of a visitor centre, it is shown not on the appeal site but in the Stock Street Barn. However, the Friends no longer consider that building to be suitable. The appeal site is now favoured for that purpose. While the site is currently peripheral to the park, it would be more central if the park was extended to include land to the south, as Figure 4 shows. Figure 4 also shows a route for a cycle/footpath running along the west bank of the river and forming part of the last phase of the park's development.
31. The appeal site is not allocated for a visitor centre in the BCPS. Nor is there evidence of funding likely to be available for a visitor centre on the land or of a firm and realistic intention by the Friends or the Council to acquire the land for that purpose, by Compulsory Purchase or any other means. The proposed cycle/footway skirts the appeal site but is outside it. Reference is made to the need to reconsider the route because of erosion of the riverbank. Nevertheless,

there is no substantive assessment of that or of alternative options. Nor is there evidence of funding for that proposal or of how land would be acquired if necessary. I appreciate the Friends' aspirations for the country park. Their determination for it to succeed and develop is clear from their evidence. Nor do I doubt its health and other benefits to the local community, which were also explained at the Inquiry by Mr Pinder, or its potential contribution to the local economy. Nevertheless, I conclude that further development of the country park could continue irrespective of the development of this small site. The development would not conflict with policy RT3/1 and these matters do not weigh against the appellant.

### *The Overall Balance*

32. Paragraph 144 of the National Planning Policy Framework (the Framework) says that substantial weight should be given to any harm to the Green Belt. It is consistent with *SSCLG & Others v Redhill Aerodrome Ltd. [2014] EWCA Civ 1386* that any harms should form part of the Green Belt Balance. However, Framework paragraph 144 does not, as the Council suggests, require that substantial weight is given to each individual harm to the Green Belt. In this case, the harm to the Green Belt is comprised of harm through inappropriateness, moderate harm to openness and conflict with the Green Belt purposes of assisting in safeguarding the countryside from encroachment and checking the unrestricted sprawl of a large built-up area. I give very substantial weight to the harm to the Green Belt. I give moderate weight to the harm to character and appearance and the related conflict with UDP policies OL5/2 and EN1/1.
33. PPTS paragraph 16 sets out that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. The unmet need for sites in the area and absence of a 5-year supply of sites carries considerable weight in the appellant's favour. The lack of a suitable alternative site and the Council's failure to allocate sufficient sites for gypsies and travellers over a long period also weigh substantially in the appellant's favour. The site's compliance with criteria in UDP policy H1/3 merits moderate weight. Refusal of planning permission would not facilitate the gypsy and traveller way of life. Nevertheless, without consideration of personal circumstances and the best interests of the children, I conclude that the harm to the Green Belt and any other harm would not be clearly outweighed by other considerations.
34. In this case the best interests of 5 children fall to be considered, including 2 children with serious medical conditions. It is consistent with caselaw in *Stevens v SSCLG [2013] EWHC 792 (Admin)* that their best interests are not determinative. Nevertheless, they are a primary consideration in my decision and are worthy of very substantial weight in favour of the development. The personal circumstances with regard to medical conditions merit considerable weight, as does the effect on human rights if this appeal fails. I conclude that, when these matters are added to the balance, the harm to the Green Belt and any other harm would be clearly outweighed by other considerations. On that basis, there are very special circumstances in this case which justify the grant of planning permission subject to a personal condition. Refusal of such a permission would have a disproportionate effect on the human rights of the prospective occupiers of the site.

### *Conditions*

35. I have taken into account the discussion of conditions at the Inquiry and the requirements for conditions set out in Planning Policy Guidance. Having regard to my conclusions above a personal condition is required, as is a condition limiting the number of caravans. To protect the character and appearance of the area the submission and approval of a site development scheme should be required. It should require details of the layout of the site, including the siting of caravans, areas of hardstanding, the siting of the amenity building, areas for the parking and turning of vehicles, areas for hard and soft landscaping. It should also include details of landscaping and boundary treatment, any external lighting and a timetable for implementation. To protect the environment, details of foul and surface water drainage should also be required. Other conditions are required in respect of the details of the amenity building and works to trees. There is evidence of invasive species in the area so that a condition for their detection, eradication and control is required. Although the Council suggests contaminated land conditions, the evidence provided is not sufficient to show that such a condition is reasonable or necessary having regard to the type of development at issue in this appeal.

### **Overall Conclusion**

36. Having regard to the above and to all other matters raised the appeal should succeed.

### **Formal Decision**

37. The appeal is allowed. Planning permission is granted for a change of use to use as a residential caravan site, the erection of an amenity building and the laying of hardstanding on Land North of The Garsdale, Woodhill Road, Bury, BL8 1XG in accordance with the terms of the application ref:63243 and the drawings submitted therewith and subject to the conditions set out in the Schedule attached to this decision.

*K Williams*

INSPECTOR

## **APPEARANCES**

FOR THE LOCAL PLANNING AUTHORITY: Mr P Riley-Smith, of Counsel

He called:

Dr M Bullock BSc, PhD

Director Arc4

Mr T Beirne BSc (Hons)

Senior Planning Officer, Bury Council

FOR THE APPELLANT: Mr A Masters, of Counsel

He called:

Mr P Brown BA (Hons), MRTPI

Phillip Brown Associates

Mrs M Sharp

Daughter of the appellant

FOR THE FRIENDS OF BURRS COUNTRY PARK

Ms H Marshall

Chairperson of the Friends group

## INTERESTED PERSONS

Ms Fogg

Local resident

Mr Pinder

Chief Officer, Brandlesholme Community Centre

Mr Collin

Local resident

Mr O'Donnell

Local resident

Mr Boaden

Sleaford Residents' Association

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Council's list of appearances.
2. Council's opening submissions.
3. Manchester University NHS Foundation Trust letter, 27 January 2020.
4. Manchester University NHS Foundation Trust letter, 27 January 2020.
5. Statement of Common Ground.
6. Turner v SSCLG and East Dorset Council [2016] EWCA Civ 466.
7. Stevens v SSCLG and Guildford Borough Council [2013] EWHC 792 Admin.
8. Friends of Burrs Country Park, statement read at the Inquiry.
9. Council's delegated report, application no.57671/FUL.
10. Notice of Planning Permission, application no.57671.
11. Unitary Development Plan extract, policy OL5.
12. Suggested conditions, version 1.
13. Suggested conditions, version 2.
14. Cystic Fibrosis Foundation document.
15. Closing statement – Friends of Burrs.
16. Council's closing submissions.
17. SSCLG, Reigate and Banstead BC, Tandridge DC v Redhill Aerodrome Ltd [2014] EWCA civ 1386.
18. Appellant's closing submissions.
19. Mr D Dutton comments on planning application 63243.
20. Ms J Scott comments on planning application 63243.
21. Friends of Burrs Country Park leaflet.

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The use hereby permitted shall be carried on only by the following persons: Mr Douglas Sharp and Mrs Mary Sharp and their resident dependents and Mr Tom Young, Mrs Barbara Young and Ms Laurel Young and their resident dependents. When the premises cease to be occupied by those named, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought onto the land in connection with that use shall be removed and the land restored to its condition before the development was carried out.
- 3) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the land at any time.
- 4) The development of the amenity building shall not commence until details of the materials to be used in the external elevations of the building have been submitted to and approved in writing by the Local Planning Authority. The building shall be constructed in accordance with the approved details.
- 5) No development shall commence until details of a site development scheme have been submitted in writing to and approved in writing by the Local Planning Authority. The site development scheme shall include details of the site layout (including the siting of the amenity building and of caravans, areas of hardstanding, areas for the parking and turning of vehicles and areas for hard and soft landscaping); materials for hardstanding; boundary treatment; means of foul and surface water drainage of the site; tree hedge and shrub planting (including plant species, plant sizes, number, density, seeding or turfing and measures for replacing plants which die, are removed or become diseased); any proposed external lighting and a timetable for the implementation of each element of the scheme. The development shall be carried out in accordance with the site development scheme as approved in writing by the Local Planning Authority and shall be retained in accordance with that scheme.
- 6) The approved vehicle parking and turning areas shall remain unobstructed and available for those purposes.
- 7) No development shall commence until details of a scheme for the detection and, if necessary, the eradication and/or control of Japanese Knotweed and Himalayan Balsam, together with a timetable for implementation, is submitted to and approved in writing by the Local Planning Authority. Measures shall be carried out in accordance with the approved scheme. Should a delay of more than one year occur between the approval of the scheme details and either the implementation of the scheme or the commencement of development, a further site survey shall be undertaken and submitted to the Local Planning Authority.
- 8) No works to trees or shrubs shall be undertaken between 1 March and 31 August in any year unless details are submitted to and approved in writing by the Local Planning Authority. Works shall be carried out in accordance with the approved details.



## Appeal Decision

Site visit made on 20 January 2020 by Hilary Senior BA (Hons) MCD MRTPI

**by Chris Hoult BA(Hons) BPhil MRTPI**

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

**Decision date: 26 February 2020**

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**Appeal Ref: APP/T4210/D/19/3239361**

**4 Myrtle Grove, Radcliffe, M45 7RR**

- 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 Barrett against the decision of Bury Metropolitan Borough Council.
  - The application Ref 64338, dated 19 June 2019, was refused by notice dated 28 August 2019.
  - The development proposed is single storey rear extension and double storey side extension to form living space and garage.
- 

### Decision

1. The appeal is allowed and planning permission is granted for a single storey rear extension and double storey side extension to form living space and garage at 4 Myrtle Grove, Radcliffe, M45 7RR, in accordance with the terms of the application Ref 64338, dated 19 June 2019 subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PL0017/01, PL0017/02, PL0017/03, PL0017/04, PL0017/05, PL0017/06, PL0017/07, PL0017/08, PL0017/09, PL0017/10, PL0017/11, PL0017/13, PL0017/14, PL0017/15, PL0017/16
  - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
  - 4) The car space to be provided shall be kept available at all times for the parking of motor vehicles by the occupants of the dwelling and their visitors and for no other purpose.

### Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

## **Preliminary Matters**

3. During the appeal process it was confirmed that Plan reference PL0017/15a, that is referred to on the Council's decision notice, was withdrawn by the appellant and did not form part of its decision. It has therefore not been included in the formal decision above.
4. The address on the application form differs from that on the appeal form and accompanying plans. I have used the address from the application form in the banner heading and formal decision above.

## **Main Issues**

5. The main issues are the effect of the proposal on:
  - the character and appearance of the area; and
  - highway safety with regard to car parking provision

## **Reasons**

### *Character and appearance*

6. Myrtle Grove lies within an established residential area of Radcliffe, characterised by predominantly semi-detached dwellings although there are a mix of design types in the local area.
7. The host dwelling is the left hand side of a pair of semi-detached dwellings as viewed from the street at the front. The appeal proposal includes a rear single storey extension, which the Council indicate is acceptable in terms of any impacts on neighbours' living conditions or on the character and appearance of the area. From what I have read and seen I have no reason to disagree with this assessment. The right hand side dwelling, 2 Myrtle Grove, has previously been extended in very similar manner to that which is proposed here.
8. The Council's Supplementary Planning Document 6: "Alterations and Extensions to Residential Properties (2010)" (SPD) seeks to prevent a terracing effect created when adjacent properties are extended to the plot boundaries. The Council's concern here is about the degree of set back from the plot boundary (with 6 Myrtle Grove) which the SPD advises should be a minimum of 1.5m. It had proposed a relaxation to 0.75m but the plans show a narrower gap. The appellant points out that some degree of space to the boundary would be maintained, the appeal property is in a short run of similar dwelling types and there is an irregular building line generally in the locality.
9. There are certain circumstances where the set-back requirement is relaxed, including in very short rows of houses. The appeal property is in a row of two pairs of semi-detached dwellings, where any appearance of terracing would be limited. The proposed extension would replicate the design of the previously extended dwelling at no. 2, to create a symmetrical appearance in the street scene across both extended dwellings. No. 2 has been extended to its plot boundary, with no set back, but a sizeable gap would nevertheless be maintained to the adjacent property on its side. In this case, any harm caused by the limited potential for terracing would be outweighed by the design and massing of the resultant building and the consequent appearance of symmetry achieved with no. 2.

10. The appeal proposal would retain a narrow gap between the extension and the boundary with No. 6. The driveway to this property abuts the boundary. It would appear from the site visit that this property has not been extended and, should that be proposed, a terracing effect could result. However, there is no evidence of a proposal along these lines and in any event, some form of gap would be retained under the proposal. The benefits of achieving an appearance of symmetry referred to above would outweigh any harm caused by any potential terracing effect.
11. For the reasons outlined above, the proposal would not therefore cause harm to the character and appearance of the area. It would therefore not conflict with saved policies EN1/2 – Townscape and Built Design and H2/3 – Alterations and Extensions of the Bury Unitary Development Plan (1997) which together seek to ensure that extensions are of a high standard and are sympathetic in nature to the original building and surrounding area.

#### *Car parking*

12. The Council are concerned that the appeal proposal would result in a reduction of off-road parking available for the occupiers of the dwelling and that there would be insufficient space to park a vehicle on the remaining drive. That said, there is no evidence before me regarding, for example, the level of on-street parking, whether there are any local issues regarding parking or how highway safety may be affected if insufficient off-road space were available.
13. From the site visit it was noted that other dwellings in the vicinity have parking to the frontage without any apparent difficulty and that the proposed extension would not protrude any further forward than the current building line. The existing driveway to the side of the property would be removed, however, there is currently sufficient space for the parking of a vehicle on the driveway in front of the dwelling and the proposal is to create a garage. The plans indicate that the retained driveway would be 4.6m which should be sufficient to accommodate a family sized car
14. For the reasons outlined above, the proposal would not cause harm to highway safety with regard to car parking and would therefore not conflict with saved policies EN1/2 and H2/3 referred to above in so far as they relate to car parking provisions.

#### **Conditions**

15. In addition to the standard timescale condition, I have imposed a condition specifying the relevant drawings in the interests of precision and clarity. I have also imposed a condition relating to materials in the interests of safeguarding the character and appearance of the area.
16. The Council have suggested a pre-commencement condition requesting confirmation that there is sufficient space for parking a vehicle off road. I do not consider this is necessary as other dwellings in the vicinity appear to park vehicles on driveways of similar size. However, a condition requiring a parking space to be maintained following completion of the extension is necessary in the interests of highway safety.

### **Conclusion and Recommendation**

17. For the reasons given above and having regard to all other matters raised, I recommend that the appeal is allowed.

*Hilary Senior*

APPEAL PLANNING OFFICER

### **Inspector's Decision**

18. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed.

*C M Hoult*

INSPECTOR



## Appeal Decision

Site visit made on 24 February 2020

**by R E Walker BA Hons DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 March 2020

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**Appeal Ref: APP/T4210/W/19/3242673**

**79 Bury New Road, Whitefield, Manchester M45 7EG**

- 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 Harrington House Estates Ltd against the decision of Bury Metropolitan Borough Council.
  - The application Ref 64719, dated 25 September 2019, was refused by notice dated 15 November 2019.
  - The development proposed is the change of use from existing 6 bed HMO (Class C4) to 8 bed (8 person) house in multiple occupation (HMO) (Sui Generis).
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. In Part E of the appeal form it is stated that the description of the development has not changed. However, the wording from the Council's decision notice has been entered rather than that from the application form. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the Council's decision notice for completeness which better describes the proposal.

### Main Issue

3. The main issue is the effect of the proposal on highway safety in Bury New Road with particular reference to vehicular parking.

### Reasons

4. The appeal building is a large end terrace property which has been converted to a 6-bedroom HMO. The terrace group comprises of 8 properties positioned on Bury New Road, which appeared to be a busy road. I'm told that the other end terrace is also in use as a HMO.
5. There is no parking to the front on Bury New Road. However, the properties have an access lane, known as Robin Lane (the lane), which runs around the sides and rear of the terrace group. This is of varying widths but widens to the side of the appeal property. The lane also provides pedestrian access to the rear to, amongst other things, housing and a nursery.
6. Although Bury New Road is relatively straight, the combination of the terrace buildings and their small front yard restricts visibility looking southwards. The road has 3 lanes at this point, includes traffic lights and an approach to the

- junction with Higher Lane. Exiting from the lane in a forward gear appeared safe. However, any drivers reversing out of the lane would have poor visibility southwards and limited warning of approaching vehicles. Such manoeuvres would, in my view, lead to unacceptable highway safety risks.
7. I have not been provided with a parking or turning layout for the lane. However, an aerial image provided shows a snapshot of how the lane has been used historically and the appellant suggests 12 cars can be parked in the wider area of the lane adjacent to the appeal site. From my observations it did appear possible to park, turn and manoeuvre within the wider areas, which would allow vehicles to exit safely from the lane in a forward gear.
  8. At the time of my morning site visit I observed parking to the side of the appeal property, to the rear along the lane and to the side of the other end terrace. Nonetheless, there were still spaces available. However, third-party representations have raised concerns regarding the level of parking, particularly in the evenings and photographic evidence has been provided. I recognise that evenings are when the parking demand is likely to be at its greatest from all the occupiers within the terrace group including the existing HMO's. Although photographs are a snapshot in time, I have not been provided with any substantive evidence to quantify the existing parking demand and capacity in the lane.
  9. The Council have advised that they do not have any specific parking standards for HMO's. At present the property is occupied by 6 individuals and the appellant advises that 3 of the tenants have cars and in the area car ownership for HMO tenants is expected to be around 33%. It is therefore put to me that the proposal for 2 additional individuals would likely result in an additional car at the appeal site.
  10. Whilst, at times, some residents of the HMO might not require access to a private car, I do not have any mechanism before me by which this could be secured. In consequence, there is potential that, at times, all residents within the building might have access to a private car. Should this scenario occur, it would seem unlikely, based on my observations and the evidence before me, that all vehicles could be parked along the lane in combination with cars associated with the other properties.
  11. I recognise that the proposal seeks an increase of 2 occupants within the HMO. However, should a number, or all, of the residents have a car, or the visitor levels by car increase, the limited amount of appropriate car parking spaces would encourage parking practices in inopportune locations. This is because, for convenience, residents and visitors might wish to park their car nearby.
  12. As a result, there is the potential for inappropriate parking that would impede the turning and manoeuvring of vehicles in the lane and could result in vehicles reversing out into the highway due to a lack of available space. Any increase in occupancy levels has the potential to incrementally breach the capacity for parking and turning within the lane. In the absence of substantive evidence to the contrary, this would not be conducive to securing good levels of highway safety.
  13. I acknowledge that the appeal property is large and could potentially also be occupied by a large family. However, as a family dwelling, there is a likelihood that not all residents would be of an age where they might be able to drive.

This would reduce the number of likely vehicles associated with the property. In addition, the current layout of the building features bedrooms on the ground floor. A family might utilise a greater proportion of the ground floor for communal space, in contrast with the current use. As such, in my view, the proposed 8-bedroom HMO has the potential to generate a greater demand for car parking than both a family dwelling and the existing 6-bedroom HMO.

14. I recognise that the location of the site and its proximity to shops, facilities and public transport links, means there is potential for occupiers to not need their own cars. I also recognise that some residents may cycle. However, the site equally has good road links for potential occupiers that own a car.
15. I note that the Council's planning officer recommended the application favourably and there were no objections from the Council's traffic section. However, I am required to determine the appeal on its own merits having regard to all evidence before me.
16. In conclusion, the lane appears to have a limited amount of parking and turning space. Based on the evidence before me, an increase in parking demand from occupiers and visitors could lead to circumstances where vehicles reverse onto Bury New Road to the detriment of highway safety in the road.
17. As such, the proposal would be contrary to the requirements of policy HT2/4 and H2/4 of the Bury Unitary Development Plan (adopted 1997) and the Conversion of Buildings to Houses in Multiple Occupation Supplementary Planning Document (adopted 2007). These require, amongst other things, that applications make adequate provision for their car parking and servicing requirements. The proposal would also be contrary to paragraph 109 of the National Planning Policy Framework (the Framework) which seeks to ensure that development does not have an unacceptable impact on road safety.

### **Other Matters**

18. I recognise that the appellant is seeking to make an effective use of an existing property, an objective which is encouraged by the Framework. The site is sustainably located with good access to services and facilities. The proposal would increase the diversity of housing supply, meeting a need. Moreover, I recognise that the appellant has invested in renovating the property, improving its appearance in the street scene. These are all positive factors in favour of the scheme. However, they do not outweigh the harm that I have identified.
19. I have also had regard to third party representations made including, amongst other things, noise, ownership issues and damage to the lane's surface. However, as I am dismissing the appeal on other grounds, I have not pursued these matters further.

### **Conclusion**

20. I have taken account of all the other matters raised including the benefits of the proposal. However, none changes the balance of these findings and the harm I have identified. I therefore conclude that the appeal should be dismissed.

*Robert Walker*

INSPECTOR

**Details of Enforcement Appeal Decisions  
between 10/02/2020 and 17/05/2020**



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**Location:** 90 Cornwall Drive, Bury, BL9 9EX

**Case Ref:**  
0065 / 19

**Issue:** Erection of porch

**Appeal Decision:** Dismissed 17/02/2020

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**Location:** 49 Radcliffe New Road, Whitefield, Manchester, M45 7QZ

**Case Ref:**  
0377 / 18

**Issue:** Raised decking at rear

**Appeal Decision:** Allowed 14/04/2020

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**Location:** 26 Lomond Drive, Bury, BL8 1UL

**Case Ref:**  
0160 / 18

**Issue:** Erection of fencing

**Appeal Decision:** Allowed 14/02/2020

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## Appeal Decision

Site visit made on 21 January 2020

**by K Stephens BSc (Hons), MTP, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 February 2020**

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### **Appeal Ref: APP/T4210/C/19/3230821**

### **90 Cornwall Drive, Bury BL9 9EX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mohammed Raza against an enforcement notice issued by Bury Metropolitan Borough Council.
- The enforcement notice was issued on 9 May 2019.
- The breach of planning control as alleged in the notice is: without the benefit of planning permission the erection of a porch on the eastern elevation of the property.
- The requirements of the notice are:
  - a) Demolish and permanently remove the porch
  - b) Following demolition, remove all resulting materials from the site.
- The period for compliance with the requirements is 60 days to complete step a) and a total compliance time of 60 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period. Hence the application for planning permission deemed to have been made under section 177(5) of the Act, as amended, falls to be considered.

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### **Decision**

1. It is directed that the enforcement notice be varied by:

- At the beginning of Step 5 *insert* the word "Either".
- At the end of requirement a) *insert* the word "or".
- *Delete* requirement b) and *replace* with "Remove the columns, cladding and overhanging roof and construct the porch and its roof in accordance with the terms and conditions of the extant planning permission ref: 61912 dated 26 October 2017".
- *Add* new requirement c) to read "Following demolition of the porch under a) or its remodelling under b), remove all resulting debris and materials from the site".

Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## **Appeal on Ground (a) and the Deemed Application**

2. The appellant has made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the notice.
3. I consider the main issue is the effect of the development on the character and appearance of the area.
4. The appeal property is a semi-detached dormer bungalow in a predominantly residential area. It is located on a road of properties of a similar design, most of which front the road. This rhythm together with the simplicity of the design of the dwellings contributes to the character and appearance of the area.
5. However, the appeal property is also prominently located on the corner of Cornwall Drive and a cul-de-sac spur. As a result, the front porch, the subject of this appeal, faces the main thoroughfare of Cornwall Drive, rather than the cul-de-sac. According to the submitted annotated plans, the pitched roof porch projects out from the side elevation by 2m and is some 2.7m wide. It has a brick base with the remaining side elevations being glazed and there are windows either side of the solid front door. The door, windows frames and fascia are all coloured dark grey and the red pantiles match those on the main house. The top part of the gable of the porch is clad in white horizontal cladding. The porch roof projects out beyond the porch itself and is supported by two white Doric-style columns.
6. Due to the orientation of the property side-on to Cornwall Drive and its close proximity to the road, the porch is more prominent than other porches. This is exacerbated by the protruding roof and the columns, which enlarge the porch and introduce unduly decorative features at odds with the relative simplicity of design of the surrounding dwellings. The white columns and white horizontal cladding draw attention to the porch further compounding its visual prominence and incongruity. Whilst the columns and cladding could be replaced or painted a darker colour to reduce their visual prominence, the columns and projecting roof still result in an incongruous feature. I accept that the property has been extended over time and is now larger, but in my view the porch, as built, remains visually incongruous and intrusive in the street scene.
7. I therefore find the porch harms the character and appearance of the area. Accordingly, the development is contrary to Bury Unitary Development Plan Policy H2/3 which seeks to ensure that extensions are of an appropriate size, design and external appearance, and are sympathetic with the original building and surrounding area. It would also be contrary to the design guidance in the Council's Supplementary Planning Document 6 – Alterations and Extensions to Residential Properties.
8. I saw on my site visit that a number of other properties further along Cornwall Drive had projecting porches of various designs. These properties are positioned and orientated differently to Cornwall Drive than the appeal property. I have not been advised if these porches have been built under permitted development, have been granted planning permission or are the subject of enforcement action. Nonetheless, they do not alter my findings on the appeal proposal, which I must consider on its own merits.

### **Appeal on ground (f)**

9. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f) it is essential to understand the purpose of the notice. S173(4) of the Act provides that the purpose shall be to remedy the breach of planning control or to remedy any injury to amenity. From the reading of the Notice, it is clear that its purpose is to remedy the breach of planning control by the complete demolition and removal of the porch.
10. The appellant, however, considers that complete demolition is excessive when the Council has already granted planning permission<sup>1</sup> for a porch in this location, albeit with a hipped roof and without the projecting roof, columns and horizontal cladding.
11. In my view, it is clear from the Council's Statement that the white cladding and white pillars are features of the porch which the Council considers particularly offensive and make it too big and incongruous, when compared to the design of porch the Council has already granted planning permission for. Therefore, I consider there are lesser steps that could be taken to remove the offending features, namely removing the white cladding, white columns, pull the roof back and remodel it as a hipped roof, in accordance with the approved scheme. I find that this would be, as provided for in s173(4)(a) of the Act, "remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land".
12. This obvious alternative would make the porch smaller. As such, it would still relate to the whole or part of the alleged breach in the Notice, namely a porch on the eastern elevation of the property. This alternative would overcome the planning harm I have identified and the Council's concerns. There would also be less cost and disruption than total demolition, as the appellant would not have to rebuild the porch again just to implement the already granted scheme.
12. In light of the extant planning permission for a smaller porch, which the Council supports and which would have been subject to public consultation, I consider that complete demolition of the porch is therefore excessive and unnecessary.
13. Therefore, under s176(b) of the Act, I will vary the Notice to amend the requirements to require *either* the complete demolition of the porch, or to only require the removal of the front columns and projecting roof in accordance with the extant planning permission ref: 61912. The appellant therefore has the choice.
14. The appeal on ground (f) therefore succeeds.

### **Appeal on ground (g)**

15. Ground (g) is that the period specified for compliance with the notice falls short of what is reasonable. The notice states 60 days (which would be equivalent to 2 months), but the appellant wants 6 months in order to raise the funds to finance the building works and organise the contractors.

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<sup>1</sup> LPA ref: 61912 – dated 26 October 2017

16. It does not take long to find a contractor. Furthermore, the extent of the works are not substantial and 2 months would be an adequate time period in my view. The appellant has been aware of the enforcement process and the requirement to demolish the porch, so there has been time to raise the necessary finances in anticipation of the appeal being dismissed. The appellant has not supplied any compelling evidence as to his personal or financial circumstances that would cause me to take a different view.

17. The appeal on ground (g) therefore fails.

**Conclusion**

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice but with variations and refuse to grant planning permission on the deemed application

*K Stephens*

INSPECTOR



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## Appeal Decision

Site visit made on 21 January 2020

by **K Stephens BSc (Hons), MTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 April 2020

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**Appeal Ref: APP/T4210/C/19/3229682**

**49 Radcliffe New Road, Whitefield, Manchester M45 7QZ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Allan Wilson against an enforcement notice issued by Bury Metropolitan Borough Council.
- The enforcement notice was issued on 3 May 2019.
- The breach of planning control as alleged in the notice is: without the benefit of planning permission the erection of a raised decking area incorporating a supporting retaining wall in the rear garden of the property.
- The requirements of the notice are:
  - a) Dismantle and permanently remove the decking area, including timber balustrade and supporting retaining wall and steps.
  - b) Return the land to its former condition prior to the decking area and supporting retaining wall being constructed.
- The period for compliance with the requirements is 60 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period. Hence the application for planning permission deemed to have been made under section 177(5) of the Act, as amended, falls to be considered.

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### Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a raised decking area incorporating a supporting retaining wall in the rear garden of the property, on land at 49 Radcliffe New Road, Whitefield, Manchester M45 7QZ referred to in the enforcement notice, subject to the following condition:

- Within 1 month of the date of this decision, remove the timber balustrade and erect it in line with the top of the steps, and retain it in this position thereafter.

### Procedural matters

2. The Council's Statement sets out a case against the appeal on grounds (a) and (f). However, the appellant has not appealed on ground (f).

3. The Council granted a split decision<sup>1</sup>. It granted planning permission for a "single storey extension at side and rear", but refused planning permission for the "decking area at rear" that had already been erected and which is the subject of this appeal.
4. At the time of my visit the decking, a timber balustrade and retaining wall of substantial height with steps leading up to the decking area had been installed and the single storey extension was under construction.
5. I will consider the grounds of appeal in logical, not alphabetical order. The logic is that if an appeal against an enforcement notice (the 'Notice') succeeds on ground (c), the notice is quashed and ground (a) becomes redundant.

### **Appeal on ground c)**

6. Ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. It is a legal ground of appeal, distinct from any planning merits. The burden of proof lies with the appellant and the test of the evidence is on the balance of probability.
7. The key questions are whether 'development' has taken place which requires planning permission and, if so, whether planning permission is granted or the development is otherwise deemed to be lawful. Section 55(1) of the Town and Country Planning Act 1990 (the 'Act') defines 'development' to include the "carrying out of building, engineering, mining or other operations in, on, over or under land".
8. From my site visit observations the appeal property and a number of others in the road occupy a sloping site, with the rear gardens generally sloping up behind the houses.
9. The appellant's submitted photographs in Figure 2 and Figure 3 of his statement appear to show the garden before the decking was installed. But they are not taken from the ground level of the dwelling looking up the garden, and hence they do not clearly reveal the degree of the slope of the garden or the existing ground levels before the decking and retaining wall were installed. Figure 2 is taken from the upstairs window looking down onto a heavily overgrown garden, so it is not possible to establish with any certainty the profile or slope of the garden. Similarly, Figure 3 is taken from within the overgrown rear garden looking towards the back of the dwelling, but does not show how the garden meets the ground level or patio directly outside the house. Therefore these photographs do not conclusively show that ground levels have not been raised in the rear garden when the decking and retaining wall were constructed.
10. The photographs in Figure 5 of the appellant's statement show close-ups of the adjacent gardens. These show that adjacent properties do have sloping gardens, but that they have been fashioned differently with different degrees of slope and terracing effects. It is evident to me that the garden levels and slope of the appeal property are considerably different to the ground levels of the adjacent gardens.
11. The appellant's aerial photograph in Figure 1 of his statement shows the rear garden of the appeal property and of neighbouring properties. But due to the

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<sup>1</sup> Application ref: 63138/FUL dated 19 October 2018

overhead angle of the photograph it is not possible to ascertain with any certainty the degree of ground level rise at the appeal property or compare garden ground levels with adjacent properties. However, it is possible to see what appears to be a patio directly behind the appeal dwelling (approximately where the single storey extension has now been erected) and then another non-grassed area, with what appears to be a flight of steps leading from a patio area up to the area. The shading along the front edge of this area, facing the dwelling, would indicate to me that the area is elevated at some height above the adjacent patio. This configuration appears similar to the raised decking area I saw on site.

12. It would appear from the aerial photograph that Nos. 51 and 47 have some breaks in their garden that could indicate some terracing to deal with the sloping ground and these would appear to correspond with the photographs in Figure 5. But the adjacent gardens do not appear to correspond with the ground levels and profile configuration of the appeal garden. This would indicate to me that the garden levels in the appeal property differ to those in the adjacent gardens and have been raised in creating the decking and retaining wall.
13. Furthermore, Figure 4 of the appellant's statement, which is a diagrammatic representation of the appeal garden and that of No.47, does not appear to tally with the aerial photograph or photographs Figure 5. Figure 4 shows the front of the appeal decking in line with a stepped raise in ground level at No. 47. But the aerial photograph shows the front of the decking in line with an extension and a patio area around it. This does not persuade me that ground levels have not been raised.
14. The raised decking area is elevated between 1.2 - 1.3m above the ground level at the back of the house, according to the Council's delegated report and the appellant's plan extracts in Figure 5 of his statement, and this broadly corresponds to what I saw on site. There is a breeze block retaining wall of approximately the same height with steps up to the decking area. Along the front of the decking there is a timber balustrade, approximately 1m in height.
15. The alleged works would have involved some pre-planning to order and purchase materials, bring them to site, dig foundations and build the retaining wall with steps, lay the decking and install the balustrade. The works also reveal a degree of permanence due to the block retaining wall, steps up to the decking and a balustrade for safety of users of the decking.
16. Based on the evidence before me, I am of the view that operational development has taken place to raise ground levels to a substantial degree to create the high level decking area with the need for a retaining wall of a substantial height.
17. Having established that the decking and retaining wall are 'development', it is now necessary to establish if planning permission is required for the said development.
18. Section 57(1) of the Act states that planning permission is required to carry out any 'development' of land. However, section 55(2) expressly provides that certain operations and uses do not involve development. The erection of decking and retaining walls are not one of the exclusions.

19. Section 58 of the Act grants planning permission for certain developments by various means and Orders. The Town and Country (General Permitted Development) (England) Order 2015 ('the Order') grants planning permission for certain types of development as "permitted development" which does not need the express grant of planning permission.
20. Schedule 2, Part 2, Class A (b) of the Order permits the erection or construction of any gate, fence, wall or other means of enclosure provided it does not exceed 2 metres above ground level. The retaining wall is less than 2 metres in height and therefore the retaining wall itself is permitted development and does not require express planning permission.
21. Decking or raised platforms are permitted development provided they are no more than 30cm above ground level. Whilst there may be a gap of no more than 30cm between the boards of the decking and the part of the ground over which they lie, the constructed raised decking area as a whole is approximately 1.2-1.3m above ground level, as already described, and therefore exceeds the permitted development allowance. Therefore the raised decking requires express planning consent.
22. In light of the above and on the balance of probability, I find there has been a breach of planning control with regards to the erection of a raised decking area incorporating a supporting retaining wall. Whilst the retaining wall is permitted development in itself and not a breach of planning control, any breach of planning control in relation to the matters alleged in the Notice means that the appeal fails. Accordingly, the appeal on ground (c) fails in regard to these matters.

### **Appeal on Ground (a) and the Deemed Application**

23. The appellant has made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the notice.
24. I consider the main issues are the effect of the development on the living conditions of existing occupants of neighbouring properties, with particular regard to privacy.
25. I acknowledge that due to the existing sloping topography of the appeal site garden and adjacent properties, there will have always been some degree of accepted overlooking. The issue is therefore whether the degree of overlooking has been made significantly worse by the unauthorised works as to cause harm.
26. The raised decking extends across the entire width of the rear garden up to the shared timber fence boundaries with the adjacent properties Nos.47 and 51. During my site visit I was able to stand on the decking and lean over the balustrade. The existing side boundary fences are of a height that prevents direct looking sideways into either of the adjacent gardens.
27. However, standing at the front of the decking against the balustrade and standing at the top of the steps I was able to look towards the window and French doors in the side of No.47. According to the Council's delegated report these openings serve a combined kitchen/dining room. I find the proximity of the decking and its elevated position affords anyone standing by the balustrade the opportunity for increased overlooking of the adjacent properties and gardens. This is compounded because the decking area takes up a substantial

- part of the garden area and is obviously intended to be used as part of the main outdoor recreational space, likely used for entertaining and sitting on. Furthermore, the only means of access to the decking area is via the steps that are located close to the shared boundary with No.47. Whilst I acknowledge that views would be oblique, I consider that there is an unacceptable degree of overlooking that has a harmful effect on the privacy of existing occupants of No.47.
28. Views into the rear of No.51 and its patio area at the back of the dwelling are impeded to some extent by the existing boundary fencing and the roof of the appellant's own single storey extension. As a result, overlooking of No.51 is less than for No.47, but more than it was previously. Overall, I find the raised decking harms the living conditions of existing occupiers of No.47 and 51.
  29. The appellant has not appealed ground (f) - that the requirements of the notice to dismantle and permanently remove the decking area, timber balustrade, supporting retaining wall and steps, are excessive. However, the appellant suggests that obscure glazed privacy screens 1.7m high and 0.5m wide could be erected along the boundaries of the decking to mitigate overlooking and planters could be placed along the front of the decking area to prevent people standing close to the balustrade.
  30. With regards the proposed privacy screens, section 177(1)(a) of the Act effectively requires me to analyse the 'as built' scheme with the suggested alternative for the retention of the decking area, balustrade, retaining wall and steps, but with privacy screens erected either side. In doing so, I must have regard as to whether I could grant planning permission for the privacy screens in relation to whether they relate "to the whole or any part of those matters" stated in the Notice.
  31. The Notice has been served on the decking area, balustrade, retaining wall and steps. The suggested privacy screens would project approximately 1.7m in height above the decking area and would extend beyond the 1m high balustrade. Therefore, the privacy screens would extend beyond the matters alleged in the Notice and modify the development in such a way as to make it substantially different from that set out in the Notice and the split-decision planning application. Hence the privacy-screen option would not be within the 'whole or any part of' the matters alleged against, for which the Notice was issued. Therefore, I am unable to take them into account.
  32. There would be nothing preventing the appellant from placing planters along the front of the balustrade in any event. But this would be vague and unenforceable and not a permanent or effective solution.
  33. The Council has suggested a condition requiring the 1m high balustrade to be repositioned and set back from the edge of the front of the decking, so that the balustrade would be in line with the top of the steps. The Council also mentioned this as suitable mitigation in their delegated report. This suggestion would not modify the development in such a way as to make it substantially different and would still ensure the development was within the 'whole or any part' of those matters stated in the Notice as constituting a breach of planning control.
  34. I find the suggested condition would be a more permanent and effective means of ensuring people stand far enough back on the decking to reduce the

opportunity for overlooking, and the existing shared boundary fencing would provide more effective screening. From my observations on site, I am satisfied it would overcome the harm I have identified, but still leave the appellant with a sizeable decking area. The appellant has had the opportunity to respond to the Council's suggested condition but did not submit any Further Comments or objection.

35. With the imposition of a condition requiring the balustrade to be set back from the front edge of the decking area in line with where the top step meets the decking area (approximately 1.5m back), the development would no longer conflict with Policy H2/3 of the Bury Unitary Development Plan (adopted 1997), which seeks to ensure that household alterations and raised decking does not reduce privacy of adjacent properties. Nor would it be contrary to the advice in the Supplementary Planning Document 6 'Alterations and Extensions to Residential Properties'<sup>2</sup> in relation to ensuring decking does not reduce privacy to neighbouring properties.

### 36. **Other Matters**

37. A number of nearby residents raise a series of other concerns about the single storey extension, but in view of the alleged breach of planning control, the split planning permission granting the single storey extension and my conclusions on the main issue there is no need for me to address these in the current decision.

### **Conclusion**

38. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

*K Stephens*  
INSPECTOR

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<sup>2</sup> Adopted March 2004 and updated January 2010



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## Appeal Decision

Site visit made on 21 January 2020

**by K Stephens BSc (Hons), MTP, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 February 2020**

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### **Appeal Ref: APP/T4210/C/19/3230755**

### **26 Lomond Drive, Bury BL8 1UL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr M Ward against an enforcement notice issued by Bury Metropolitan Borough Council.
  - The enforcement notice was issued on 9 May 2020.
  - The breach of planning control as alleged in the notice is: without the benefit of planning permission the erection of a means of enclosure consisting of a timber boundary fence and gate, adjacent to Annecy Close.
  - The requirements of the notice are to dismantle and permanently remove the timber boundary fence and gate, indicated approximately by the blue coloured line on PLAN 1 attached to the Notice.
  - The period for compliance with the requirement is 60 days.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period. Hence the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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### **Decision**

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a means of enclosure consisting of a timber boundary fence and gate, adjacent to Annecy Close, on land at 26 Lomond Drive, Bury BL8 1UL.

### **Procedural Matter**

2. In its Statement the Council sets out a case against the appeal on ground (f). However, the appellant has not appealed on ground (f). Therefore, I shall disregard this part of the Council's Statement.

### **Appeal on Ground (a) and the Deemed Application**

3. The appellant has made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the notice.
4. The main issue in this case is whether the development is harmful to highway safety.
5. The appeal property is a bungalow located on the corner of Lomond Drive and Annecy Close, such that its rear garden extends along Annecy Close. Along this garden boundary the appellant has erected a vertical timber boarded fence that

- follows the curvature of Annecy Close to the end of the garden where it meets the driveway of No.1 Annecy Close (No.1). The fence has been erected some distance back from the kerb line of the highway and there is a strip of grass between the fence and kerb.
6. Annecy Close is a relatively short quiet cul-de-sac that is on an incline. It serves some 10 properties who must drive past the fence to access their driveways. The occupiers of No.1 are most affected by the erection of the fence as it is immediately adjacent to their driveway. However, I must assess whether this is detrimental to highway safety.
  7. The Council has not submitted any technical evidence to support their concerns about highway safety and there are no comments from the Highway Authority.
  8. From my observations on site, drivers exiting the driveway of No.1 would still be able to see vehicles and cyclists approaching up Annecy Close because of the set back of the fence and the direction of the curvature of Annecy Close, which is enhanced by the incline of the road. Furthermore, Annecy Close is a short cul-de-sac where traffic speeds are likely to be less, as people slow down to approach their driveways. Furthermore, Annecy Close would be used primarily by residents who are familiar with the road layout. In addition, there is no pavement on this side of Annecy Close or along the line of the fence so there is no conflict with pedestrians when vehicles exit the driveway of No.1.
  9. Other properties and driveways of Annecy Close are located some distance from the fence, or on the other side of the road, such that it does not affect their visibility or their use of the cul-de-sac.
  10. The occupiers of No.1 have written to support the new fence (Appendix A of the appellant's Statement) stating its erection and replacement of the previous hedge has improved their visibility. I note the Council's concerns that future occupiers may have a different opinion, but I concur with the current occupiers based on my site observations and in the absence of any technical highway evidence to the contrary.
  11. Therefore, I am not persuaded that the fence has created a situation that is a significant danger to highway users and their safety. Accordingly, I find no conflict with the adopted 1997 Bury Unitary Development Plan Policies H2/3 and HT6/1 which seek to ensure there is no effect on the visibility and safety of pedestrians, cyclists and drivers and seeks to eliminate points of conflict between these road users. It would not conflict with the design guidance in the Council's Supplementary Planning Document 6: Alterations and Extensions to Residential Properties, as far as it is relevant.

## **Conclusion**

12. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

*K Stephens*  
INSPECTOR