

# REPORT FOR NOTING

<b>DECISION OF:</b>	<b>PLANNING CONTROL COMMITTEE</b>
<b>DATE:</b>	<b>5 October 2021</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 23/08/2021 and 26/09/2021**



**Application No.:** 66990/FUL

**Appeal lodged:** 10/09/2021

**Decision level:** DEL

**Appeal Type:**

**Recommended Decision:** Split Decision

**Applicant:** Richard Roberts

**Location** 1 Dover Close, Tottington, Bury, BL8 4EE

**Proposal** A: Conversion of garage roof to pitched; Addition of door to side elevation and sliding doors to rear elevation; Relocation of the entrance door to front elevation  
B: Roof extension to existing front dormer

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**Total Number of Appeals Lodged: 1**

**Planning Appeals Decided  
between 23/08/2021 and 26/09/2021**



**Application No.:** 66466/FUL

**Decision level:** DEL

**Recommended Decision:** Refuse

**Applicant:** Mr John Cuthbertson

**Location:** Sedgewell, 120 Brandlesholme Road, Tottington, Bury, BL8 4DZ

**Proposal:** Retrospective application for 1.8m high boundary fence and gates

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**Appeal Decision:** Dismissed

**Date:** 02/09/2021

**Appeal type:** Written Representations



## Appeal Decision

Site Visit made on 10 August 2021

**by R Hitchcock BSc(Hons) DipCD MRTPI**

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

**Decision date: 02 September 2021**

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**Appeal Ref: APP/T4210/D/21/3275517**

**Sedgewell, 120 Brandlesholme Road, Tottington, Bury BL8 4DZ**

- 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 John Cuthbertson against the decision of Bury Metropolitan Borough Council.
  - The application Ref 66466, dated 16 December 2020, was refused by notice dated 22 March 2021.
  - The development proposed is retention of fence and gates.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The planning application sought planning permission for development that has already taken place. I have therefore considered the proposal under the terms of s73A of the Town and Country Planning Act 1990.
3. Since the Council's determination of the planning application, a revised version of the National Planning Policy Framework (the Framework) was issued on 20 July 2021. I have sought the further comments of the main parties in this respect and have had due regard to the changes to the Framework in my determination of this appeal.

### Main Issues

4. The main issues are:
  - whether the development is inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and the relevant development plan policy
  - the effect of the proposal on the openness of the Green Belt
  - the effect on the character and appearance of the locality
  - the effect on highway safety
  - if the development is inappropriate, whether the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

## Reasons

### *Green Belt*

5. The site lies within the Green Belt. The development includes the erection of timber panels on top of and alongside an existing stone wall to the front boundary and part of the driveway of a detached dwelling located on the south-western side of Brandlesholme Road. According to the appellant, the majority of the timber panels are some 0.9m high and sit above the wall, also estimated at a height of 0.9m. A length of panel fencing at the south-eastern extent of the wall, where the property's side boundary adjoins a public footpath alongside the site, is described as being 1.8m in height. Additionally, timber gates shown to be 2.2m high on the submitted plans have been erected on the driveway about 7.6m from the back of the footway.
6. S336 of The Town and Country Planning Act 1990 (as amended), interprets a 'building' to include any structure or erection, and any part of a building, as so defined. The fence and gate structures are additions to the existing wall structure and are therefore extensions to a 'building' (the wall) for the purpose of this assessment.
7. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the Framework makes it clear that new buildings are inappropriate in the Green Belt. However, an exception is made in the case of extensions to a building, provided that they do not result in disproportionate additions over and above the size of the original building.
8. Although saved Policy OL1/2 of the Bury Unitary Development Plan [1997] (UDP) is broadly consistent with the provisions of the more recent Framework in relation to new buildings in the Green Belt, its references to building extensions which are not inappropriate is limited to those in relation to dwellings only. This is distinct from the broader approach of the Framework which allows the extension or alteration of any building. Accordingly, the provisions in the Framework prevail pursuant to its Paragraph 219.
9. In the absence of any definition within the Framework or referenced interpretation within the development plan, whether or not an extension to an existing building constitutes a disproportionate addition is a matter of planning judgement. The fencing panels atop the stone wall double the height of the built boundary enclosure. Elsewhere, the introduction of 1.8m high fencing and gates have added to its overall length. The resultant height and length of the combined new elements of the structure significantly exceed the proportions of the existing wall by some way. They therefore appear disproportionate when compared to it.
10. A volumetric comparison between the timber structures and the stone wall may be limited on account of the slenderness of the fence and gate structures. As such any effect on the spatial openness of the Green Belt is limited. However, the visible area of the new fencing would be considerably larger than that of the stone wall. Accordingly, the effect on the visual openness of the Green Belt is considerable in comparison.

11. For the reasons set out above, I find that the fence and gates constitute inappropriate development within the Green Belt that erode its visual openness. As such they are contrary to Policy OL1/2 of the UDP which seeks to protect the openness and permanence of the Green Belt. For similar reasons, the development does not fall within the exceptions outlined in the Framework.

*Character and appearance*

12. The site is located within a short row of loose residential development set behind garden areas of varying depth on the south-western side of Brandlesholme Road. The land to the rear is open fields. On the opposite side of the road, the plot overlaps with open fields behind a tree line and an informal driveway leading to dwellings situated on the edge of a settlement area to the north.
13. The front boundaries of properties addressing Brandlesholme Road within the row are generally low masonry walls with railings or vegetation providing additional height. Driveways are mainly ungated. In the settlement area a short distance to the north-west, boundary treatments are more varied in their materials but remain generally low in height. In addition, some older properties nearby have high stone walls and fencing where they side on to the road frontage.
14. The introduction of the bespoke close board panel fencing and gates serve to introduce a hard edge to the site's front boundary. Although much of it is backed by mature trees and shrubs, its height and length result in a 'dead frontage' on this part of the road. Whilst the fencing is described by the appellant as 'rustic' in its appearance, it has significantly greater affinity to the suburban area than the rural location of the site. The appearance has neither the quality of the higher stone walls of the older properties to the north-west or consistency with the predominant form of boundary treatments nearby. Furthermore, it closes off glimpses of the property beyond. This prevents any active or visual contribution to the street scene.
15. In support of the proposal the appellant has referred me to a number of other examples of high boundary treatments visible in the area and I saw these during my site visit. A tall fence above a stone wall was approved by the Council at Nobbs House, a listed building. This encloses a private rear amenity space and is broken up by areas of planting. From the evidence before me it is unclear as to the specific reasons for that decision or whether the site also lies within the Green Belt. However, it is evident that the boundary in that case, like that at 116 Brandlesholme Road, serves to enclose a private amenity space to the rear of the building. It is therefore distinct from the case in point, a case I have considered on its own merits.
16. A high fence at Dowry Cottage, also encloses a private garden area within the row of development on the south-western side of the road. However, it is unclear whether it benefits from planning permission. Furthermore, it is an isolated example. It is not therefore a strong justification for development which contrasts with the prevailing character in the locality.
17. I note the appellant's suggestion that despite its preservative treatment the weathering of the fence would reduce its prominence and that it could be colour treated in order to attempt to assimilate it against the backdrop of greenery within the enclosed frontage. Although this would potentially make it

less prominent, it would not change the harsher visual nature or scale of the fencing compared to the characteristic forms of frontage enclosure. It would not therefore overcome the harm to the visual amenity of the locality I have identified.

18. There are some examples of solid gates in the locality, including one set alongside the building frontage at Dowry Place. Others to the north-west serve rear courtyard areas. However, these examples are also in the minority and contrast with the prevalent character of open driveways. Although it is suggested that the gates match the height of the original gateposts there is little evidence before me to illustrate the claim. These are therefore matters of limited weight in favour of the development.
19. For the above reasons, I find that the development is at odds with the character and appearance of boundary treatments fronting on to this part of Brandlesholme Road. It conflicts with saved Policy H2/3 of the UDP as it seeks high standards of development which are sympathetic to the character of the surrounding area.

#### *Highway safety*

20. The site benefits from a wide driveway with curved splays formed by the original stone wall to the back of the pavement. Close to the house, the drive splits into a Y arrangement which facilitates turning and enables drivers to leave the site in a forward gear.
21. I have little doubt that the presence of the fence above the wall has resulted in more limited intervisibility between drivers of vehicles emerging from the site and users of Brandlesholme Road, including footpath users. Previously the visibility splay would have included the space above the walls providing a wider field of vision.
22. Nevertheless, views at the junction of the driveway remain sufficient to observe both pavement users and approaching traffic on the straight stretch of the 30mph carriageway. I therefore find that the development is consistent with saved Policy H2/3 as it provides suitable visibility for pedestrians, cyclists and drivers of motor vehicles at the junction of the site's driveway with Brandlesholme Road.

#### **Other Considerations**

23. In support of the development, the appellant advises that the fence and gates provide enhanced security at the site which is a concern of the residents on account of their age. Age is a 'relevant protected characteristic' and I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010. This sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had regard to rights conveyed within the Human Rights Act.
24. Whilst I acknowledge the benefits that result to the appellant and his wife in this regard, I note that this is not dependent on the specific development. It could be equally achieved through the implementation of other forms of enclosure and/or its alternative siting. Accordingly, those personal circumstances are not a strong justification for setting aside national and local



policies with the legitimate aim of protecting the essential characteristics of the Green Belt and the locality in the public interest. Nevertheless, the benefit therein weighs moderately in favour of the development.

25. The screening effect of the fence secures privacy for those using the garden areas previously visible from the roadside and prevents the danger of young children falling from the higher levels within the site. According to the appellant it has also prevented the accumulation of litter and waste along the frontage. These are also benefits that attract moderate weight.
26. The fact that the fence has been in place for some time and no objections have been received from neighbouring residents are not matters in favour of the development.

### **Conclusion**

27. Due to its scale and extent the erection of the fence is inappropriate development in the Green Belt. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to that and any other harm to it. The development also causes harm to the visual openness of the Green Belt and it contrasts with the prevailing character and appearance of the locality.
28. The considerations presented by the appellant or my finding in favour of the appellant with regard to the impact of the development on highway safety, do not clearly outweigh the totality of the harm that I have identified. Consequently, the very special circumstances necessary to justify granting planning permission do not exist. Furthermore, the development is contrary to the adopted development plan and there are no other material considerations to indicate a decision otherwise than in accordance with it.
29. For the reasons set out above, I conclude that the appeal should be dismissed.

*R Hitchcock*

INSPECTOR