

REPORT FOR NOTING

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	24 April 2022
SUBJECT:	PLANNING APPEALS
REPORT FROM:	HEAD OF DEVELOPMENT MANAGEMENT
CONTACT OFFICER:	DAVID MARNO
TYPE OF DECISION:	COUNCIL
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	<p>Planning Appeals:</p> <ul style="list-style-type: none"> - Lodged - Determined
OPTIONS & RECOMMENDED OPTION	The Committee is recommended to the note the report and appendices
IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	Executive Director of Resources to advise regarding risk management
Statement by Executive Director of Resources:	N/A
Equality/Diversity implications:	No
Considered by Monitoring Officer:	N/A

Wards Affected:	All listed
Scrutiny Interest:	N/A

TRACKING/PROCESS

DIRECTOR:

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

1.0 BACKGROUND

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

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

2.0 CONCLUSION

That the item be noted.

List of Background Papers:-

Contact Details:-

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**Planning Appeals Decided
between 14/03/2022 and 14/04/2022**



Application No.: 66444/FUL

Decision level: COM

Recommended Decision: Approve with Conditions

Applicant: Mr Nicholas Mordin

Location: Brookhouse Farm, 218 Holcombe Road, Tottington, Bury, BL8 4BQ

Proposal: Demolition of existing garages/stables and erection of 1 no. dwelling

Appeal Decision: Allowed

Date: 12/04/2022

Appeal type: Written Representations

Application No.: 67263/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: Mr & Mrs Rose

Location: 5 Holmfield Avenue, Prestwich, Manchester, M25 0BH

Proposal: Demolition of existing dwelling and erection of 1 no. dwelling

Appeal Decision: Allowed

Date: 18/03/2022

Appeal type: Written Representations



Appeal Decision

Site visit made on 4 April 2022

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th April 2022

Appeal Ref: APP/T4210/W/21/3287711

218 Holcombe Road, Tottington, BL8 4BQ

- 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 Nicholas Mordin against the decision of Bury Metropolitan Borough Council.
 - The application Ref 66444, dated 16 January 2021, was refused by notice dated 11 November 2021.
 - The development proposed is a single dwelling following the demolition of garages and stables.
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Decision

1. The appeal is allowed and planning permission is granted for a single dwelling following the demolition of garages and stables at 218 Holcombe Road, Tottington, BL8 4BQ in accordance with the terms of the application, Ref 66444, dated 16 January 2021, subject to the conditions set out in Annex A.

Applications for costs

2. An application for costs was made by Mr Nicholas Mordin against Bury Metropolitan Borough Council. This application is the subject of a separate Decision.

Background and Main Issues

3. The appeal site lies in the Green Belt. In addition, the barn on the site is a Grade II Listed Building and the farmhouse and cottage attached to the barn are considered to be non-designated heritage assets. I take as my starting point the proposal's Green Belt location and the relevant policy context set out in the development plan and the *National Planning Policy Framework* (the Framework). It is necessary firstly to establish whether it represents inappropriate development in the Green Belt which requires consideration of its effect on the openness of the Green Belt, before going on to consider its effects on the setting of the Listed Buildings and other nearby heritage assets as well as the natural environment. In dealing with the effect on the setting of the Listed Buildings, I have had regard to the special duty placed on decision makers in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
4. Therefore the main issues in the appeal are;
 - Whether or not the proposal would be inappropriate development in the Green Belt for the purposes of the development plan and the Framework

having regard to the effect of the proposal on the openness of the Green Belt;

- The effect of the proposal on the setting of nearby heritage assets;
- The effect of the proposal on the natural environment; and
- if the proposal is inappropriate development, 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 it.

Reasons

Whether inappropriate development and openness

5. Policy OL1/2 of the *Bury Unitary Development Plan (adopted August 1997)* (UDP) indicates that the construction of new buildings in the Green Belt is inappropriate development unless it is for one or more of a limited number of criteria listed in the policy.
6. Similarly, paragraph 149 of the Framework indicates that the construction of new buildings should be regarded as inappropriate development unless it is for one of the exceptions listed. This includes limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt than the existing development (paragraph 149 g)).
7. Whilst the proposed dwelling would not be for any of the forms of development listed in Policy OL1/2, this policy is not in full accordance with the Framework, as amongst other things, it does not include the provisions outlined above in paragraph 149 g).
8. It is not disputed by any party that the site forms previously developed land, and from my own observations, I would agree with this conclusion. However, to accord with this exception the proposal should not have a greater impact on the openness of the Green Belt. Openness is an essential characteristic of the Green Belt. It can be considered as meaning the absence of built, or otherwise urbanising, development.
9. The appeal site consists of a complex of buildings associated originally with a farm. These include a large stone building which comprises a barn, farmhouse and a cottage, together with a number of outbuildings located across the site. It is proposed to demolish the 5 outbuildings that comprise garages, stable blocks and a shed/woodstore and replace them with a split-level dwelling with a detached garage to the front. This would be located in a similar position to the existing garages.
10. The undisputed figures provided by the appellant indicate that the appeal scheme would result in a decrease in the footprint of buildings on the site of around 35%. Whilst the volume would increase by approximately 33%, the above ground volume would decrease by around 5%.
11. The width of the dwelling would be comparable to that of the garage block located in a similar position at present. Due to the screening provided by the hedge along the front boundary, the increase in the height of the building,

- which like the garages would appear as a single storey building at the front, would not be readily discernible.
12. The rear of the dwelling would include a basement level. However, I observed that due to the topography and vegetation, there is minimal visibility of this part of the site from the footpaths to north-east and east of the site, even in winter. In addition, the removal of the stable blocks to the rear of the barn, at the south-western end of the site, would mean that the proposal would help to concentrate the built development on the site.
 13. Whilst it is not possible to precisely compare the effect on openness of one building with that of several smaller buildings, taking into account the factors outlined above, I consider that both spatially and visually the proposal would not have a greater impact on the openness of the Green Belt.
 14. Therefore, I consider that the appeal scheme would represent the partial redevelopment of a previously developed site which would not have a greater impact on the openness of the Green Belt. Consequently, although it would be contrary to Policy OL1/2 of the UDP, it would accord with the more recent national policy in the Framework. This is a material consideration of significant weight which outweighs the conflict with the development plan. Thus, I consider the proposal would not be inappropriate development in the Green Belt.
 15. The Council have suggested that as the dwelling would be 2m higher than the existing garages it would be materially larger than the building it replaces and so would be inappropriate development. However, whether a new building is materially larger is the test in paragraph 149 d) of the Framework which relates to the replacement of buildings within the same use. This is not the case here. Similarly in Policy OL1/2 the test of whether a development is materially larger relates to a replacement of an existing dwelling by another dwelling. As such, whether the proposal is materially larger is not a relevant test to apply in the case.

Heritage assets

16. The existing barn, which is currently unused, is a Grade II Listed Building. The farmhouse and cottage which are attached to the barn and retain their residential use are considered to be non-designated heritage assets. The appeal site's location, to the north-east of the house, means that it forms part of the setting of these assets.
17. The barn, which dates from the mid-18th century, retains a number of key architectural features such as the cart entry on the elevation facing the road, the threshing floor and some stone flag stall dividers. The farmhouse has local historical significance due to its links with the Quaker Henry Wood.
18. Whilst the land where the house would be built previously formed part of the farm complex, it currently exhibits little in the way of agricultural character. Due to the intervening farmhouse and vegetation in its rear garden, there is minimal intervisibility between the site where the house would be built and the barn itself. Therefore, the contribution this part of the site makes to the significance of the heritage assets is limited.
19. The existing brick built garage building has a stone garage attached towards the rear of its side elevation. The material and design of the brick garage

- building detracts from the setting of the adjacent farmhouse as does the overgrown and neglected land and poor quality shed/log store to the rear of it.
20. The stable buildings are wooden structures with corrugated roofs located to the rear and the side of the barn. They are in a poor state of repair and are visible in views of the barn and across the site from Holcombe Road and Brookhouse Mill Lane. They too detract from the setting of the listed barn and the non-designated heritage assets. As such, the removal of the various outbuildings would have a positive impact on the setting of the heritage assets and would improve views of the barn from the south and south-west.
21. The proposed dwelling would be built from stone and would use natural stone roofing tiles. In addition, the design incorporates architectural detailing found on the farmhouse such as quoins, and stone mullions, sills and lintels. The eaves and ridge height of the building would be lower than those on the adjacent farmhouse and cottage, which together with the distance that would be maintained between them would ensure the proposed dwelling would not compete with them. Landscaping around the site can be controlled by condition to ensure it creates an appropriate rural character. As a result, I consider that the proposed dwelling would be sympathetic to the adjacent heritage assets.
22. In addition, as part of the appeal scheme it is proposed to complete a schedule of works to the barn. These have been agreed with the Council's Conservation Officer and would improve its condition.
23. Thus overall, I consider the appeal scheme would have a positive impact on the setting of the Listed Building and the non-designated heritage assets. Accordingly, there would be no conflict with UDP Policy EN2/3 which requires that developments safeguard the character and setting of Listed Buildings. Nor would it be contrary to the Framework which seeks to conserve and enhance the historic environment.

Natural Environment

24. The application was accompanied by a bird and bat report which concluded that both the buildings that are to be demolished, and the existing trees offered negligible bat roost potential, although the trees would provide valuable foraging/commuting habitat. It also concluded that the proposal would not have any impact on specially protected bird species such as Barn Owls. The site would however provide nesting habitat for common species, so the report recommends that a condition be used to prevent sensitive works during the nesting season.
25. The proposed development would not result in the loss of any trees on the site. Whilst part of the front boundary hedge would be lost to enlarge the existing vehicular access, the rest of the hedge would be retained and reinforced by additional native planting. The report also recommends a variety of other biodiversity measures including the provision of bat, bird and invertebrate features and a hedgehog home to compensate for the loss of scrub and provide biodiversity enhancement. The provision of these can be controlled by condition.
26. The Council has not disputed the findings of this report, nor have they provided any evidence as to why the proposed mitigation measures would be unacceptable. In the absence of any evidence to the contrary, I consider that

subject to various conditions, the proposed development would not have a detrimental impact on the natural environment and would be likely to enhance biodiversity on the site.

27. The reason for refusal also refers to sustainable building measures. However, the Council's appeal statement only mentions the lack of evidence from the appellant relating to mitigation measures for the loss of trees and scrub and any biodiversity enhancement. As such, it provides no further indication of what they consider is required in this respect. The proposed dwelling would be required to be built according to the current Building Regulations which require any new dwelling to incorporate a range of sustainability measures to address climate change. In the absence of any specific policies in the development plan requiring anything above this, I am satisfied that the proposal would not have a detrimental impact on the natural environment in this regard.
28. All in all, I am satisfied that, subject to conditions, the proposed development would have a beneficial impact on the natural environment. Consequently, I consider that the proposed development would not conflict with the Framework which seeks to ensure the protection and enhancement of the natural environment and improvements to biodiversity.

Other Matters

29. Third parties have suggested that the appeal scheme could set a precedent for further developments on adjoining land. However, each application and appeal must be determined on its individual merits and any future application would have to be determined on the basis of relevant development plan and national policies at the time. Therefore, a generalised concern of this nature does not justify withholding permission in this case.
30. I note the various concerns raised by local residents regarding highway and pedestrian safety issues that may result from the proposal. However, I note that subject to conditions, there is no objection to the proposed development from the Highway Engineer. In the light of this, and observations made during my site visit, I am satisfied that the proposed scheme would not have an unacceptable impact on highway and pedestrian safety in the area. In addition, there are no persuasive reasons to believe that the proposed development would have any detrimental impact on flooding in the area.

Conclusion and Conditions

31. The proposed development would not be inappropriate development in the Green Belt and so there is no need to demonstrate very special circumstances. Moreover, it would have a beneficial impact on the nearby heritage assets and the natural environment. I therefore conclude that the appeal should be allowed.
32. In addition to the standard implementation condition, to provide certainty it is necessary to define the plans with which the scheme should accord. In the interest of the character and appearance of the area conditions are required to control the external appearance of the development, the finished floor levels, the removal of the specified outbuildings and the landscaping of the site. I have altered the suggested wording of the latter to ensure it incorporates more of the measures outlined in the Bat and Bird report. The condition relating to the removal of the other outbuildings is a pre-commencement condition as the

- acceptability of the development in the Green Belt is based on their removal from the site.
33. As the site is previously developed land, and given the sensitive nature of the end use, conditions to assess the potential for contamination and to outline measures of how any contamination would be dealt with are necessary. The first of these needs to be a pre-commencement condition as it relates to works that have to be undertaken before the start of construction.
 34. For highway safety reasons conditions are necessary to ensure the work to the access and the provision of the visibility splays and the parking and turning facilities are all done before the dwelling is first occupied, and to prevent the subsequent conversion of the garage. For succinctness I have combined the provision of the parking and turning facilities into one condition. However, as the development is for a single dwelling, I am not persuaded that a condition requiring a Construction Traffic Management Plan is necessary. The provision of electric vehicle charging points will be required under the Building Regulations from June this year. Nevertheless, in advance of this to assist in the change to low emission vehicles a condition for the provision of an electric vehicle charging point is necessary.
 35. To ensure the adequate drainage of the site a condition is required to ensure it is carried out in accordance with the approved plans. In the interests of nature conservation and ecology conditions to control the removal of invasive species, to prevent certain works during the bird nesting season and to ensure adequate protection to the retained trees and shrubs, are required. The first and last of these need to be pre-commencement conditions as the first relates to ground clearance works and the other needs to ensure adequate protection is provided during the construction phase.
 36. The Planning Practice Guidance makes clear that conditions to restrict permitted development rights should only be used in exceptional circumstances. However, in this case as the acceptability of development in the Green Belt is related to its size in relation to the buildings being removed on the site, I consider a condition to control certain of these rights on the approved house is necessary to protect the openness of the Green Belt. However, I have altered the wording as removing such rights on the existing houses is not justified.
 37. For conservation and heritage reasons a condition to ensure the works to the Listed Building on the site are carried out before the development is occupied is necessary.
 38. Where necessary and in the interests of precision and enforceability I have altered the wording of the suggested conditions. In accordance with Section 100ZA of the Town and Country Planning Act 1990, the appellant has provided written agreement to the pre-commencement conditions.

Alison Partington

INSPECTOR

Annex A

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: Location Plan Drg. No. 20-06-01; Existing Site Survey Plan Drg. No. 20-06-05A; Existing Garages Roof Plan & Elevations Drg. No. 14-06-06; Proposed Block Plan and Building Plan Drg. No. 20-06-27 B; Proposed Elevations 1 of 2 Drg. No. 20-06-28 B; Proposed Elevations 2 of 2 Drg. No. 20-06-29; and Proposed Street Elevation and Section Drg. No. 20-06-19 D.
- 3) No development above ground level shall commence until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall commence unless and until:
 - a) a contaminated land Preliminary Risk Assessment report to assess the actual/potential contamination and/or ground gas/landfill gas risks at the site has been submitted to, and approved in writing by, the local planning authority.
 - b) where actual/potential contamination and/or ground gas/landfill gas risks have been identified, detailed site investigation and suitable risk assessment has been submitted to, and approved in writing by, the local planning authority;
 - c) where remediation/protection measures is/are required, a detailed Remediation Strategy has been submitted to, and approved in writing by, the local planning authority.
- 5) If remediation of the site is required, it shall be carried out in accordance with the approved Remediation Strategy and within agreed timescales and a Site Verification Report detailing the actions taken and conclusions at each stage of the remediation works, including substantiating evidence, shall be submitted to, and approved in writing by, the local planning authority prior to the first occupation of the development hereby permitted.
- 6) The development hereby permitted shall not be first occupied unless and until the access improvements and bin storage arrangements indicated on approved plan Drg. No. 20-06-27 B, incorporating the widening of the footway abutting the site, all necessary alterations to the existing footway crossing, demarcation of the limits of the adopted highway as a result of the highway works, relocating the 450mm high boundary wall, relocating the pedestrian gate pillars behind the visibility splay shown, inward opening gates set back from the adopted highway and new driveway in a porous/permeable material and/or measures to prevent the discharge of surface water onto the adopted highway, have been implemented in full.
- 7) The visibility splays shown on approved plan Drg No. 20-06-27 B shall be implemented before the first occupation of the development hereby

permitted and they shall subsequently be maintained free of obstruction above the height of 0.6m.

- 8) The parking and turning facilities, including the garage space, indicated on approved plan Drg. No. 20-06-27 B shall be provided before the first occupation of the development hereby permitted and they shall thereafter be kept available at all times for those purposes.
- 9) The garage associated with the development hereby permitted shall not be converted to additional living accommodation.
- 10) The development hereby permitted shall not be first occupied until an electric vehicle charging point has been installed. The charge point shall be chosen from the Electric Vehicle Home Charge Scheme approved charge point model list.
- 11) The drainage for the development hereby approved, shall be carried out in accordance with principles set out in approved plan Drg. No. 20-06-27 B. For the avoidance of doubt no surface water will be permitted to drain directly or indirectly into the public sewer. Furthermore, foul and surface water shall be drained on separate systems.
- 12) No works to trees or shrubs shall occur between 1st March and 31st August in any year unless a detailed bird nest survey by a suitably experienced ecologist has been carried out immediately prior to clearance.
- 13) Prior to any vegetation clearance, earthworks or demolition a survey for invasive plant species, including Himalayan Balsam shall be undertaken and submitted to the local planning authority. If any invasive species are found to be present a method statement detailing avoidance, control and eradication measures should be submitted to, and approved in writing by, the local planning authority, prior to the commencement of any earthworks.
- 14) No development above ground level shall take place until full details of both hard and soft landscape works with an associated implementation plan, have been submitted to, and approved in writing by, the local planning authority. The hard landscape details shall include proposed finished levels or contours; means of enclosure and hard surfacing materials. The soft landscaping works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of native plants and trees, noting species, plant/tree sizes and proposed numbers/densities and the implementation programme. The scheme shall also include the provision for bats, birds and invertebrates and a hedgehog home as set out in the "Inspection and Assessment in relation to Bats and Breeding Birds" document dated December 2020.

The approved scheme shall thereafter be implemented not later than 12 months from the date the development hereby permitted is first occupied or within the first available tree planting season, and any trees or shrubs removed, dying or becoming severely damaged or becoming severely diseased within five years of planting shall be replaced by trees or shrubs of a similar size or species to those originally required to be planted.

- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order

revoking and re-enacting that Order with or without modification), no development shall be carried out within the terms of Classes A to E of Part 1 of Schedule 2 of the Order, at the dwelling hereby permitted.

- 16) The finished floor levels shall be as indicated on approved plan Drg. No. 20-06-27 B.
- 17) No development shall take place until the buildings indicated in pink on submitted plan Drg. No. 20-06-05-A have been demolished and all arising materials have been removed from the site (or the arising materials re-used or retained in a position on site to be agreed by the local planning authority and thereafter so retained).
- 18) Prior to the first occupation of the development hereby permitted, the Proposed Works Schedule ref WS1 dated 14/09/2021 for the carrying out of the works to the Listed Barn Building shall be carried out and completed by a suitably experienced and qualified person and following completion, evidence shall be provided within 1 month of the completion date to the local planning authority that the works have been carried out and completed in accordance with the approved Works Schedule.
- 19) All trees to be retained on site shall be protected in accordance with BS 5837:2012 "Trees in relation to design, demolition and construction". The development shall not commence unless and until the measures required by the British Standard are implemented and all measures required shall remain in situ until the development has been completed.



Costs Decision

Site visit made on 4 April 2022

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 12th April 2022

Costs application in relation to Appeal Ref: APP/T4210/W/21/3287711 218 Holcombe Road, Tottington, BL8 4BQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Nicholas Mordin for a partial award of costs against Bury Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for a single dwelling following demolition of garages and stables.
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. The *Planning Practice Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The partial award of costs relates to the second and third reason for refusal which relate to the effect of the proposal on the natural environment and on the setting of the Listed Building and the non-designated heritage assets on the site.
4. The application is made on substantive grounds. It is argued that in refusing the application the Council has made vague, generalised assertions about the proposal's impact, which are unsupported by objective analysis. In addition, it is claimed that, in relation to the second reason for refusal, the Council have refused planning permission on a ground capable of being dealt with by condition. The PPG indicates that, in such circumstances, costs may be awarded against an authority.

Natural environment

5. The second reason for refusal relates to the impact of the proposal on the natural environment and sets out the parts of the *National Planning Policy Framework* (the Framework), to which the Council consider the scheme would be contrary. The Council's appeal statement indicates that as no details were provided on mitigation measures for the loss of trees and scrub or any biodiversity enhancement measures it was not possible to assess whether adequate mitigation would be provided.

6. However, the application was accompanied by an "Inspection and Assessment in relation to Bats and Breeding Birds" report. This not only assessed the impact of the proposal on protected species but set out a range of recommended biodiversity enhancement measures. Whilst I accept this does not give full details of the measures, both the Officer's report and the comments of the Council's ecological advisors, which are recorded in the Officer's report, indicate in the light of this evidence and subject to conditions the proposal would be acceptable and in accordance with the Framework.
7. Whilst the Committee of the Council responsible for determining planning applications is not required to accept the recommendations of its Officers, in circumstances where the professional advice of Officers is not followed, it is reasonable to expect the authority to be able to produce relevant evidence on appeal to support the decision.
8. However, no evidence has been provided in the Council's appeal statement as to why it was considered the mitigation and enhancement measures suggested would not be able to provide adequate mitigation and enhancement on the site. Nor does it indicate why, as advised by its technical advisors, conditions would not be able to satisfactorily deal with any outstanding matters of detail.
9. Whilst the PPG does advise that the use of pre-commencement conditions and those requiring the submission of outstanding details should be limited, it qualifies this as other than where they would clearly assist with the efficient and effective delivery of the development, such as would be the case here.
10. I note the Council has declared a climate emergency and that it gives great weight to this but there is no indication on how this is affecting the determination of planning applications in general. More specifically, at appeal no evidence has been provided on why this scheme should incorporate sustainable building measures over and above the requirements of the Building Regulations.
11. Given this, I consider that with regard to this reason for refusal the Council have acted unreasonably in not providing evidence underpinned by objective analysis to support their decision and in refusing a matter that could have been dealt with by a condition. This unreasonable behaviour has resulted directly in the need to contest this reason for refusal at appeal.

Heritage Assets

12. The application was accompanied by a Heritage Statement that concluded that the appeal proposal would have a beneficial impact on the setting of both the Listed Building and the non-designated heritage assets and the Officer's report noted that the Council's Conservation officer raised no objections to the scheme.
13. As indicated above, whilst the Committee of the Council responsible for determining planning applications is not bound by the technical advice given by its Officers and can give different weight to matters in the planning balance, it is reasonable to expect evidence to support their decision at any appeal.
14. Whilst the Council's appeal statement indicates the siting close to the east of the non-designated heritage asset would not preserve its setting no objective analysis has been provided to support this assertion. Nor is there any substantive evidence on how it is considered the appeal scheme would harm

the listed building and its setting. Moreover, in the appeal statement no account appears to have been taken of the benefits that would arise through the removal of the outbuildings that currently detract from the setting of the heritage assets.

15. In the light of this, I consider that with regard to the third reason for refusal the Council have acted unreasonably in not providing evidence underpinned by objective analysis to support their decision. This unreasonable behaviour has resulted directly in the need to contest this reason for refusal at appeal.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

17. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Bury Metropolitan Borough Council shall pay to Mr Nicholas Mordin, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with matters relating to the second and third reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to Bury Metropolitan Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alison Partington

INSPECTOR



Appeal Decision

Site visit made on 22 February 2022

by **F Rafiq BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 March 2022

Appeal Ref: APP/T4210/W/21/3283822

5 Holmfield Avenue, Prestwich M25 0BH

- 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 & Mrs Rose against the decision of Bury Metropolitan Borough Council.
 - The application Ref 67263, dated 7 July 2021, was refused by notice dated 2 September 2021.
 - The development proposed is the demolition of the existing dwelling and erection of a new detached single dwelling house.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing dwelling and erection of a new detached single dwelling house at 5 Holmfield Avenue, Prestwich M25 0BH in accordance with the terms of the application, Ref 67263, dated 7 July 2021 subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr and Mrs Rose against Bury Metropolitan Borough Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

4. The appeal site consists of a detached dwelling which is situated towards the end of a short cul-de-sac. Other properties are mainly semi-detached with a short terrace row at the head of the cul-de-sac. Some of the properties have been subject to alterations but there is a strong degree of uniformity in the character of the area provided by the two storey bays with gable features above, the hipped roof arrangements and the use of brick as the facing material.
5. The central part of the proposed dwelling's front elevation would retain the simple appearance of the existing dwelling in that it would incorporate a two-storey bay feature with the main entrance doorway replicating the appearance of the existing front entrance. The single storey garage to the side of the existing dwelling would be replaced by a two-storey element that would be set

- back at first floor level from the main front elevation. The front dormer proposed would also in itself appear as a modest addition.
6. However, the proposed dwelling would have a splayed element on its western side which, despite being setback from the front elevation, would not reflect the regular layout of properties in the area. Furthermore, the roof of the proposed dwelling would not respect the hipped roof form of the existing dwelling or the majority of the properties in the vicinity of the site. Rather, the confluence of differing roof heights at various angles, as well as the unusual plan layout of the proposed dwelling would result in it having a disjointed appearance.
 7. As a result, I conclude that the proposed development would have an adverse effect on the character and appearance of the area. As such, it would be contrary to Policies H2/1, H2/2 and EN1/2 of the Bury Unitary Development Plan, which seek, amongst other matters, for all new residential development to make a positive contribution to the form and quality of the surrounding area. It would also conflict with the National Planning Policy Framework, which seeks, at paragraph 130, for development to add to the overall quality of an area.
 8. The appellant has set out that the existing dwelling has been granted planning permission¹ for various extensions and alterations that would result in an identical development to the appeal proposal. The Council do not dispute that the appeal development would replicate the previously approved scheme but have indicated that it may not be possible to structurally construct the fallback scheme. There is nothing before me that indicates any structural matters would prevent the extensions to the existing house and the appellant has stated the rationale for the appeal proposal is that it would be more cost effective. As such, I have no reason to doubt the likelihood of it being implemented if this appeal was to fail.
 9. The Council has also referenced the lack of pre-application engagement and the planning history of the site, including the use of permitted development rights as fallback positions. Be that as it may, and whilst noting the references to high design expectations in national guidance as set out in one of the referenced appeals, the end result of the appeal proposal would be the same as the referenced fallback position. Consequently, and unlike the approach in one of the referenced appeals, the proposal would have the same effect on the character and appearance of the area as the fallback position and not cause greater harm.
 10. I appreciate that with the proposed demolition of the existing dwelling, there was an opportunity to design an entirely new property rather than replicating the appearance of the older dwelling with extensions. Nevertheless, I am required to determine the appeal before me on its own merits.
 11. I have also considered the representations by interested parties, including concerns in relation to parking and the effect on living conditions. As the proposal would result in the same end development as the fallback scheme, it would have no greater impact in these regards. None of the other comments made would outweigh my overall conclusion.

¹ LPA Ref: 66765

Conditions

12. I have considered the conditions suggested by the Council and other parties, having regard to the six tests set out in the Framework. For the sake of clarity and enforceability, I have amended the wording of the suggested conditions as appropriate.
13. A condition is necessary requiring the submission of materials in the interests of the character and appearance of the area and for car parking and refuse storage facilities to be provided to ensure adequate such provision is provided within the site. Although the development is for a single dwelling, a Construction Traffic Management Plan (CTMP) is required given the proposal involves the demolition of the existing dwelling and the location of the site on a narrow cul-de-sac. This condition can incorporate details in relation to asbestos to ensure that any such material on site is disposed appropriately. It is essential for details relating to the CTMP to be a pre-commencement condition to ensure there are no adverse effects arising on highway safety or on living conditions.
14. As the appeal site is already occupied by a dwelling and that it was previously open land, I do not consider the suggested conditions relating to contaminated land are necessary. I am also not persuaded that conditions are required in relation to landscaping or sustainable drainage as the site already accommodates a dwelling which has a garden. A further condition has been put forward requiring the provision of an electric vehicle charging point. From the information before me, there is no local policy justification and I can only see this as an aspirational matter. The development would not be unacceptable without it.

Conclusion

15. For the reasons given above, having considered the development plan as a whole, the approach in the Framework and all other relevant material considerations, the appeal is allowed.

F Rafiq

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site – Location and Block Plan (DA19130.3. 001. Rev 2), Existing GA Plans and Elevations (DA19130.3. 002. Rev 1), Landscaping Plan – Existing (DA19130.3. 004. Rev 1), Proposed GA Plans and Elevations (DA19130.3. 003. Rev 4), Landscaping Plan – Proposed (DA19130.3. 005. Rev 1) and Streetscene Elevations (DA19130.3. 206).
- 3) No above ground works shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No demolition/construction shall commence unless and until a 'Construction Traffic Management Plan' (CTMP), has been submitted to and approved by the Local Planning Authority in writing and shall confirm/provide the following:
 1. Hours of operation and number of vehicle movements;
 2. Arrangements for the turning and manoeuvring of vehicles within the curtilage of the site;
 3. Parking on site of operatives' and demolition/construction vehicles together with storage on site of demolition/construction materials;
 4. Measures to ensure that all mud and other loose materials are not carried on the wheels and chassis of any vehicles leaving the site and measures to minimise dust nuisance caused by the operations; and
 5. An asbestos survey undertaken by an appropriately qualified person to include details of any asbestos identified and the method of disposal.

The approved CTMP shall be adhered to throughout the demolition/construction period and the measures shall be retained and facilities used for the intended purpose for the duration of the demolition and construction periods. The areas identified shall not be used for any other purposes other than the turning/parking of vehicles and storage of demolition/construction materials.
- 5) The car parking indicated on the approved plans shall be surfaced, demarcated and made available for use prior to the development hereby approved being brought into use.
- 6) The refuse storage facilities indicated on the approved plans reference DA19130.3. 005 Rev 1 (date 07/12/2020) shall be implemented and made available for use prior to the development hereby approved becoming first occupied and shall thereafter remain available at all times.

The Ombudsman's final decision

Summary: We will not investigate Mr X's complaint about the Council's handling of his concerns about his neighbour's development constructed under 'permitted development'. This is because there is not enough evidence of fault by the Council.

The complaint

1. The complainant, Mr X, complains the Council has decided his neighbour's development does not require planning permission, Mr X disagrees with the Council's decision as he says the development does not comply with local and national planning policies.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure', which we call 'fault'. We must also consider whether any fault has had an adverse effect on the person making the complaint, which we call 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start an investigation if the tests set out in our Assessment Code are not met. (*Local Government Act 1974, section 24A(6), as amended*)
3. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)

How I considered this complaint

4. I considered information provided by Mr X and the Ombudsman's Assessment Code.

Background

5. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) allows certain development without the need for planning permission. This is known as 'permitted development'. Permitted development rights are subject to limitations and exclusions, but when a proposal falls within the parameters of development allowed by the Order it will not require planning permission. Where development fails to comply with the limitations of permitted development or the plans approved as part of an application for planning permission it can be described as a breach of planning control.

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6. Building control deals with the process of inspecting work for compliance with the Building Regulations. The Building Regulations set standards for the design and construction of buildings to ensure the health and safety of people in and about those buildings.

My assessment

7. Mr X refers to various planning policies which set standards for the design of new development and limits on issues including its impact on neighbour amenity and the character and appearance of an area. But these issues are not relevant to Mr X's neighbour's development as it does not require planning permission and the policies do not therefore apply.
8. Mr X disagrees with the Council's view on this point but I have seen no basis to question it. His complaint suggests that because the development involves changes to an existing flue or soil/vent pipe it cannot be considered permitted development under Class B of the 2015 Order. But the Council has explained the changes to the flue or soil/vent pipe are themselves permitted development under Class G and the government's technical guidance confirms that while such changes "*are not permitted development under Class B of Schedule 2 to the Order, they may be permitted development under Class G.*" I cannot therefore accept Mr X's statement that Class G is irrelevant to his neighbour's development and there is no basis for me to criticise the Council's interpretation on this point or to show the development requires planning permission.
9. Mr X also suggests his neighbour's failure to comply with planning policies show the development breaches the Building Regulations, but this is an entirely separate issue as set out at Paragraph 6 above. Building control does not take account of the design or appearance of a development and the Council's building control function is not engaged in this matter as Mr X's neighbour has decided to instruct a private company to monitor compliance with the Regulations. The private company will consider the construction methods and safety of the development constructed but cannot look at issues such as the impact of the development on neighbour privacy.

Final decision

10. We will not investigate this complaint. This is because there is not enough evidence of fault by the Council.

Investigator's decision on behalf of the Ombudsman