

# REPORT FOR NOTING

Agenda  
Item

6

<b>DECISION OF:</b>	<b>PLANNING CONTROL COMMITTEE</b>
<b>DATE:</b>	<b>19 March 2024</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 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 12/02/2024 and 10/03/2024**



**Application No.:** 69914/FUL

**Appeal lodged:** 06/03/2024

**Decision level:** DEL

**Appeal Type:** Informal Hearing

**Recommended Decision:** Refuse

**Applicant:** Specscart

**Location** 10 Union Street and 40 The Rock, Bury, BL9 0NY

**Proposal** Modifications to existing window openings

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**Application No.:** 70120/FUL

**Appeal lodged:** 20/02/2024

**Decision level:** DEL

**Appeal Type:** Written Representations

**Recommended Decision:** Refuse

**Applicant:** Mr P Sanghani

**Location** Storage unit to the rear of 2C Green Street, Bury, BL8 1TF

**Proposal** Change of use from storage unit to 1 no. dwelling (Use Class C3)

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**Application No.:** 70236/FUL

**Appeal lodged:** 27/02/2024

**Decision level:** DEL

**Appeal Type:** Written Representations

**Recommended Decision:** Refuse

**Applicant:** Mr Lee Hoppley

**Location** 21 Philips Drive, Whitefield, Manchester, M45 7PY

**Proposal** First floor front extension

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**Total Number of Appeals Lodged: 3**

**Planning Appeals Decided  
between 12/02/2024 and 10/03/2024**



**Application No.:** 69178/FUL

**Decision level:** DEL

**Recommended Decision:** Refuse

**Applicant:** Mr Mark Jagger

**Location:** Land at junction of Arthur Lane & Bury Old Road, Ainsworth, Bolton

**Proposal:** Demolition, conversion and extension of existing stable/livestock buildings to create 1 no. single storey dwelling with enclosed garden and parking

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**Application No.:** 69467/FUL

**Decision level:** DEL

**Recommended Decision:** Refuse

**Applicant:** Mr Paul McDonald

**Location:** 35 Bankside Avenue, Radcliffe, Manchester, M26 2QH

**Proposal:** Erection of decking on raised platform with steps, balustrade and fencing, garden room pod and covered spa area

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**Application No.:** 69882/FUL

**Decision level:** DEL

**Recommended Decision:** Refuse

**Applicant:** Mr Craig Timbrell

**Location:** 46 Oak Lane, Whitefield, Manchester, M45 8ET

**Proposal:** Hip to gable roof extension at side and loft conversion with rear dormer

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**Details of Enforcement Appeal Decisions  
between 12/02/2024 and 10/03/2024**



**Location:** 35 Bankside Avenue, Radcliffe, Manchester, M26 2QH

**Case Ref:**

0039 / 23

**Issue:** Erection of decking

**Appeal Decision:** Dismissed 28/02/2024



## Appeal Decision

Site visit made on 1 February 2024

by **J Smith MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27<sup>th</sup> February 2024

**Appeal Ref: APP/T4210/W/23/3327748**

**Land at Junction of Arthur Lane and Bury Old Road, Ainsworth, Bury, Lancs BL2 5PN**

- 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 Mark Jagger against the decision of Bury Metropolitan Borough Council.
- The application Ref 69178, dated 6 December 2022, was refused by notice dated 1 June 2023.
- The development proposed is: Demolition, conversion and extension of existing stable/livestock buildings to create 1no. single storey dwelling with enclosed garden and parking.

### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The location given in the application form, decision notice and appeal form are different to each other. Each is a variation of the address of the site. I have used the address detailed within the appeal form as this provides the most accurate location of the site.

### Main Issues

3. The main issues are:

- Whether or not the development is inappropriate development in the Green Belt having regard to the Framework, including any relevant effects on the openness of the Green Belt, and with regard to any relevant development plan policies; and,
- Whether the harm by reason of inappropriateness would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

### Reasons

*Whether or not the proposed development is inappropriate development in the Green Belt and its effect on openness*

4. The proposed development is the demolition, conversion and extension of stable/livestock buildings into a single dwelling. These buildings are of varying design and construction material. These buildings are sited towards the rear boundary of the appeal site. The main appeal building faces towards the access point, with a single storey barn to its side and rear elevations. The appeal site

is located within the Green Belt. Paragraph 155 of the National Planning Policy Framework (the Framework) sets out certain development which are not inappropriate in the Green Belt, provided that they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

5. I note that although the Bury Unitary Development Plan 1997 (UDP) policies pre-date the Framework, these policies are consistent with paragraphs 155 of the Framework. Paragraph 155 of the Framework sets out certain forms of development which are not inappropriate within the Green Belt. This includes the re-use of buildings provided that the buildings are of permanent and substantial construction.
6. Policy OL1/2 of the UDP sets out the purposes where development is not considered to be inappropriate in the Green Belt. These include new buildings for agriculture and forestry, limited extension, alteration or replacement of existing dwellings provided that this would not result in disproportionate additions over and above the size of the original dwelling and the limited infilling in existing villages. Policy OL1/4 of the UDP is concerned with the conversion and re-use of buildings in the Green Belt. This policy states that conversions will be permitted where it does not have a materially greater impact than the present use on the openness of the Green Belt, and the buildings are of permanent and substantial construction and are capable of conversion without major or complete reconstruction, amongst other things.
7. I have had regard to the structural survey (dated April 2023), which accompanies this appeal. The appellant suggests that the development is focused on an existing building that is capable of conversion with little alteration. However, this report does not consider the extent to which aspects of the building would be retained for the conversion, or which aspects are structurally sound. From my site visit, I noted that the building proposed for conversion was in a deteriorated state. The lack of evidence within the survey and other evidence in this appeal leads me to conclude that the building is not of permanent and substantial construction and the proposal would require its major reconstruction. For this reason, the proposal would be inappropriate development in the Green Belt, which is by definition, harmful.
8. As I consider the proposal would be tantamount to the construction of a new building I have also considered it against the exceptions in paragraph 154. As this does not appear to be an extension or alteration of an existing building, the exceptions found in paragraph 154 do not apply. However, in any event, I have considered the effect of the proposal on openness.
9. Openness is an essential characteristic of the Green Belt that is capable of having spatial as well as visual aspects. Despite a hedgerow which surrounds the existing site, the appeal property would be visible from the adjacent highway due to its close proximity to it. Notwithstanding neighbouring dwellings within the vicinity of the appeal site, the openness of the Green Belt is clearly evident around the site and the wider area.
10. The appeal proposal would involve the removal of two barn structures which are located to the side and rear of the proposed conversion. The converted stables would be extended to its side elevations. Both parties have provided me with various figures of their assessment of the volume increase or decrease as a result of the removal of the barns and additional extensions to the proposed dwelling. When taking the removal of the barns into account, I find

that this would result in a reduction in cubic volume than what is proposed in this appeal.

11. The assessment of the proposal should not be restricted to arguments about volume, as noted by the appellant. The barn structures which are to be demolished are located to the side and rear. The form and massing of the rear barn structure in particular is not easily visible due to its location to the rear of the existing stables and location towards the edge of the rear site boundary which is bound by tall hedgerows.
12. Due to their more prominent location and extension of the width of the proposed dwelling, the additional side extensions to the proposed conversion would have a form and massing greater than the existing barns that are to be removed. Furthermore, when taking the size of the building subject to conversion into account, the proposed extensions would result in two large additions which I find to be disproportionate, due to their increase in floor space when compared to the host dwelling.
13. Moreover, whilst the appellant notes that the domestic curtilage would be kept to a minimum, the introduction of a residential dwelling on the site would result in the creation of associated domestic paraphernalia. Some of the hardstanding would be used for turning, manoeuvring and parking of vehicles. There would then be the increased comings and goings associated with the activities of a dwelling rather than the keeping of farm animals which currently characterises the use of the site. I recognise that farming vehicles could be present on this site in its current form, however these are accepted within this Green Belt context.
14. To conclude, the appeal proposal would be inappropriate development within the Green Belt. Additionally, the increase in the massing of the existing building would result in a greater impact to the openness of the Greenbelt. It would therefore be in conflict with Policies OL1/2 and OL1/4 of the UDP. These policies allow for the construction of limited extensions, alteration or replacement of existing dwellings, provided that this would not result in disproportionate additions over and above the size of the original dwelling. Additionally, any re-use of buildings must not have a greater impact than the present use on the openness of the Green Belt, amongst other things. Consequently, the development would therefore fail to meet the requirements of paragraphs 155 and 154(g) of the Framework and would be inappropriate development, contrary to local and national policy.

## **Other Considerations**

15. The proposal would constitute inappropriate development in the Green Belt and would harm openness. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
16. The appellant states that the Council is unable to demonstrate a 5 Year Housing Land Supply (5YHLS). The Council do not disagree with the appellant. The provision of a dwelling would contribute to the overall housing land supply. Given the likely substantial shortfall, I attach moderate positive weight to the delivery of an additional dwelling.

17. The site is also close to Ainsworth Local Shopping Centre. The shopping centre has limited services and amenities. Nevertheless, the Council note that a bus service is situated close by and would enable occupants to not be solely reliant on a private car. The appellant suggests that the proposal would alleviate a flooding issue within the site and the adjacent highway. As such, I consider the appeal site to be in an accessible location and would offer some alleviation to possible highway issues as a result of flooding. As such, I ascribe negligible additional benefit, as I consider this to be an absence of harm.
18. The appellant suggests that the proposal would improve its appearance and notes that the Council accept that the design and materials are appropriate for its surroundings. I give no weight, in this particular case, to mere compliance with the normal development management objectives. The appellant further suggests that the property would be built for and occupied by a family member in an area of higher house prices, but this personal circumstance carries little weight in my decision.
19. The appellant also contends that the appeal should be allowed as planning permission was granted by the Council for a previous proposal which was similar to the subject of this appeal. Whilst in principle this is capable of being a material consideration, pre-commencement planning conditions were imposed by the Council on this previous approval but were not discharged by the appellant. As such, the previous permission has lapsed. I am sympathetic with the appellants assertion that the limitations of the Covid 19 pandemic resulted in them being unable to employ the appropriate staff during this period to undertake this work, or that they were waiting to gain accurate information on the funding details from a "Help to Build" initiative.
20. However, I note that since that time, the Council have found that the structure of the proposed converted building has deteriorated to a point beyond what is possible of conversion. From the evidence before me, I also find that the building would not be capable of conversion, without major reconstruction and would therefore be inappropriate development within the Green Belt. I am not bound by the previous decisions of the Council to make a similar decision. I have assessed the individual merits of this proposal and therefore assign this minimal weight in this decision.
21. These other considerations would not clearly outweigh the harm to the Green Belt by reason of inappropriateness and through a greater impact on the harm to openness. Consequently, the very special circumstances necessary to justify the proposed development do not exist.
22. The fact that the Council cannot demonstrate a 5-year housing land supply triggers the presumption in favour of sustainable development the in paragraph 11 d) of the Framework. However, in this case the application of policies in the Framework that protect the Green Belt provides a clear reason for refusing the proposed development in accordance with paragraph 11d)(i). As such, the presumption in favour of sustainable development does not apply.

## **Other Matter**

23. The Council refer to section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, on the evidence before me, the appeal site is not located within a conservation area. Further, because of its absence of clear association with its setting and distance to it, the proposal

would not cause harm to the significance of a designated heritage asset, in terms of its setting.

**Conclusion**

24. The proposal would conflict with the development plan when taken as a whole. Material considerations, including the Framework, do not indicate that the decision should be made other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

*J Smith*

INSPECTOR



## Appeal Decisions

Site visit made on 19 February 2024

**by Peter Willows BA MRTPI**

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

**Decision date: 28 February 2024**

### **Appeal A: APP/T4210/C/23/3324652**

#### **35 Bankside Avenue, Radcliffe, Manchester M26 2QH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Paul McDonald against an enforcement notice issued by Bury Metropolitan Borough Council.
- The notice, numbered 23/0039, was issued on 21 June 2023.
- The breach of planning control as alleged in the notice is without planning permission, the erection of decking on a raised platform, with steps, balustrade and fencing in rear garden of the property.
- The requirements of the notice are:
  - a) Permanently remove the decking, raised platform, steps, balustrade and unauthorised fencing from the land.
  - b) Return the land to its former condition prior to the decking, raised platform, steps, balustrade and unauthorised fencing being constructed.
- The period for compliance with the requirements is 60 days.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

### **Appeal B: APP/T4210/W/23/3324651**

#### **35 Bankside Avenue, Radcliffe, Manchester M26 2QH**

- 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 Paul McDonald against the decision of Bury Metropolitan Borough Council.
- The application Ref 69467, dated 16 March 2023, was refused by notice dated 1 June 2023.
- The development proposed is described as a raised deck to rear of the garden.

### **Decisions**

1. Appeal A: The appeal is dismissed, 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.
2. Appeal B: The appeal is dismissed.

### **Preliminary Matters**

3. During my site visit I viewed the development from Nos 31 and 33 Bankside Avenue, as well as from the appeal property itself.

4. The description of the Appeal B proposal in the heading to this decision is taken from the planning application form. However, the description on the Council's decision notice is 'Erection of decking on raised platform with steps, balustrade and fencing, garden room pod and covered spa area'. The garden room pod and covered spa have been built and are shown on the submitted plans. However, I have no evidence of any agreed change to the description of the development and the appellant states that the decision did not relate to the spa and pod. I have therefore approached the decision on the basis that permission was not sought for the spa and pod. Although the steps, balustrade and fencing are not referred to in the description on the planning application form either, it seems to me that they are actually part and parcel of the raised deck and I therefore regard them as part of the development before me.
5. The foregoing means that both appeals relate to the same development, and I consider them together below.

### **Main Issues**

6. The main issue is the effect of the development on the living conditions of neighbouring residents, with particular regard to any loss of privacy and harm to outlook.

### **Reasons**

7. The appeal property is a house with a modest rear garden. The garden is flat near the house but rises steeply at the far end, as does the garden of the neighbouring No 33. The decking has been formed on this raised land. It is reached via a set of steps placed next to the boundary to No 33. Very tall fencing has been added to the side of the balcony and steps, to provide screening. There is also high fencing to the rear. A balustrade with glazed panelling, at about waist height, has been built along the front edge of the decking (the edge facing the house).
8. The fencing to the side and rear do much to restrict views from the raised decking. However, the waist-height balustrade does not prevent views back towards the housing. The result of this is that there are elevated, close-range views of much of the rear garden of No 33. Moreover, when standing on the decking I was able to see clearly into the conservatory at No 33. In my judgement the views are intrusive. Given the closeness and elevation of the decking, people in the garden or conservatory of No 33 will be very aware of people using the decking, to the extent that the enjoyment of those parts of the property will be seriously impaired.
9. Moreover, I am concerned by the height of the fencing adjacent to No 33. The impact of this is limited to an extent by the fact that it only extends along part of the boundary, stopping well-short of the houses. Additionally, the part of the garden of No 33 next to the fencing rises, so that, at the rear of the garden, the new fencing is only marginally higher than the boundary fencing that was already in place. However, nearer to the houses, as the ground drops away, the new fencing towers above the pre-existing fencing. Indeed, the submitted drawings suggest that it may be 5m above ground level at the maximum point. I did not verify that figure on site but, in any event, the height and positioning of the fencing is such that it is overbearing when viewed from the garden of No 33, adding to the harm to living conditions there.

10. The effect on other properties is far more limited, due to their distance from the appeal site and, in the case of No 37, the screening afforded by a garage. Various other concerns have been raised by neighbours, but my decision is based on the matters outlined above.
11. An element of overlooking may be common in suburban areas such as this. Here, the decking makes use of the pre-existing rising land level, which is also present at No 33, and there may already have been an element of intervisibility between the properties as a result. I saw that terracing with seating had been created in the rear garden of No 33. However, the unauthorised decking provides a large, elevated area for people to gather on and the evidence before me does not show that the pre-existing terracing was comparable to this development in terms of the opportunities it created for overlooking.
12. I do not consider that planning conditions could make the development acceptable. While a reduction in the height of the fence would reduce its visual impact, that would not improve (and might worsen) harm due to overlooking.
13. For the reasons given above, I conclude that the living conditions of neighbouring occupiers, specifically the occupiers of No 33, have been unacceptably harmed by the development. This places the development at odds with Policy H2/3 of the *Bury Unitary Development Plan*, which seeks to protect the amenity of adjacent properties. Although the policy is titled 'Extensions and Alterations', the supporting text indicates that it applies to other relevant domestic development. This is also clear from the Council's *Alterations and Extensions to Residential Properties* supplementary planning document (SPD), which was prepared to support the policy. Amongst other things, the SPD advises that areas of decking should not result in undue direct overlooking into neighbouring property. My findings above mean that there is conflict with the SPD in that regard.

### **Other Matter**

14. I am told that the appellant feels victimised regarding this matter and considers that his human rights have been affected. However, any effect on the appellant or occupiers of the appeal property must be weighed against the public interest of ensuring the proper planning of the locality. In my judgement, dismissal of the appeals is a necessary and proportionate response to the harm arising from the development, and would not result in any violation of the rights of the individuals concerned.

### **Conclusion**

15. For the reasons given above, I conclude that the appeals should not succeed. With regard to Appeal A I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. Appeal B is dismissed.

*Peter Willows*

INSPECTOR



## Appeal Decision

Site visit made on 21 February 2024

**by K Winnard LL.B Hons Solicitor**

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

**Decision date:07.03.2024**

**Appeal Ref: APP/T4210/D/23/3334811**

**46 Oak Lane, Whitefield, Bury, Lancs, M45 8ET**

- 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 Craig Timbrell against the decision of Bury Metropolitan Borough Council.
- The application Ref. 69882 dated 10 July 2023, was refused by notice dated 9 October 2023.
- The development proposed is a hip to gable roof extension at side and loft conversion with rear dormer.

### **Decision**

1. The appeal is dismissed.

### **Procedural Matters**

2. In December 2023 the Government published its revised National Planning Policy Framework (the Framework). In this instance the issues most relevant to the appeal remain unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework and that no party would be disadvantaged by such a cause of action.
3. The Council changed the description of the development and I note that this description was used by the appellant in the appeal form. I have accordingly used this description.

### **Main Issue**

4. The main issue in the appeal is the effect of the proposed development on the character and appearance of the host dwelling and the area.

### **Reasons**

5. No 46 Oak Lane, the appeal property, is a semi-detached property situate in a residential street. On this part of Oak Lane properties are similar in size and scale. On my site visit I did not observe any rear dormers nor any hip to gable roof extensions, and the dwellings generally retain the style and appearance of the original built development. There was a strong sense of uniformity and coherence to the pattern of development in this area.
6. The proposed rear dormer extension would be built across much of the full width of the roof slope and its ridge height would project some 300mm above

the existing ridge line of the dwelling. The Council's Supplementary Planning Document 6: Alterations and Extensions to Residential Properties (adopted 2004 and updated 2010) (SPD6) provides that in the case of dormer extensions, dormers with pitched roofs should not project beyond the original ridge line and in all other cases the roof of the dormer should be 0.5 metres or more below the main ridge line.

7. The proposal would accordingly exceed the height recommended in SPD6 and would by reason of its height be an incongruous addition to the dwelling. It would introduce a form of roof design which would be at odds with that of its attached neighbouring property and unreflective of the area as a whole. As such it would cause unacceptable harm to the character and appearance of the dwelling and the area.
8. The Council raises no concern with regard to the residential amenity of the occupiers of neighbouring properties and having regard to the juxtaposition of the properties, I see no reason to disagree with this view. Nor are any concerns raised in relation to parking. However the absence of harm in these respects does not weigh in favour of the proposal.
9. Therefore, the proposal would cause unacceptable harm to the character and appearance of the host dwelling and the area. As such it would conflict with Saved Policy H2/3 of the Bury Unitary Development Plan (1997) which seeks to ensure that development is sympathetic in nature with the original building and surrounding area by reason of design, form and size. It would also fail to comply with guidance as to the design of dormer/roof extensions within SPD6.

### **Other Matter**

10. Reference has been made to the personal circumstances of the family in seeking larger family accommodation to meet their needs. However limited information is before me as to those circumstances and as to how the needs of the appellant and his family could only be met by the construction of an extension of the size and scale now proposed. Nor am I convinced that this scheme is the only practical option for extending this property. I do not therefore find that the personal circumstances of the appellant outweigh the harm I have found to the character and appearance of the host dwelling and the area.

### **Conclusion**

11. The proposal would have a harmful effect on the host dwelling and the character and appearance of the area. There are no other considerations which would outweigh these findings nor the conflict with the Development Plan. Accordingly I dismiss the appeal.

*K Winnard*

INSPECTOR