

REPORT FOR DECISION

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	16th DECEMBER 2014
SUBJECT:	PLANNING APPEALS
REPORT FROM:	DEVELOPMENT MANAGER
CONTACT OFFICER:	JOHN CUMMINS
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 <p>Enforcement Appeals</p> <ul style="list-style-type: none"> - Decided
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
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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:- Copy Appeal Decisions attached

Contact Details:-

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**Planning Appeals Lodged
between 18/10/2014 and 07/12/2014**



Application No.: 57611/FUL

Appeal lodged: 17/11/2014

Decision level: DEL

Appeal Type: Written Representations

Recommended Decision: Refuse

Applicant: Mr & Mrs John Hughes

Location 74 Windsor Road, Prestwich, Manchester, M25 0DE

Proposal First floor extension at side and rear

Application No.: 57721/FUL

Appeal lodged: 28/11/2014

Decision level: DEL

Appeal Type: Written Representations

Recommended Decision: Refuse

Applicant: Mr A Mahmood

Location 134 Rochdale Road, Bury, BL9 7BD

Proposal Retrospective application for single storey extension at side

Total Number of Appeals Lodged: 2

**Details of Enforcement Appeal Decisions
between 19/10/2014 and 07/12/2014**



Location: Ainsworth Hall Farm, Ainsworth Hall Road, Ainsworth, Bolton, BL2 5QT

Case Ref:
0011 / 12

Issue: Development - erection of a two storey outbuilding (partly constructed)

Appeal Decision: Dismissed 05/12/2014

Location: Ainsworth Hall Farm, Ainsworth Hall Road, Ainsworth, Bolton, BL2 5QT

Case Ref:
0011 / 12

Issue: Unauthorised uses – Change of Use from Agriculture to parking/storage of vehicles and plant machinery and the storage of construction materials

Appeal Decision: Dismissed 05/12/2014

Copies of the Inspectors Appeal Decisions are attached below:



Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State for Communities and Local Government

Decision date: 5 December 2014

Appeal ref: APP/T4210/C/14/2220795

Land at Ainsworth Hall Farm, Ainsworth Hall Road, Ainsworth, Bolton BL2 5QT

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.
- The appeal is brought by Mr Graham Vause against an enforcement notice issued by Bury Metropolitan Borough Council.
- The notice was issued on 12 May 2014.
- The Council's reference is 12/0011.
- The appellant's agents are Inspire Planning Solutions.
- The breach of planning control as alleged in the notice is: "Without the benefit of planning permission, the erection of a two storey outbuilding (partly constructed) on the Site".
- The requirements of the notice are: "a) Demolish and permanently remove the partly constructed outbuilding from the Site, including all foundations and associated ground works. b) Following demolition, remove from the Site all resulting materials".
- The period for compliance with the requirements of the notice is "60 days after the notice takes effect".
- The appeal is made on grounds (f) and (g) as set out in section 174(2) of the amended 1990 Act.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld without variation.

Procedural matters

1. The Inspectorate's letter of 9 July 2014 confirmed that, because the correct fee was not paid within the specified period, the deemed application for planning permission had lapsed. The planning merits of the development cannot therefore be considered. I shall accordingly deal only with the appeal on grounds (f) and (g).
2. I have considered the ground on which the appeals were made, together with the Council's statement. As these representations have been made available to the parties, I do not intend to summarise them in detail. They have been carefully considered.

The Ground (f) appeal

3. The ground (f) appeal is made on the basis that the appellant considers it is unnecessary for the foundations to be removed as they are below ground level

and do not cause undue harm to the greenbelt. He also contends that he would be able to construct a 2m high wall without the need to apply for planning permission and therefore that section of the development could be retained. The Council contend that in accordance with the *Garland*¹ judgement the development must be considered in its entirety and should not be subdivided into parts that constitute permitted development and parts that do not. They argue that the walls and foundations are part and parcel of the unauthorised development and as the notice is aimed at remedying the breach of planning control, as opposed injury to amenity, no lesser steps other than complete removal would remedy the breach of planning control.

The Ground (g) appeal

4. The ground (g) appeal is made on the basis that the appellant requires more time to comply with the notice in order to allow for a planning application to be determined by the Council for which the appellant anticipates a positive outcome. He requests that the compliance period be extended to 6 months. The Council point out that the application referred to was refused on 25 July 2014 and consequently there is now no need for the time period for compliance to be extended.

Conclusions

5. I have carefully considered all the points made during the appeal. I acknowledge the appellant's argument concerning the fact that as the foundations are not visible they do not cause harm to the greenbelt. However, as the appeal is made under grounds (f) and (g), whether or not any of the development causes visual harm is not before me to consider. Moreover, as the Council point out, the notice is clearly aimed at remedying the breach of planning control, as opposed to remedying injury to amenity. As such, it is reasonable to require the building in its entirety to be removed, including its foundations. Furthermore, in accordance with the *Garland* judgement, the unauthorised development cannot be subdivided into elements that fall within permitted development rights and those that do not. In view of the above, I am not satisfied that the steps required to comply with the notice are excessive and that the lesser steps suggested by the appellant would overcome the Council's objections. The appeal under ground (f) therefore fails.
6. Turning to the appeal on ground (g), as the planning application referred to by the appellant has been determined and refused since the submission of the appeal, it is reasonable to conclude that there is no longer any need for the compliance period to be extended. Therefore, on the evidence before me, I see no good reason to justify extending the compliance period further.
7. Bearing all these points in mind, I conclude that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control and I do not consider that an extension of the compliance period is justified. The ground (f) and (g) appeals fail accordingly.
8. For the reasons given above, I consider it appropriate to return the control of development to the Council as soon as possible.

¹ *Garland v MHLG* [1968] 20 P&CR 93

Formal decision

9. For the reasons given above, and in exercise of the powers transferred to me, I hereby dismiss the appeal and uphold the enforcement notice.

K McEntee



Appeal Decision

by **Ken McEntee**

a person appointed by the Secretary of State for Communities and Local Government

Decision date: 5 December 2014

Appeal ref: APP/T4210/C/14/2220797

Land at Ainsworth Hall Farm, Ainsworth Hall Road, Ainsworth, Bolton BL2 5QT

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.
- The appeal is brought by Mr Graham Vause against an enforcement notice issued by Bury Metropolitan Borough Council.
- The Council's reference is 12/0011.
- The appellant's agents are Inspire Planning Solutions.
- The notice was issued on 12 May 2014.
- The breach of planning control as alleged in the notice is "Without the benefit of planning permission, the material change of use of the Site from agriculture to a mixed use comprising of agriculture and for the parking/storage of vehicles and plant machinery and the storage of construction materials".
- The requirements are "a) Permanently cease the use of the site for the parking/storage of vehicles and plant machinery and the storage of construction materials and associated items. b) Permanently remove from the Site all vehicles, plant machinery and construction materials and associated items. c) Break up and totally remove the hard-standing from the Site, showed hatched Blue on the attached plan, including the base layer and any foundations. d) Reinstate the Site to its former condition as agricultural land".
- The period for compliance with the requirements is "1) To complete step 5 (a) above - 30 days after the notice takes effect. 2) To complete step 5 (b) - 30 days after the notice takes effect. 3) To complete step 5 (c) above - 60 days after the notice takes effect. 4) To complete step 5 (d) - 60 days after the notice takes effect".
- The appeal is made on ground (g) as set out in section 174(2) of the amended 1990 Act.

Summary of decision: The appeal under ground (g) is dismissed and the enforcement notice is upheld.

Procedural matters

1. The Inspectorate's letter of 9 July 2014 confirmed that, because the correct fee was not paid within the specified period, the deemed application for planning permission had lapsed. The planning merits of the development cannot therefore be considered. I shall accordingly deal only with the appeal on ground (g).
2. I have considered the ground on which the appeal was made, together with the Council's statement. As these representations have been made available to the parties, I do not intend to summarise them in detail. They have been carefully considered.

The Ground (g) appeal

3. The ground (g) appeal is made on the basis that the appellant requires more time to comply with the notice in order to find an alternative site. He suggests a compliance period of 6 months in order for this to happen. The Council contend that by the time the appeal is determined the appellant will have had sufficient time to find an alternative site.

Conclusions

4. I have carefully considered all the points made during the appeal. I appreciate the appellant's desire for more time to comply with the notice in order to seek out an alternative site but this has to be weighed against the stated harm to the surrounding area caused by the unauthorised use. I am also mindful that almost 6 months have elapsed since the appeal was submitted. Therefore, as the compliance period will be again from the date of this decision, the appellant will have had nearly twice the period he has requested to comply with the notice. In view of this, there clearly does not appear to be any good reason to justify extending the compliance period further and the ground (g) appeal fails accordingly.

Formal decision

5. For the reasons given above, In view of the above, I consider it appropriate to return the control of development to the Council as soon as possible. I therefore take the view that the period for compliance of the notice is sufficient to meet its requirements.
6. Bearing all these points in mind, I do not consider that an extension of the compliance period would be justified in this case. The ground (g) appeal fails accordingly.
7. For the reasons given above, and in exercise of the powers transferred to me, I hereby dismiss the appeal and uphold the enforcement notice.

K McEntee