
Appeal Decisions

Site visit made on 20 March 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 26 April 2017

Appeal A: APP/B2355/C/16/3158284

**Land to the rear of 1222 Burnley Road (former Glory Public House),
Rawtenstall, Rossendale, BB4 8RG**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Stanley Ainsworth against an enforcement notice issued by Rossendale Borough Council.
 - The enforcement notice was issued on 5 September 2016.
 - The breach of planning control as alleged in the notice is the unauthorised commencement of engineering operations comprising of the raising of ground levels and the formation of hardstanding.
 - The requirements of the notice are:
 - i) Permanently remove all stone, compacted stone, earth, chippings, rubble and tarmac used to form the hardstanding and alterations to the ground levels.
 - ii) Restore the land back to its former natural levels.
 - iii) Seed the land back to grass so that it matches the adjoining field located to the west.
 - iv) Remove the three storage containers from the land.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Appeal B: APP/B2355/W/16/3159927

The Glory, 1222 Burnley Road, Rawtenstall, Rossendale, BB4 8RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr S Ainsworth (Ribble Valley Luxury Homes) against the decision of Rossendale Borough Council.
 - The application Ref 2016/0317, dated 19 July 2016, was refused by notice dated 29 September 2016.
 - The development proposed is the erection of 4 houses.
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Appeal A: Decision

1. It is directed that the enforcement notice be corrected in the first sentence of Section 4 by deleting all of the words after the word "occurred", and instead substituting the words "within the last four years".
2. It is directed that the enforcement notice be varied by:
 - (i) deleting all of the words in Section 5(ii) and substituting instead the words "Restore the land levels back to their condition before the breach of planning control occurred";

- (ii) in Section 5 of the notice deleting the whole of requirement (iv);
 - (iii) deleting all of the words in Section 6 and substituting instead the words "8 months".
3. Subject to the correction and variations the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: Decision

4. The appeal is dismissed.

Appeal A: (Enforcement Notice)

Procedural matter

5. Section 4 of the notice contains the reasons for issuing it. It states that the breach of planning control commenced in October 2014. While that is unambiguous the reasons for issuing an enforcement notice should specify whether the breach of planning control has occurred within the last four or ten years, so that it is clear to an appellant which period of immunity is relevant. No injustice has resulted because the appellant was notified of this matter early in the appeal process in order that an appeal on ground (d) could be considered. For completeness I shall correct the notice to refer to the four year time limit.

Appeal site and background

6. The former Glory public house (PH) is located in the countryside on the main A682 Burnley Road. The land to the rear of the PH and its car park occupy an elevated position overlooking the valley slope to the west and surrounding landscape.
7. Planning permissions¹ have been granted for the alteration and conversion of the PH and a barn to residential use, and works to implement those permissions were under way at the time of my visit to the appeal site.
8. The appeal site is defined by the red line of the enforcement notice plan. It comprises a roughly rectangular strip of land at the rear of the former PH.

Appeal A - ground (c)

9. A ground (c) appeal is that the matters alleged in Section 3 of the enforcement notice (in this case engineering operations comprising of the raising of ground levels and the formation of hardstanding) do not constitute a breach of planning control. The burden of proof in legal grounds of appeal, including ground (c), rests with the appellant, and the test of the evidence is the balance of probability.
10. Some of the comments under grounds (a) and (f) in the appellant's submitted appeal statement relate to this ground of appeal. In the interests of fairness I have also taken account of them in respect of ground (c).

¹ Council refs: 2015/0523, 2016/0317

11. The appellant refers to the storage containers sited on the land, being used temporarily in connection with the ongoing building works to the former PH. However, the siting of the containers does not form part of the alleged breach of planning control in Section 3 of the notice. It is argued that there should be no requirement to remove them. However, that argument relates to an appeal under ground (f), that the requirements of the notice are excessive, a point to which I return later.
12. It should be noted that no appeal has been made on ground (b); that the matters alleged in Section 3 of the notice have not occurred as a matter of fact. Indeed, although the appellant argues that the profile and extent of the western slope has not *unduly* or *significantly* changed, and that grassed parts of the original slope still remain, he nonetheless acknowledges² that material has been added to the slope. In support of the argument that the added material has not resulted in any significant change the appellant refers to submitted photographs³.
13. However, contrary to the appellant's view, I consider that these photographs indicate large amounts of tipped material within the red line area of the enforcement notice, and thus undermine the appellant's case. Moreover, the Council have supplied dated photographs⁴ of the site taken during officers' site inspections in November 2014, February and May 2015, and in February, July and August 2016. Taken together, I find this photographic evidence clearly shows that between November 2014 and August 2016 substantial amounts of material were tipped, spread and compacted both to the level surface and to the western slope of the appeal site, extending out into the field well beyond the former paved PH patio area. Third party photographs⁵ also support my finding in this matter.
14. The appellant refers to reported comments of the Council Leader in the minutes of a local community group meeting in respect of whether a change of use had occurred⁶. However, this does not affect my finding that significant engineering operations have taken place over a period up to August 2016 as I have described.
15. On the balance of all the evidence I consider that these are undoubtedly significant engineering operations and constitute development within the meaning of section 55 of the Act, and for which planning permission is required but has not been granted. Since no planning permission exists for the development as I have previously described it constitutes a breach of planning control as defined by section 171A(1) of the Act.
16. The appeal on ground (c) therefore fails.

Appeal A - ground (a)

17. An appeal on this ground is that planning permission should be granted for the breach of planning control as alleged in Section 3 of the notice.

² Appellant's statement page 6, and Final Comments page 9, paragraph 2 (comments in blue)

³ Appellant's statement, pages 7 and 8

⁴ Council's appendices B to G

⁵ Letter from Limey Valley Residents Association - photographs 2 and 3.

⁶ Limey Valley Residents Association meeting 09.03.2015

18. The appellant's case is that although material has been added to the existing batter to the car park it has not changed its character and appearance to any great extent.
19. However, I have already found that substantial amounts of material were tipped, spread and compacted to the level surface of the site, and to the western slope extending out into the field well beyond the former paved PH patio area. In addition to the photographic evidence referred to already, I was able to see the effect of this development from within the site and also from a number of vantage points within the public realm, including from within the Loveclough Fold Conservation Area.
20. From the evidence before me and from my own observations of the site and its surroundings, I consider that the land has clearly been urbanised, harmfully detracting from its more open and rural character and appearance and its contextual relationship with the field to the west and the surrounding countryside.
21. As such, I find that the development results in unacceptable harm to the character and appearance of the area in conflict with the requirements of Policies 1, 18, 23 and 24 of the Rossendale Core Strategy Development Plan Document (2011) which, taken together, seek to ensure that developments are of the highest standard of design, and which respect and respond to local context, distinctiveness and character, and which avoid harmful impacts including harm to landscape character.

22. The appeal on ground (a) therefore fails.

Appeal A - ground (f)

23. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary.
24. However, when a ground (f) appeal is made it is essential first to understand the purpose of the notice. Section 173(4) (a) and (b) of the Act provide that the purpose is (a) to remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach.
25. The breach is the carrying out of engineering operations comprising of the raising of ground levels and the formation of hardstanding. Since the requirements in Section 5 of the (corrected) notice require the complete removal of the development carried out and restoration of the land, the purpose of the notice clearly falls within section 173(4)(a); to remedy the breach of planning control that has occurred.
26. Given that the purpose of the notice is to remedy the breach of planning control, the requirements of the notice should go no further than achieving that remedy. The appellant argues that a requirement of simply covering the slope with soil and seeding and removing any material above the surface level of the car park would be more effective in achieving the aims of the Council. However, in terms of the purpose of the notice that would not remove all of the material that has been laid and hence would not fully remedy the breach of planning control.
27. I consider that the term 'natural' in requirement (ii) is somewhat imprecise. Since the appellant carried out the breach of planning control, and therefore is

best placed to know precisely how much and where material was laid, I consider that requirement (ii) would be more fairly and unambiguously expressed in terms of going no further than remedying the breach. Moreover, if the Council later consider they have sufficient evidence to prove that there has been a failure to comply with the requirement they could take further legal action. I shall therefore vary requirement (ii) to require that the land levels be restored to their condition before the breach of planning control occurred.

28. The Council confirm in their evidence⁷ that the requirement at Section 5(iv) of the notice to remove the storage containers is simply in order to facilitate compliance with requirements (i) to (iii). However, the binding obligation of requirement (iv), as drafted, requires the appellant to remove the storage containers from the land permanently, and any failure to comply with that requirement holds legal implications for a landowner regardless of whether or not the Council chose to pursue the matter.
29. Notwithstanding the above, and as I mentioned previously, the siting of the storage containers does not form part of the alleged breach of planning control in Section 3 of the notice. Their removal is therefore an excessive requirement in terms of remedying the breach of planning control. I shall therefore vary the notice by deleting requirement (iv). It should be noted that deleting requirement (iv) does not prevent the other notice requirements from being complied with where their full compliance necessitates the containers to be re-positioned.
30. To conclude, I am satisfied that the notice can be varied as described using powers available to me under section 176(1) of the Act without resulting in injustice to either party. The appeal on ground (f) therefore succeeds to the limited extent I have set out above and I have varied the notice accordingly.

Appeal A - ground (g)

31. The ground of appeal is that the period for compliance falls unreasonably short of what should be allowed.
32. Given the extent, order and timing of remedial works required to be undertaken I consider in all the circumstances that a period of eight months would be more reasonable. Therefore, the appeal on ground (g) succeeds and I have varied the notice accordingly.

Section 78 appeal - Appeal B

33. The appeal site in appeal B is to the north of the former Glory PH building and is defined by the red line of the location plan in the refused application⁸.

Procedural matter

34. Following the Council's refusal of planning permission, and as part of the appeal process, the appellant submitted a revised alternative proposed site plan⁹. It differs slightly from the refused one by showing the existing steps down into the site from Burnley Road as being retained in their current form, and the relocation of two of the 16 proposed car parking spaces to the

⁷ Council's statement, pages 10-11

⁸ Council application reference 2016/0317

⁹ Proposed site plan dated September 2016

side/rear of the northern-most proposed dwelling. The Council received the revised plan in time to consider it before responding to the appeal. I have therefore taken account of it in reaching my decision.

Main Issues

35. Having regard to the Council's reasons for refusal and to all other evidence before me I consider the main issues in this appeal are:

- (i) the Borough's housing land supply position and its policy implications; and
- (ii) whether the proposed development would be sustainable having particular regard to: its effect on the character and appearance of the area, the stability of the retaining wall along Burnley Road, the availability of turning space within the site for refuse collection vehicles, and cycle storage provision.

Reasons

(i) *Housing land supply position and its policy implications*

36. The objective of paragraph 47 of the Framework¹⁰ is to boost significantly the supply of housing.

37. Where a local planning authority is unable to demonstrate a five year supply of deliverable housing sites, paragraph 49 of the Framework indicates that relevant policies for the supply of housing should not be considered up-to-date, and that housing applications should be considered in the context of the presumption in favour of sustainable development at paragraph 14. With regard to this matter there is no disagreement between the main parties that following the most recent analysis of housing supply in the Borough, there is currently less than a five year supply of deliverable housing sites. I therefore apply the presumption at paragraph 14 in reaching my decision.

38. The Framework also acknowledges as a core planning principle that in determining planning applications the intrinsic character and beauty of the countryside should be recognised (paragraph 17). Thus the Framework does not provide a 'green light' for wholesale development of the countryside, but rather it provides a more flexible strategy for prioritising housing development while controlling any development in the countryside appropriately.

39. Policy 18 of the Council's Core Strategy¹¹ (CS) does not, as the appellant argues, constrain housing supply. I come to this conclusion on the basis that it specifically states it seeks to: avoid any *harmful impacts of development*; that *development proposals* should safeguard and enhance landscape character; and that where *negative effects are unavoidable, suitable measures will be required to mitigate any negative impacts*. It is clear to me that the policy wording allows for all types of development in the countryside, including housing, but at the same time seeks to avoid or minimise any harmful impacts on landscape character.

40. Thus having regard to the Judgment¹² referred to by the appellant, I consider that CS Policy 18 does not "*bear upon the principle of the site in question being*

¹⁰ National Planning Policy Framework (2012)

¹¹ Core Strategy Development Plan Document: The Way Forward (2011-2026) – adopted 2011

¹² *Suffolk Coastal v Hopkins Homes Limited, Richborough Estates Partnership LLP v Cheshire East Borough Council*

developed for housing”, but rather it reflects the flexible strategy of the Framework I have outlined in paragraph 38 above. CS Policy 18 is not therefore a relevant policy for the supply of housing and I attach full weight to it in reaching my decision.

41. CS Policy 23 promotes high quality design and spaces by, amongst other requirements, ensuring that developments are of the highest standard of design that respects and responds to local context, distinctiveness and character. CS Policy 24 also seeks, amongst other matters, to ensure that developments are compatible with their surroundings. These policies also reflect the over-arching aims and objectives of the Framework and I attach full weight to them.

(ii) Whether the proposed development would be sustainable

Character and appearance

42. The appeal site occupies the hard-surfaced car park to the former PH, it being located well below the level of Burnley Road and separated from it by the stone boundary wall. Vehicular access into and out of the site would be from the existing access. A pedestrian only access would be from existing steps or from re-configured steps in the same location at the southern end of the site. Although the appeal site is at a lower level, the upper storey and roof ridge of the dwellings would project to the eaves level of the existing adjacent former PH buildings.
43. The proposed terrace of 4 two storey houses would extend the existing built form northwards, partially infilling a large open gap on the western side of Burnley Road between the former PH and the nearest housing to the north. It would also be sited substantially further back (west) than the rear wall of the PH and barn conversion. As such it would extend built development further north and further west into the rural landscape than currently exists along this length of Burnley Road. Given the limited built development along this side of the road and the scale and massing of the proposal, I consider that the terrace would be prominently visible from public vantage points at close and longer distances and would diminish the quality of the relatively open and attractive landscape vista. It would thereby result in significant harm to the character and appearance of the natural rural landscape.
44. I acknowledge that the terrace of houses would be built using traditional materials, and which could be secured by planning conditions. However, the finished detailed appearance would not mitigate the significant harm I have identified resulting from the scale and massing of the development encroaching prominently into the open rural landscape. The use of the appeal site as a level car park and access to the existing development does not result in any significant loss of openness and harm to the character and appearance of the area. In this regard, I am not persuaded that the appellant’s fear in respect of future ongoing maintenance of the car park justifies the proposed development and the significant harm I have described that would result.
45. I have considered the use of landscaping (the remaining reserved matter) and the suggested planning conditions. However, they would not overcome the harm I have previously identified.

46. The appellant also refers to the approved development for ten houses on the car park adjoining Loveclough WMC on Commercial Street. However, the material considerations in that case are not identical to those in this appeal. Moreover, that development would not result in the significant harm I have identified in respect of this appeal. It thus does not set a precedent or add weight to allowing the appeal.
47. For these reasons I conclude that the proposal would result in significant harm to the character and appearance of the area in conflict with the provisions of the Framework and with CS Policies 18, 23 and 24.

The retaining wall, turning space, and bicycle storage provision

48. I see no reason why the proposed development would result in any significant risk to the stability of the retaining wall, particularly so having regard to the revised site plan which indicates that the existing steps would be retained in their current form. This matter could be adequately controlled through the imposition of a planning condition requiring implementation of works in accordance with details to be prior approved by the Council.
49. From the submitted plans and from my own observations there appears to be sufficient manoeuvring space for refuse and other large vehicles visiting the site, and there is no convincing contrary evidence before me which would lead me to conclude otherwise. Given these circumstances this matter could also be controlled through a condition precedent requiring prior approval of a plan demonstrating the accessibility of the site for such vehicles.
50. In the interest of delivering a sustainable form of development, bicycle storage facilities for each dwelling are necessary to encourage less use of the motor car. The proposed plots, having only very short front forecourts, do not in my view provide adequate space at the front to incorporate such a provision. Consequently, occupiers of the middle two proposed houses would be compelled to store bicycles within the house, or take them through the house from the rear garden. I consider that scenario would be unlikely to encourage bicycle use.
51. However, the lack of adequate bicycle storage provision is not, by itself, sufficient reason for dismissing the appeal, but it does add a further degree of weight against allowing the appeal in addition to the significant harm I have found that would result to the character and appearance of the area.

Conclusion

52. As I set out previously, the presumption in favour of sustainable development at paragraph 14 of the Framework is engaged. The key issue in this appeal therefore is whether the adverse impacts resulting from the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
53. The Framework sets out three inter-linked dimensions to sustainable development; social, economic and environmental.
54. In social terms the proposal would provide four additional dwellings to the housing stock which is currently under-supplied. In my view even this modest contribution is a positive benefit in meeting the need for housing, and also

relieving pressure on the Green Belt. I attach due weight to it in support of the appeal.

55. In economic terms, the proposal would provide construction jobs, albeit temporary, and would result in a modest increase in the economically active population with increased household expenditure, some of which is likely to be spent on local services. This also adds weight in support of the appeal.
56. In environmental terms, in support of allowing the appeal, the appeal site is located close to public transport links providing access to nearby centres for services and facilities. However, I have found that there would be significant harm resulting from the effect of the development on the character and appearance of the area. This is an adverse impact to which I attach substantial weight.
57. In carrying out the balancing exercise set out in paragraph 14 of the Framework, I conclude that the adverse environmental impacts of the development significantly and demonstrably outweigh the social and economic benefits, and thus it is not a sustainable form of development overall when assessed against the policies in the Framework taken as a whole. Planning conditions would not overcome or satisfactorily mitigate that harm. As such, it also conflicts with CS Policies 18, 23 and 24 and the Development Plan as a whole.
58. For all the above reasons, I conclude that the appeal should be dismissed.

Thomas Shields

INSPECTOR