



Appeals Received and Decisions Made

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Appeal Decisions

Proposed Telecommunications Site Slaidburn Crescent Southport

Reference: DC/2023/01727 (APP/M4320/W/24/3336617)

Prior notification procedure for the erection of 1 No. 20m

monopole with 6 No. apertures mounted at 18.65m, 4 No.

600mm dishes at 14.65m, the installation of 5 No. cabinets

and ancillary apparatus.

Procedure: Written Representations

Start Date: 14/03/2024

Decision: Allowed

Decision Date: 03/06/2024

100 Guildford Road Birkdale Southport PR8 4JZ

Reference: DC/2021/01740 (APP/M4320/X/24/3336597)

Certificate of Lawfulness for the shed in the rear garden of the

dwellinghouse.

Procedure: Informal Hearing

Start Date: 16/01/2024

Decision: Dismissed

Decision Date: 17/05/2024

100 Guildford Road Birkdale Southport PR8 4JZ

Reference: DC/2023/00228 (APP/M4320/W/24/3336615)

Erection of a detached dwellinghouse to the side garden area

with a new access to Shaw's Road.

Procedure: Informal Hearing

Start Date: 16/01/2024

Decision: Dismissed

Decision Date: 17/05/2024

Caravan Park 105 Rock Lane Melling L31 1EW

Reference: EN/2023/00234 (APP/M4320/C/23/3326585)

Appeal against without planning permission, the material

change of use of the land from use as grassed open space to

the laying of additional hardstanding to form an extended

gypsy/traveller caravan site.

Procedure: Informal Hearing

Start Date: 26/07/2023

Decision: Quashed

Decision Date: 16/05/2024

Land West Of Rock Lane Rock Lane Melling

Reference: DC/2022/02372 (APP/M4320/W/23/3326544)

Change of use of land to form extended gypsy/traveller

caravan site, including the stationing of 12 caravans for

residential purposes, of which no more than 8 shall be static

caravans/mobile homes (maximum 8 pitches) and the laying

of additional hardstanding (part retrospective).

Procedure: Informal Hearing

Start Date: 26/07/2023

Decision: Allowed

Decision Date: 16/05/2024

Appeals received and decisions made between [16 May 2024](#) and [09 June 2024](#)

New Appeals

[Land To East Of A565 Formby Bypass](#) [Formby L37 7HN](#)

Reference: DC/2023/02092 (APP/M4320/Z/24/3341533)
Advertisement consent for the display of 2No. non-illuminated
hoarding signs

Procedure: Fast Track Appeal

Start Date: 23/05/2024

Decision:

Decision Date:



Appeal Decision

Site visit made on 7 May 2024

by Helen B Hockenhull BA(Hons) BPI. MRTPI

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

Decision date: 03 June 2024

Appeal Ref: APP/M4320/W/23/3336617

Bells Healthcare, Slaidburn Crescent, Southport, Merseyside, PR9 9YF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by MBNL against the decision of Sefton Council.
 - The application Ref DC/2023/01727, dated 2 October 2023, was refused by notice dated 24 November 2023.
 - The development proposed is the installation of 1 no. 20 metre monopole with 6 no. apertures mounted at 18.65 metres, 4 no. 600mm dishes at 14.65 metres, the installation of 5 no. cabinet and ancillary equipment.
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Decision

1. The appeal is allowed, and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), for the siting and appearance of the proposed installation of 1 no. 20 metre monopole with 6 no. apertures mounted at 18.65 metres, 4 no. 600mm dishes at 14.65 metres, the installation of 5 no. cabinet and ancillary equipment on land at Bells Healthcare, Slaidburn Crescent, Southport, Merseyside, PR9 9YF in accordance with the application ref DC/2023/01727 and the plans submitted with it including 002 Location plan, 215 Proposed Max Configuration Site Plan, 265 Proposed Max Configuration Elevation A.

Preliminary matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
3. The Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023. Whilst I have had regard to the revised Framework, the issues most relevant to this appeal remain unaffected by the revisions. I am therefore satisfied that there is no requirement to seek further submissions on this matter, and that this would not disadvantage any party. For correctness, I have used the 2023 Framework paragraph references.

4. The provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. I have had regard to the Framework, and the policy referred to in the reason for refusal, Policy EQ2 of the Sefton Local Plan, in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issue

5. The main issue in this case is the effect of the siting and appearance of the proposed installation on the character and appearance of the area, and if any harm would occur, whether this is outweighed by the need for the installation to be sited as proposed, taking into account any suitable alternatives.

Reasons

6. The appeal site is located within an existing industrial estate and forms an area of grassland with three mature trees near to the entrance to Bells Healthcare. The area is fenced off by palisade fencing and there is an existing substation immediately to the north.
7. The site lies approximately 20 metres from an existing 20 metre high telecommunications mast. The Council have raised concern that should the appeal be successful, the existing mast would remain. Cumulatively the two masts would cause harm to the character and appearance of the area. As the existing mast lies outside the 'red edge' of the application boundary for this appeal on private land, it would not be possible to impose a condition requiring the mast's removal.
8. The appellant has confirmed that they have been given Notice to Quit the existing site and therefore need to find a new location. A copy of the Notice has been provided in the appeal submission. The new mast would form a replacement to the existing one but would be upgraded to 5G.
9. The appellant points out that, whilst the basis of the planning permission for the existing mast is unclear, it is likely to have been granted permission by the General Permitted Development Order 1995 (GDPO) so that the structure would be subject to a condition that it has to be removed when it is no longer required.
10. On the basis of the evidence before me, I am satisfied that on the balance of probabilities, the existing mast would be removed when the new one becomes operational.
11. Turning to the proposed structure itself, it would be the same height as the existing mast but would include more equipment. The area is characterised by large industrial warehouses many with prominent signage and there are a number of lighting columns close to the site. The mast would be seen in the backdrop of the existing warehouse buildings and would not be directly overlooked by residential properties.
12. The proposal includes five ground-based equipment cabins, which, whilst they are included in the appeal proposal for completeness, would form permitted development under Class A of Part 24, Schedule 2 of the GDPO. Nevertheless, they would be set back behind the existing palisade fence which would provide an element of screening.

13. In this context, I consider that the proposal would not form an intrusive or dominant feature. It would cause no harm to the character and appearance of the area. The proposal therefore complies with Policy EQ2 of the Sefton Local Plan which promotes high quality design.
14. I note that the appellant has provided evidence of alternative sites considered. These have been rejected for a variety of reasons including the width of the pavement, existing street furniture and trees as well as proximity to residential properties. The Council queries the robustness of this exercise as no information is provided on the possibility of mast sharing on other structures or buildings. However, in light of my conclusion above, that the appeal proposal causes no harm to local character, it is not necessary for me to consider this matter further.

Conditions

15. The Order does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it. These specify that the development must be carried out in accordance with the details submitted with the application, begin within 5 years of the date of the approval and be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.

Conclusion

16. Paragraph 118 of the Framework states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communication networks, including next generation mobile technology (such as 5G).
17. For the reasons given above, I find that the proposal would cause no harm to the character and appearance of the area and therefore the appeal should be allowed, and prior approval should be granted.

Helen Hockenhull

INSPECTOR



Appeal Decisions

Hearing held on 17 April 2024

Site visit made on 17 April 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2024

Appeal A Ref: APP/M4320/X/24/3336597

100 Guildford Road, Birkdale PR8 4JZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Chris Wright of Melford Construction Ltd against the decision of Sefton Metropolitan Borough Council.
- The application ref DC/2021/01740, dated 4 July 2021, was refused by notice dated 14 October 2021.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is described as 'the erection of a garden shed for the benefit of 100 Guildford Road, further details within the submitted cover letter'.

Appeal B Ref: APP/M4320/W/24/3336615

100 Guildford Road, Birkdale, Sefton PR8 4JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Chris Wright of Melford Construction Ltd against the decision of Sefton Metropolitan Borough Council.
- The application Ref is DC/2023/00228.
- The development proposed is the erection of a detached dwellinghouse to the side garden area with a new access to Shaw's Road.

Decisions

1. Appeal A and Appeal B are dismissed.

Appeal A

Background

2. The appeal concerns land and a garden shed located on the corner of Guildford Road and Shaw's Road. There have been two previous planning applications, references DC/2020/02370 and DC/2021/00405, for the erection of a detached dwelling on the land, both refused based on harm to the living conditions of the occupants of 119 Shaw's Road in respect of outlook.

Reasons

3. Section 191(2) of the 1990 Act states that uses are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

4. On an application made under section 191 of the Act, the time to consider whether a use is lawful is at the time of the application (section 191(4)). The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
5. The development is the erection of a garden shed. Article 3(1) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants planning permission for the classes of development set out in Schedule 2 to the Order. It includes, at Part 1, Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such.
6. The Council accepts that the proposed building would comply with all the limitations set out in E.1., E.2. and E.3. and I have no reason to conclude otherwise.
7. The main issue in this case is whether the Council's decision to refuse to grant a lawful development certificate was well-founded, with the dispute centred on whether the garden shed is within the curtilage of the dwellinghouse and reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.

Curtilage

8. The Council do not dispute that the land where the shed is sited, was formerly part of the curtilage to 100 Guildford Road, nor do they consider that there has been a material change of use or new planning unit created. Their case is that in fencing off the land, the functional link with the house was lost, such that it no longer formed part of the curtilage. In support they referred to a comment in a design and access statement that the site was 'formerly part of the side garden to 100 Guildford Road'.
9. There is no statutory definition of 'curtilage', which does not describe a use of land but defines an area of land in relation to a building. The courts have considered the issue of curtilage many times. The term generally refers to land which serves the purpose of a building in some reasonably necessary or useful manner.
10. As established, there are three factors to be taken into account when determining whether land constitutes curtilage, these include the physical layout of the building and attached land, the ownership, past and present; and their use or function; past and present.
11. Whether or not land falls within the curtilage of a building is a matter of fact and degree to be considered on a case-by-case basis and thus primarily a matter for the decision maker. What is also apparent is that the relevant date on which to determine the extent of the curtilage is the date of the LDC, but this involves considering both the past history of the land and how it is laid out and used at the time of the application.
12. Shortly after purchasing the house the appellant erected an internal fence between those areas of the curtilage around the house and that to the side. The appellant explained that they purchased No.100 with the intention of developing the land to the side of the house for an additional dwelling and that

they erected the fence to demonstrate how the land could be divided. The land was divided in this way for around two months.

13. The appellant explained that during consideration of the first planning application for a dwelling (DC/2020/02370), they became aware the process may not be as straightforward as anticipated and therefore decided to rent out the house which was unoccupied. They removed internal fence panels toward the rear of the land, so that the land could be accessed and used by the tenants.
14. It is possible for the extent of curtilage to change, and evidently the appellant aspires to build a dwelling on the land, erecting the fence and clearing vegetation being part of that process.
15. However, since the house was not occupied when the fence was erected, none of the land surrounding the house was in use as garden or for domestic purposes at that time. Whilst the land where the shed is sited, was physically and functionally separated from the remaining curtilage, and notwithstanding the appellant's intentions, in my view its status as curtilage could not have been 'lost' in such a short period, particularly in the absence of an intervening or material change of use.
16. I saw that the land has a typical garden appearance with areas laid to grass and paving, with gravel areas close to the shed and importantly, at the time of the application the land was accessible from and used as garden to No.100.
17. Therefore, I am satisfied that, as a matter of fact and degree, the land where the shed is sited is within the curtilage of the dwellinghouse for Part 1 purposes.

Incidental

18. In the case of *Emin V SSE [1989] JPL 909*, referred to in the counsel advice, it was held that, to attract the planning permission granted by the Order, the erection or construction of a building must be required for a purpose incidental to the enjoyment of a dwellinghouse as a dwellinghouse and not for extraneous purposes. Moreover, it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse and answer the question as to whether the building is genuinely and reasonably required or necessary to accommodate the use and thus achieve that purpose. The test of incidental must retain an element of objective reasonableness and it should not be based on the unrestrained whim of the occupier.
19. The appellant stated that the shed is used by the occupants of No.100, and images submitted with the application show the shed in use for the storage of foldable chairs, bikes, footballs, and other domestic paraphernalia. I consider and the Council does not dispute that such a use would be incidental to the enjoyment of the dwellinghouse.
20. The Council's case is that the shed was erected to obscure views from the kitchen window in the neighbouring No.119 and therefore, its erection was not solely for a purpose/s incidental to the enjoyment of the dwellinghouse.
21. The appellant acknowledged that the shed was erected to demonstrate what could be erected on the land but argued the motivation for its erection is not relevant in considering whether it constitutes permitted development.

22. It is apparent from the Council's officer report in respect of the first planning application that the applicant was made aware of concerns about the impact of the proposal on the living conditions of the occupants of No.119. Drawings were subsequently submitted showing what, in their view, could be built as permitted development. Furthermore, it is stated that during the determination period a steeply pitched building was erected 'in order to demonstrate that the harm arising from this application will be less than as 'exists''.
23. Indeed, the appellant's submissions in respect of Appeal B, refer to the shed screening the proposal from the kitchen window at No.119, precluding any impact on the existing neighbouring dwelling.
24. The shed has an unusually steep pitched roof, which combined with its siting, significantly obscures views from the kitchen window in No.119. In my view, the design and siting illustrate the purpose for which the shed was provided, which was to essentially block views from the kitchen window at No.119, in an attempt to overcome the Council's only reason for refusing permission for a dwelling on the land.
25. The appellant couldn't recall whether the house was occupied when the shed was provided. Whilst not determinative, comments from the neighbour that they have not seen anyone use the shed, but have seen the garage used, reinforce my view regarding the purpose and requirement for the shed.
26. On the particular facts of this case, although it appears that the shed at the time of the application was in use for a purpose which would be considered incidental to the enjoyment of the dwellinghouse, the shed was not provided for that purpose. Its purpose was to obstruct views from the kitchen window in No.119. It was not genuinely and reasonably required for purposes incidental to the dwellinghouse as such.
27. The evidence does not show, on the balance of probabilities, that the shed was reasonably required for a purpose incidental to the enjoyment of the dwellinghouse. The development does not, therefore, constitute permitted development by virtue of Schedule 2 Part 1 Class E of the GPDO. It follows that I consider the Council's decision to refuse to grant a lawful development certificate was well-founded.

Appeal B

Main issue

28. The main issue is the effect of the proposed development on the living conditions of the occupants of 119 Shaw's Road with particular regard to outlook.

Reasons

29. The proposed dwelling would front Shaw's Road and broadly follow the front building line of No.119 but would have a slightly lower eaves and ridge height. It would be sited to the other side of the shed, subject of Appeal A, which is near the shared boundary with No.119.
30. The kitchen at No.119 is a galley style kitchen with a window above the sink and at the end of the kitchen through an archway (which is about the size of a single internal door, but without a door fitted) is a modest extension with

- windows and French doors overlooking the rear garden. The window above the sink, is the only and therefore primary window to the kitchen and provides the main outlook for the room when standing at the sink and adjoining worktops.
31. In my view, the importance of the kitchen window to the occupants of No.119 is significant, particularly since views out over the rear garden are not easily appreciable when carrying out tasks in the kitchen.
 32. The Council's SPD¹ sets out that the minimum distance between a ground floor habitable room window and a two-storey blank wall should be 12m. It goes on to set out the circumstances where a proposal *might* [my emphasis] be considered acceptable if these standards cannot be met, including where the local area is characterised by lesser distances between properties and it is not possible to meet the interface distances, and where there would be no significant harm to the living conditions of existing or future residents.
 33. The distance between the kitchen window and the proposed dwelling would be around 7.4m, a relatively significant shortfall from the 12m set out in the SPD. Whilst the outlook from the window is towards the relatively tall boundary treatment, the proposal would result in close-range views of a blank wall, which together with the mass of development, would have an unacceptable overbearing impact on the outlook from the kitchen window. This would cause significant harm to the living conditions of the occupants of No.119.
 34. I acknowledge that there had previously been established vegetation on the boundary with No.119 however, it seems there would have been some views over the fence and to the sky beyond. Moreover, vegetation does not have the same dominant effect as a solid wall. Accordingly, whilst it could be replanted it would not have the same harmful effect as the appeal proposal.
 35. The appellant stated that the local area is characterised by lesser distances between properties, in particular referring to 74 and 76 Shaw's Road, where the distance between a side kitchen window and the neighbouring property is as low as two metres, which I saw. However, whilst I saw several properties with lesser separation distances, this does not provide justification for development that would cause significant harm to the living conditions of existing occupants.
 36. The appellant provided details of a planning permission, granted by the Council for two dwellings at 90 Roe Lane. That development included single storey elements close to the boundaries, with two storey elements closer to habitable room windows in neighbouring houses, than in the appeal proposal. In response, the Council stated that the side windows in the neighbouring houses were not primary windows. A photograph submitted by the appellant shows the kitchen arrangement inside 88 Roe Lane. The kitchen diner in that case is a single room, served by a side window, French doors and what appears to be a further window overlooking the rear garden, unlike No.119 where the French doors are through an archway, effectively in another room. The circumstances are not therefore directly comparable and do not provide justification for the appeal proposal.
 37. The Council stated that if the shed were found to be lawful that their reason for refusal would effectively lapse. However, whilst the shed does significantly

¹ Sefton Council New Build Homes Supplementary Planning Document May 2023

obscure views from the kitchen, it is much smaller than the proposed dwelling, which would have a greater depth and height than the shed. The proposed dwelling would still therefore have an overbearing impact on the outlook from No.119. Accordingly, even if I had found the shed to be lawful, its existence would have been a matter of limited weight and would not have outweighed my findings.

38. The proposal would result in significant harm to the living conditions of the occupants of No.119, with regard to outlook. It is therefore contrary to Policies HC3 and EQ2 of A Local Plan for Sefton Adopted April 2017 (Local Plan) which state that residential development will be permitted where consistent with other Local Plan Policies and require development to protect the amenity of those adjacent to sites. It would also conflict with the aims of the National Planning Policy Framework (Framework) which seeks to ensure a high standard of amenity for existing and future users, and the Council's SPD.

Other matters

39. There would be modest benefits associated with the provision of an additional dwelling, although I have no information to suggest that the Council does not have a deliverable five-year housing land supply. The appellant stated that the plot would be suitable for a self-build opportunity, and there would be modest social and environmental benefits in providing an extra housing unit in a sustainable location by making an effective use of land, as well as economic benefits associated with the construction of a dwelling and from the additional support to the vitality of the local community from the future occupants of the dwelling.
40. However, the harm to the living conditions of neighbouring occupants means that the social objective of sustainable development would not be achieved. Accordingly, the proposed development would not represent sustainable development for which Policy SD1 of the Local Plan and the Framework presumes in favour.

Conclusions

Appeal A APP/M4320/X/24/3336597

41. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the erection of a garden shed for the benefit of 100 Guildford Road was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Appeal B APP/M4320/W/24/3336615

42. The proposal conflicts with the development plan and the advanced considerations do not indicate that a decision should be made other than in accordance with the development plan. The appeal is therefore dismissed.

Felicity Thompson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Chris Cockwill Agent
Chris Wright Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Neil Mackie Senior Planning Officer

INTERESTED PARTIES:

Mrs McCaffrey Occupant 119 Shaw's Road



Appeal Decisions

Hearing Held on 16 April 2024

Site visit made on 16 April 2024

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2024

Appeal A: APP/M4320/C/23/3326585

Land west of Rock Lane, Melling L31 1EW

- 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 Mrs Marion Doherty against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 27 June 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the land from use as grassed open space to the laying of additional hardstanding to form an extended gypsy/traveller caravan site.
- The requirements of the notice are "You must cease the use of the land as an extended gypsy / traveller caravan site, remove the hardstanding and reinstate the land to its previous condition by topsoiling and turfing the land."
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended (the Act). 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.

Summary of Decision: The appeal is allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Appeal B: APP/M4320/W/23/3326544

Land west of Rock Lane, Melling L31 1EW

- 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 Mrs Marion Doherty against the decision of Sefton Metropolitan Borough Council.
- The application Ref DC/2022/02372, dated 16 December 2022, was refused by notice dated 28 April 2023.
- The development proposed is Change of use of land to form extended gypsy/traveller caravan site, including the stationing of 12 caravans for residential purposes, of which no more than 8 shall be static caravans/mobile homes, and the laying of additional hardstanding.

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out below in the Formal Decision.

Preliminary Matters

Planning History

1. These appeals relate to an existing Gypsy and Traveller site which in broad terms is situated between, and a relatively short distance from, the settlements of Maghull to the north and Melling to the south. It is situated on land between

Rock Lane to the east and the Leeds and Liverpool canal to the west. To the south of the site is Brewery Lane and further to the north is an outlying cluster of residential properties.

2. Planning permission was previously granted on appeal for the “change of use of the site for residential purposes including the siting of caravans” and also for “engineering works including the importation of hardcore to create a hardstanding area.”¹ This followed the service of enforcement notices by the Council for the same.
3. The land affected by the original material change of use allegation was identified on the plan attached to the relevant notice. That site comprised a rectangular area extending southwards as far as Brewery Lane. However, at the time, the caravans were actually sited within a smaller portion of this land at the northern end of the site.
4. The extension targeted by the present notice comprises a parcel of land immediately to the south of the area where caravans were originally sited, but nevertheless still within the larger site area covered by the previous notice and material change of use permission.

The Enforcement Notice

5. At the Hearing the parties agreed that corrections were required to Section 2 of the notice to delete superfluous wording in the site address, and to Section 3 of the notice to better describe the alleged material change of use breach of planning control. I am satisfied that these corrections can be made without resulting in injustice to either party.

Appeal A on ground (c)

6. The appeal is that there has not been a breach of planning control. The appellant’s case is that the planning permission previously granted for the material change of use for residential purposes, including the siting of caravans, included the land targeted by the present notice. Accordingly, the appellant says that a further planning permission for the residential use of the land is not required in relation to the expansion of caravan siting within this part of the site. Furthermore, they say that a planning condition, restricting where caravans could be sited, was not imposed by the previous Inspector. Consequently they say there has not been a breach of planning control.
7. The Council maintains that a breach of planning control has occurred. It refers to a condition attached to the previous Inspector’s decision requiring the removal of hardstanding and site restoration in the event that the residential use ceased. It says because the area of hardstanding in question was identified on a plan attached to the decision as not including the presently targeted area, and because the Inspector’s reasoning specifically excluded consideration of hardstanding within the area presently targeted by the notice², this demonstrates the limited extent of the use permission that the Inspector had in mind. Furthermore it refers to an approved drawing submitted by the appellant in relation to the discharge of a condition imposed which shows the siting of caravans.

¹ Appeal references APP/M4320/C/20/3258166 & APP/M4320/C/20/3258167

² As set out in the Inspector’s deliberations at paragraphs 8 and 9 of the decision letter.

8. I have reviewed the previous Inspector's decision letter and reasoning. I concur with the view that there is nothing to support the position that planning permission was previously granted for operational development comprising hardstanding within the area targeted by the present notice. Such development would therefore require planning permission.
9. However, the present enforcement notice does not allege operational development, rather a material change of use. I am in no doubt that the original deemed planning application for the material change of use to residential, and accordingly the planning permission granted, related to the more extensive area of land which included the appeal site targeted by the present notice. Furthermore, whilst the conditions imposed by the previous Inspector required certain details to be agreed by the Council, this did not include the siting of caravans within the area where the residential use was permitted. Conditions were imposed to restrict the overall number of pitches and caravans on the site. However, there is no suggestion that the expansion of the site, as alleged, has resulted in there being more pitches and caravans on the site than were permitted by the previous permission.
10. I therefore conclude that, on the balance of probability, the use of the area targeted by the present enforcement notice as an 'extended' caravan site would not have required express planning permission. The laying of additional hardstanding, though facilitating the siting of caravans, does not in itself trigger the material change of use of land. The fact that a planning application was made which included material change of use, which is the subject of Appeal B, does not alter this conclusion. The ground (c) appeal therefore succeeds and the notice will be quashed.

Appeal B

Appeal B Preliminary Matters

11. The Appeal B site area includes the northern part of the site that was subject to the original deemed planning application and permission as referred to above. It includes the originally developed northern most part of the site and the area immediately to the south of this that was targeted by the notice to which Appeal A relates.
12. I have concluded above that planning permission has already been granted for the material change of use of the site for residential purposes including the siting of caravans. This permission would include the extended caravan site as proposed, and the stationing of a maximum 12 caravans (of which 8 would be static caravans).
13. Because the principle of the change of use has already been established, my decision therefore focuses on the merits of the additional hardstanding area, which has not already been approved as part of the original permission. However, notwithstanding the permitted use of the site, I am mindful that the hardstanding proposed plays a significant role in facilitating that use. Without the proposed hardstanding, any caravans within the southern portion of the Appeal B site would need to be sited on grass or bare ground, which could make the use of that area as a caravan site very difficult and therefore unattractive in practice. I am not persuaded that without the facilitating

hardstanding the siting of caravans in the same location would definitely go ahead³.

14. Therefore my approach is to consider the merits of the hardstanding, both in its own right and as a means of facilitating the permitted caravan site use.
15. At the Hearing the appellant set out that there was unmet need for sites in the Borough, that was not at present being addressed by the Council, in terms of a shortfall in the supply of deliverable sites. They also assert the personal circumstances of the extended family in support of the present application.
16. I acknowledge that the boundary of the appeal site includes the area where planning permission was granted by the previous Inspector for 8 pitches and up to 12 caravans. Therefore, even if the present appeal were to be dismissed, that permission would be unaffected. Accordingly it would make no difference to the availability of pitches for Gypsy and Traveller need, and would not take away a settled base for the extended family currently residing on the site. I am mindful that the need for sites and the personal circumstances of the site occupiers were matters considered in the planning balance which led to the previous Inspector granting planning permission.
17. The same matters should not therefore be taken in support of the present appeal. Any future change in the need for accommodation for the group of occupiers present on the site, should this arise, would need to be addressed if and when circumstances change in the future.
18. Rather the key issue before me, in terms of the living conditions of the appellants and other site occupiers, is the relative benefits of the additional hardstanding facilitating the spreading out of accommodation over the wider site compared to it being contained within a smaller area in the northern part of the site.

Main Issues

19. The main issues are:

- Whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
- The effect of the development on the openness of the Green Belt and the purposes of including land within the Green Belt;
- The effect of the development on the character and appearance of the area;
- The effect of the development on the living conditions of the site occupiers.
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

³ Indeed it was accepted by Mr Brown at the Hearing that, in practical terms, caravan siting was constrained by where hardstanding was permitted.

Reasons

20. Paragraph 142 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 143 notes that the Green Belt has five purposes which include safeguarding the countryside from encroachment. Paragraph 152 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
21. There is no dispute between the parties that the proposed hardstanding, and the use that it facilitates, would amount to inappropriate development. Indeed, with regard to the use, the Government's Planning Policy for Traveller Sites 2015 (PPTS) expressly states that such sites in the Green Belt are inappropriate development.

Openness and Green Belt Purposes

22. The assessment of impact on openness is about considering the presence of the development in the context of national policy which seeks to keep Green Belt land permanently open, thus avoiding urban sprawl. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect⁴. The proposed hardstanding and the various residential caravans, vehicles and paraphernalia that it would facilitate, would take up space which was previously free from development.
23. Outside the site itself, views of the development would be substantially screened, or filtered, by dense boundary planting along or adjacent to the northern, eastern and southern boundaries of the site. This, I consider, would also apply at times of seasonal leaf fall.
24. The parties agreed that the key visual receptors are elevated views from Brewery Lane, as it crosses the canal bridge to the south west of the site, and from the canal towpath to the west.
25. With regard to Brewery Lane, the absence of a footpath means that any views of the site would predominantly be to passing motorists, and then only in terms of fleeting glimpses. Because of distance, and its lack of three dimensional form, I consider any additional hardstanding over and above that already approved would be virtually imperceptible. The upper parts of caravans sited on the hardstanding would be visible, although impact on openness would be substantially mitigated by the background of similar structures on the already approved hardstanding area.
26. In terms of visibility from the towpath, the hardstanding would be entirely screened by existing boundary treatments. The upper parts of caravans would be seen as extending the depth of the site to a degree. However, from the closest viewpoints, directly to the west the site, the caravans would be substantially screened by the canal embankment and in any event would be set against the larger and more imposing building forms of the agricultural buildings associated with the development on the opposite side of Rock Lane.

⁴ *Turner v SSCLG & East Dorset Council* [2016].

27. Drawing these considerations together I consider that cumulatively the sense of visual impact and encroachment of the proposed hardstanding and structures facilitated would be limited. My assessment is unaltered by the operation of external lighting on the site, which could be controlled by a planning condition. So too by the physical presence of the relatively few lighting columns there.

Character and Appearance

28. The site is part of a relatively flat agricultural landscape, although there are reminders of man-made interventions in the vicinity, including the adjacent canal and traffic noise associated with the M58 motorway. Given that this is an existing lawful Gypsy and Traveller site, and because of the context described above and the very limited visibility of the additional hardstanding and development which it facilitates, I find that the development would result in no harm to the character and appearance of the area.

29. I am also mindful that it would be possible to impose a planning condition to require additional planting with a view to enhancing the immediate setting of the site.

30. I conclude that the development would not conflict with Policies HC5 or EQ2 of the Sefton Local Plan 2017 (LP) insofar as they seek to avoid unacceptable harm to the local environment and for developments to respond positively to character and local distinctiveness.

Living Conditions of Site Occupiers

31. The appellant has set out that they do not seek to expand the amount of accommodation on the site. The number of pitches would remain as previously approved, but would be spread over a wider area as facilitated by the hardstanding. They say the primary reason for seeking to alter the development is in the interests of the safety of children on the site, who in a more confined area, would be more vulnerable to conflicts with manoeuvring vehicles.

32. The Council's position is that the layout of the site as previously envisaged allowed for the retention of an open grassed area as a dedicated safe area for children's play, away from the comings and goings of vehicles. It therefore considers the best interests of the children to be harmed by the proposed hardstanding.

33. I am mindful that there are a large number of young children living on the site. Also that the previously envisaged site layout did not allow for significant amounts of external space, within the area where hardstanding was approved, when also allowing for the presence of caravans and the parking and manoeuvring of vehicles. I also note that it is undisputed that certain children on the site have mental health issues which is likely to mean their safety is more at risk than may otherwise be the case.

34. I acknowledge the Council's point above and note there is no dispute that the site could operate in practical terms, in accordance with the originally envisaged layout, without contravening any minimum standards or regulations. However, I am sympathetic to the view that in reality a dedicated grassed area, in itself, may not always be an attractive play space, say if ground

conditions are wet and muddy, or if there is a shortage of equipment for children to play on or around.

35. It is also inevitable that social interactions will take place to a degree in close proximity to living accommodation and not always within a specified area away from this. On balance, when considering the number of, and circumstances of, the children I therefore consider this is a matter that attracts weight in favour of the proposal.
36. I have considered the point that the spacing out of accommodation would also allow the site occupants more privacy. However, whilst this might be desirable, when having regard to minimum standards this argument, in itself, is not compelling.

Other Matters

37. Further objections to the development have been raised by third parties. Reference is made to the presence of other Traveller sites elsewhere in the Borough; also to concerns that the scale of such sites should not dominate the nearest settled community. However the level of occupation of the site, in terms of the number of pitches and caravans, would remain unchanged as a result of the present proposal and these arguments do not therefore attract weight.
38. Concerns have been raised about the development increasing the risk of flooding in the locality. However I note that the Council has raised no objection to the scheme on this ground; also that I am able to impose a planning condition with regard to the control of surface water run-off from the site. The point is made that the application is retrospective. However the Act makes provision for a grant of retrospective planning permission where appropriate, including the imposition of planning conditions.

Planning Balance

39. National planning policy attaches great importance to Green Belts. Therefore, when considering any planning application substantial weight should be given to any harm to the Green Belt. The appeal proposal is inappropriate development in the Green Belt. In addition, the residential use and associated paraphernalia, facilitated by the proposed hardstanding, would cause a loss of openness and harm to one of the purposes of including land in the Green Belt, namely to assist in safeguarding the countryside from encroachment, albeit I consider harm to openness to be limited in visual terms.
40. I have not found harm to the character and appearance of the area. However this matter would be neutral in the planning balance.
41. I have had regard to advice in the PPTS when considering sites in Green Belt locations. This states that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. However, it seems to me that for the reasons set out above, the proposed development would be in the best interests of the children, which accordingly I consider should attract substantial weight.
42. I also give weight to the fact that the appeal site already benefits from planning permission for the change of use to a caravan site, without any

restrictions regarding layout and extent of pitches. The degree is tempered to 'moderate' weight, however, given that the absence of permission for hardstanding makes the siting of caravans there unlikely, for the reasons discussed above.

43. Having particular regard to the limited visual harm to the Green Belt, I consider the substantial weight attached to Green Belt harm would be clearly outweighed by the circumstances of the site occupiers in this case, when added to the weight given to the previous grant of planning permission for the change of use of the site. The very special circumstances necessary to justify the development have therefore been demonstrated. Consequently, the proposal accords with the strategy for the protection of Green Belt land, as set out in the Framework and within Policy MN7 of the LP.
44. Article 8 of the Human Rights Act 1998 states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
45. Given the circumstances overall, I find that granting planning permission would be proportionate and necessary. Since I have decided to allow the appeal and grant full planning permission for the proposed development there will be no interference with the appellant's rights to a private and family life and home.
46. Furthermore in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.
47. The grant of planning permission would go some way towards advancing equality of opportunity by recognising the circumstances of the site occupiers.

Conditions

48. I have had regard to the conditions imposed by the previous Inspector, as discussed with the parties at the Hearing. A condition is necessary to restrict the occupation of the site to Gypsies and Travellers, in order to ensure the site meets the need which justifies granting the permission. The effect of the condition will be in accordance with that used by the previous Inspector.
49. Restrictions on the number of pitches and caravans reflects the scale of identified need. Restrictions on size of vehicle, site layout and a landscaping requirement are necessary to safeguard the character and appearance of the area. A condition to control surface water discharge from the site is required in the interests of environmental protection. Conditions requiring the set back of access gates and minimum visibility splays are imposed to ensure the retention

of such measures in the interests of highway safety. A condition to ensure the importation of contaminated material is avoided is required in the interests of environmental protection and to safeguard the health of the site occupiers. Details of external lighting are required to protect the character and appearance of the area and the living conditions of nearby residents.

50. In addition I shall impose a condition requiring the removal of hardstanding in the event the use should cease. This is in keeping with the condition imposed by the previous Inspector and is necessary because if the use ceases, it is undesirable to retain engineering works that have facilitated the use. A condition is imposed confirming the approved site location plan for the avoidance of doubt.

Conclusions

Appeal A

51. On the balance of probabilities, the appeal on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.
52. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (a) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not need to be considered.

Appeal B

53. For the reasons given above I conclude that the appeal should be allowed.

Formal Decisions

Appeal A

54. It is hereby directed that the enforcement notice be corrected as follows:

Delete the repetition of the words "Rock Lane" in the site address in Section 2 of the notice; and

Delete the description in its entirety of the alleged breach of planning control, as set out in Section 3 of the notice, and substitute the following wording instead:

"Without planning permission, the material change of use of the land from use as grassed open space to an extended gypsy / traveller caravan site facilitated by the laying of additional hardstanding."

55. Subject to the corrections the appeal is allowed and the enforcement notice is quashed.

Appeal B

56. The appeal is allowed and planning permission is granted for Change of use of land to form extended gypsy/traveller caravan site, including the stationing of 12 caravans for residential purposes, of which no more than 8 shall be static caravans/mobile homes, and the laying of additional hardstanding at Land west of Rock Lane, Melling L31 1EW, in accordance with the terms of the application Ref DC/2022/02372, dated 16 December 2022, subject to the conditions in the schedule below.

R Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 2) There shall be no more than 8 pitches on the site and on each pitch there shall be no more than 2 caravans, subject to there being no more than 12 caravans on the site at any time and no more than 1 static caravan on any pitch.
- 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed **within 28 days** of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within **4 months** of the date of this decision a 'site development scheme' with details for:
 - (a) the layout and extent of the pitches, the broad locations of caravans within those pitches, and the type of caravans;
 - (b) a scheme of landscaping and details of a schedule of maintenance for a period of 5 years, to include indications of all existing trees and hedgerows on the site identifying those to be retained and setting out measures for their protection throughout the course of carrying out the site development scheme;
 - (c) the draining of all surface water from the site, avoiding discharge to the public sewer where possible but if not the details shall include measures to restrict the discharge rate;

- (d) the setting back of the access gates to the site a minimum of 6 metres from the edge of the existing carriageway to Rock Lane;
- (e) the provision of visibility splays of 2 metres x 215 metres at the junction with Rock Lane;
- (f) the source of the material for the hardstanding, quantity imported and chemical analysis results which demonstrates the material is suitable for use within the development;
- (g) proposed and existing external lighting on the boundary of and within the site;

shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

(ii) If within **9 months** of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

(iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.

iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) If the use of the site for residential purposes should cease, within 28 days of such cessation the hardstanding areas marked in hatched blue lines and red lines on the plans attached to this decision (Plan 1 and Plan 2) shall be removed from the site and the land restored to its former condition.
- 6) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan.

END OF SCHEDULE OF CONDITIONS



Plan 1

This is the plan referred to in my decision dated: 16 May 2024

by **R Merrett Bsc(Hons) DipTP MRTPI**

Land west of Rock Lane, Melling L31 1EW

Reference: APP/M4320/W/23/3326544

Scale: Not to Scale





Plan 2

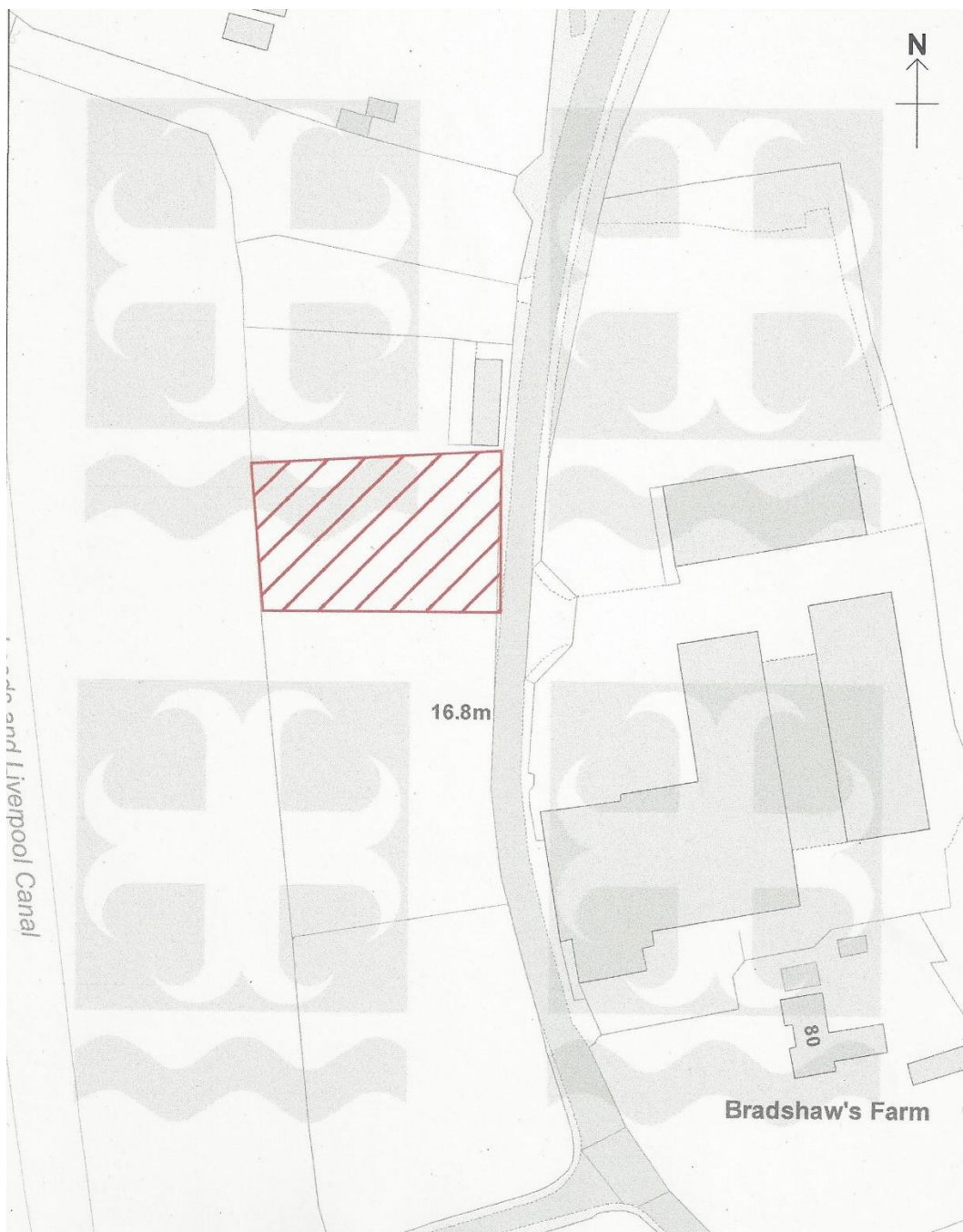
This is the plan referred to in my decision dated: 16 May 2024

by **R Merrett Bsc(Hons) DipTP MRTPI**

Land west of Rock Lane, Melling L31 1EW

Reference: APP/M4320/W/23/3326544

Scale: Not to Scale



APPEARANCES

FOR THE APPELLANT:

| | |
|----------------|---------------------|
| Philip Brown | Agent |
| Marion Doherty | Appellant |
| Martin Doherty | Appellant's husband |

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|-----------------|-------------------------|
| Catherine Lewis | Planning Officer |
| David Lawrenson | Enforcement Team Leader |
| Neil Kennard | Senior Planning Lawyer |