
Report to: Planning Committee **Date of Meeting:** 8th February 2012

Subject: TOWN AND COUNTRY PLANNING ACT 1990 APPEALS

Report of: Jane Gowing
(Head of Planning Services) **Wards Affected:** All

Is this a Key Decision? No **Is it included in the Forward Plan?**
No

Exempt/Confidential No

Purpose/Summary

To advise Members of the current situation with regard to appeals. Attached is a list of new appeals, enforcement appeals, developments on existing appeals and copies of appeal decisions received from the Planning Inspectorate.

Recommendation(s)

That the contents of this report be noted for information since the appeal decisions contained herein are material to the planning process and should be taken into account in future, relevant decisions.

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Jobs and Prosperity		✓	
3	Environmental Sustainability		✓	
4	Health and Well-Being		✓	
5	Children and Young People		✓	
6	Creating Safe Communities		✓	
7	Creating Inclusive Communities		✓	
8	Improving the Quality of Council Services and Strengthening Local Democracy		✓	

Reasons for the Recommendation:

What will it cost and how will it be financed?

(A) Revenue Costs – N/A

(B) Capital Costs – N/A

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal	
Human Resources	
Equality	
1. No Equality Implication	<input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated	<input type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>

Impact on Service Delivery:

None.

What consultations have taken place on the proposals and when?

Legal Services

Ref: LD 668/12. I HAVE NO COMMENTS ON THE REPORT.

Finance

The Head of Corporate Finance and ICT (FD1311/11) has been consulted and has no comments to make on this report as there are no apparent financial implications to the Council as a result of these appeal decisions.

Are there any other options available for consideration?

No.

Implementation Date for the Decision

N/A

Contact Officer: Neil Fleming
Tel: (0151) 934 2211
Email: monitoring@sefton.gov.uk

Background Papers:

Background documents can be viewed for each application at www.sefton.gov.uk/planapps.

Appeals Received and Decisions Made

From 17 December 2011 to 23 January 2012

Planning Appeal Decisions

7a Barkfield Lane, Formby

S/2011/0680 - 2026

Tree Preservation Order Consent to fell one Holly tree at the front of the dwellinghouse. (Lies within TPO No 109 Former Holmwood School Barkfield Lane Formby)

Appeal Type: Written
Lodged Date: 24/08/2011
Decision: Dismissed
Decision Date: 20/12/2011

Thomas Dolan Building 69 Ormskirk Road, Aintree

S/2011/0346 - APP/M4320/C/11/2159714

Retrospective application for the installation of cladding to the front of the premises

Appeal Type: Written
Lodged Date: 12/09/2011
Decision: Dismissed
Decision Date: 17/01/2012

5A Manchester Road, Southport

S/2010/1761 - APP/M4320/A/11/2161315

Erection of a detached two storey dwellinghouse at the rear of the premises fronting Walton Street

Appeal Type: Written
Lodged Date: 30/09/2011
Decision: Dismissed
Decision Date: 11/01/2012

Recommendation overturned by Committee

56 Mersey Road, Crosby

S/2011/0642 - APP/M4320/H/11/2161801

Retrospective advertisement consent for the display of one externally illuminated lettering (black) sign to the side of the premises

Appeal Type: Written
Lodged Date: 10/10/2011
Decision: Dismissed
Decision Date: 19/01/2012

Enforcement Appeals Decisions

2 Clovelly Drive, Birkdale

APP/M4320/C/11/2154626 - CLB/ENFO408

Domestic - fences/sheds/extensions etc

Appeal Type: Written
Lodged Date: 27/07/2011
Decision: UPHELD
Decision Date: 13/01/2012



Appeal Decision

Site visit made on: 15 November 2011

By: **Jim Unwin** BSCFor MICFor FArborA CEnv.

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

Decision date: 20 December 2011

Appeal Ref:

APP / TPO / M3420 / 2026

At:

The Old School House, No.7A Barkfield Lane, Formby, L37 3JW.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order.
 - The appeal is made by Mr Anthony Daley, against the decision of Sefton Council.
 - The application Ref: S/2011/0680, dated 23 May 2011, was refused by notice dated 20 July 2011.
 - The work proposed and appealed is refusal of consent for felling one holly tree, within G4 of the TPO.
 - The relevant Tree Preservation Order (TPO) is *The Sefton Metropolitan Borough Council (Barkfield Lane, Formby) Tree Preservation Order*, confirmed on 18 April 1991.
-

Decision

1. I dismiss the appeal to fell one holly tree, within G4 of the TPO, located in the front garden of The Old School House.

Main Issues

2. I consider the main issues in this appeal are:
 - the impact the proposal would have on the appearance and character of the locality, and
 - whether the reasons given for felling the holly are sufficient to justify that course of action.

Reasons

- ***The impact the proposal would have on the appearance and character of the locality.***
3. Barkfield Lane is a quiet residential road located within a mature residential area just north west of Formby town centre. It runs east off busy Harington Road to end at unmade College Avenue, which runs tight to a north-south railway line. A footbridge crosses the railway at the end of Barkfield Lane, and was well used by school children returning from school at the site visit.
 4. Dwellings along Barkfield Road range from a few large (Victorian?) villas set in large plots, to late Twentieth-Century recent infill set in small plots. All houses seen along the road were detached, and are set well back from the wide footways edging the road.

5. The Old School House, No.7A, sits at the mouth of the short Holmfield Park cul-de-sac. The large, relatively modern, house sits centrally in a medium-sized almost-rectangular plot. I measured the front garden to be quite large: about 12m long from front of house to low roadside wall, by about 23m wide from the western boundary with No.7B's front garden, east to the low wall against Holmfield Park's access road. The rear garden south of the house was not entered, but is similar in size, and enclosed.

Local tree cover

6. The Barkfield Lane part of Formby is characterised by extensive tree cover. However, owing to exposure to winds off the sea only 1.8km to the west with no higher ground in between, or poor soil, or lack of maturity, trees tend to be relatively small. For instance, west of The Evergreens is a small area of public open space (owned by the Woodland Trust?) which contains a belt of mature but squat trees including Corsican pines, sycamore, cherry and poplar. This belt continues east and south along The Evergreens' eastern edge, where it also contains beech. The closest of these is a beech about 18m west of the appeal tree.
7. On the northern side of Barkfield Lane, front gardens contain numerous smallish trees. For instance those opposite the appeal tree include holly, sycamore, bird cherry and flowering cherry, up to about 8m tall. Running about 30m to 60m north west from the appeal tree is a belt of larger aspen poplars in gardens, up to 14m tall.
8. The front garden of The Old School House contains a belt of trees along its frontage, including eight mature-ish but small sycamores, a wych elm, and the appeal holly. The western boundary is lined with three small cypresses, two small hollies and a young blue cedar. From outside I noted three larger trees in the rear garden, all semi-mature (half grown): a blue cedar, a gum tree, and a silver birch 9m tall.

Amenity value of the appeal tree

9. The appeal holly is located 2.5m back from The Old School House's Barkfield Lane frontage, roughly central across the plot, and 2m from the entrance drive. I measured it to be 8.25m tall: relatively short, but quite large compared to many trees within its visual area. The stem has grown south from an early age, because the tree has grown towards light, away from small sycamores (one has stem diameter of 19cm) standing close by to its north west and north east. As a result the deep crown is off-set to the south. I measured radial crown spread to be 1.3m north, 3m east (over the drive), 4.7m south (to within 2.7m of the house 7.4m away), and 2.8m west.
10. The holly has a deep and dense conical crown. At the site visit in late autumn when other broadleaved trees were losing their leaves, the appeal tree was a reasonably prominent landscape feature, clearly seen from close by. Vehicles travel relatively slowly along Barkfield Lane, so persons within vehicles and pedestrians clearly see the appeal tree from both directions. The appeal tree is more prominent in views west from the mouth of Holmfield Park.

11. Therefore, when other trees are leafless, the appeal tree makes a significant contribution to the local amenity value along Barkfield Lane. I partially agree with the appellant that the tree's amenity value is reduced in summer when adjacent trees are in leaf. However, at that time, the holly will still provide a pleasing contrast to adjacent deciduous trees.
12. I also have some sympathy with the appellant's view that the tree's lean to the south looks odd. However, there is lesser work: minor pruning, which could be considered before complete tree removal, to partially correct the asymmetry of the tree's canopy. Any pruning would require local authority permission.

Impact of tree removal on the local landscape

13. Felling the holly would remove a pleasing evergreen element from the frontage of The Old School House. This might eventually be replaced in decades to come by evergreen trees on the western boundary, but not in the short or medium-term. I consider reasonable justification would be required to remove the appeal tree.

- ***Whether the reasons given for felling the holly are sufficient to justify that course of action.***

Light

14. The holly is located due north of the front of The Old School House. It will never block direct sunlight from the house, but I agree with the appellant that it will reduce the amount of daylight from reaching front windows. The front garden is quite exposed to roads on two sides, and does not appear to be used for sitting out. The enclosed and private rear garden, on the sunny south side of the house, is unaffected by the holly tree, and would appear to be the main outdoor amenity space of the property.
15. The holly has a stem diameter of 28cm measured at 1.5m height. Given the relative size of nearby trees, I would consider this nearly fully grown for its location. Therefore, light interception should not significantly increase in the future.
16. The holly will block light from reaching parts of the front garden. In theory this could depress growth of garden plants. However, the competition for light and moisture from aerial parts and roots of other trees would stop much growing in the area, even if freed up by removal of the holly.
17. It is not the purpose of this appeal to permit other work, but as discussed in paragraph 12 above, there is lesser work (than felling) which could reduce light interception by the holly. For instance, lateral pruning of the southern side of the tree would increase separation between tree and house, and materially reduce light interception. The detail of any lesser work would have to be approved by the local authority.

Material falling from the tree

18. All trees shed leaves and other debris throughout the year. This includes evergreens like holly which still shed leaves to re-grow new ones. Clearing fallen material from gardens is part of routine garden maintenance, and is not usually considered justification to remove a healthy tree.

Other matters

Third-party representations

19. The Formby Civic Society is against tree removal. They consider the appeal tree is healthy, and the level of shading is insufficient to justify tree removal, with which I agree. They comment on a nearby treework application, on which I place no weight in this appeal, because it relates to a different property and set of circumstances.

Conclusions

20. I consider the appeal holly tree is healthy, at or near full size, and provides good amenity value to its roadside location in a quiet residential part of Formby.
21. The tree does block some light from the front garden and front elevation of The Old School House.
22. I do not consider this, or other lesser issues raised by the appellant, are sufficient justification to remove the tree.
23. For these reasons I dismiss the appeal to fell one holly tree within G4, standing in the front garden of The Old School House, No.7A Barkfield Lane, Formby.

Jim Unwin

Arboricultural Inspector.



4/04 Kite Wing (Env)
Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line: 0117 372 8745
Customer Services: 0117 372 6372
Fax No: 0117 372 6241
e-mail: environment.appeals@plns.gsl.gov.uk

Ms C Robertson/Ms C Griffiths -
Monitoring Technician
Sefton Council
Magdalen House
30 Trinity Road
Bootle
L20 3NJ

Your Ref: S/2011/0680

Our Ref: APP/TPO/M3420/2026

Date: 18 October 2011

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED), SECTION 78
APPLICATION FOR CONSENT TO CARRY OUT WORKS TO PROTECTED TREES
APPELLANT: Anthony Daley
SITE AT: 7A Barkfield Lane, Formby, Liverpool L37 3JW**

SITE INSPECTION ARRANGEMENTS

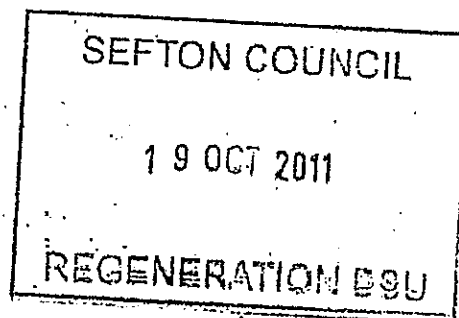
I am writing to inform you that arrangements have been made for Inspector Jim Unwin, an inspector appointed by the Secretary of State, to conduct a site inspection in connection with the above appeal. The site visit has been scheduled to take place during the week commencing 14th November 2011.

We note that when returning the completed questionnaire you indicated that the tree(s) can be viewed from public land. This being the case we have decided that the site visit can be conducted on an unaccompanied basis and neither the appellant nor a representative from your Council is required to attend.

After the site visit has taken place the Inspector will write a decision which will take into account all of the written evidence and the observations made during the site visit. A copy of the decision will be sent to you as soon as it is ready for issue.

Yours sincerely

Gemma Palmer
Environment Appeals Team





4/04 Kite Wing
 Temple Quay House
 2 The Square
 Bristol
 BS1 6PN

Direct Line: 0117 372 8745
 Customer Services: 0117 372 6372
 Fax No: 0117 372 6241
 e-mail: environment.appeals@pins.gsi.gov.uk

Mr J Eade - Tree Officer
 Planning and Economic
 Sefton Council
 Magdalen House
 30 Trinity Road
 Bootle
 L20 3NJ

SEFTON COUNCIL
 26 AUG 2011
 REGENERATION BSU

Your Ref: S/2011/0680
 Our Ref: APP/TPO/M3420/2026
 Date: 24 August 2011

Dear Mr Eade

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED), SECTION 78
 APPLICATION FOR CONSENT TO CARRY OUT WORKS TO PROTECTED TREES
 APPELLANT: Anthony Daley
 SITE AT: 7A Barkfield Lane, Formby, Liverpool L37 3JW**

We have received the above-cited appeal against the decision issued by your Council following the application to undertake work to the tree(s) at the above site. The appellant will have sent a copy of the form and attachments to you.

I can confirm that we have validated the appeal on the basis of the documents before us.

I am the case officer for the appeal and can be reached on the above telephone number, or you may write to me at the address at the top of this letter. When contacting me in respect of your appeal please quote the above reference.

You will note that the appellant has opted for the fast-track procedure. If you are also happy to proceed via fast-track, please complete the enclosed questionnaire and aim to return it to me **within 14 days from the date of this letter**. Please also copy the completed questionnaire to the appellant.

Under the fast-track procedure we **cannot** accept any documents that were not disclosed to the applicant before or at such time as the decision was issued. Inspectors are only able to consider the information provided with the original application. This means councils have no right of reply to the matters raised on appeal. It follows that any report sent under cover of the questionnaire document (item h) must have been issued to the applicant in advance of, or in support of the decision notice.

Alternatively, if your Council wishes to be heard please let me know by email to the above-address and we will send you a copy of the hearings questionnaire.

On receipt of the completed questionnaire and associated documents I will check the file for completeness. If everything is in order I will contact you and the appellant, and where appropriate, the owner of the tree(s) to give notice of the Inspector's site visit.



Finally, if you are able to resolve this dispute with the appellant at any time during the appeal process before the site visit, please let me know. This would enable the withdrawal of the appeal and a consequent saving of time and public resources.

Yours sincerely



Gemma Palmer
Environment Appeals Administration

Collette Robertson

From: Environment Appeals [environment.appeals@pins.gsi.gov.uk]
Sent: 31 August 2011 15:30
To: Monitoring
Subject: This is an automated response from The Planning Inspectorate.

Thank you for your e-mail. It is receiving attention and, where a reply is required, we will send one as soon as possible.

Correspondents should note that all communications to or from the Planning Inspectorate may be automatically logged, monitored and/or recorded for lawful purposes.

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager.

This footnote also confirms that this email message has been swept by MIMESweeper for the presence of computer viruses.

www.clearswift.com

The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Cable&Wireless Worldwide in partnership with MessageLabs. (CCTM Certificate Number 2009/09/0052.) On leaving the GSi this email was certified virus free.

Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.



Appeal Decisions

Site visit made on 6 December 2011

by Alan M Wood MSc FRICS

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

Decision date: 12 January 2012

Appeal Ref: APP/M4320/A/11/2159839 (Appeal A)

Omega Plastics, Thomas & Dolan Building, 69 Ormskirk Road, Aintree, L9 5AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Edward Leathley against the decision of Sefton Metropolitan Borough Council.
 - The application Ref S/2011/0346, dated 17 February 2011, was refused by notice dated 11 May 2011.
 - The development is the material alteration to front elevation to premises by fitting of light white PVC cladding.
-

Appeal Ref: APP/M4320/C/11/2159714 (Appeal B)

Omega Discount Plastics Ltd, Thomas & Dolan Building, 69 Ormskirk Road, Aintree, L9 5AX

- 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 John Edward Leathley against an enforcement notice issued by Sefton Metropolitan Borough Council.
 - The Council's reference is ENF0422 & S/2011/0346.
 - The notice was issued on 25 July 2011.
 - The breach of planning control as alleged in the notice is without planning permission the installation of white UPVC cladding to the front elevation of the building.
 - The requirements of the notice are: remove the white UPVC cladding and associated fixings, supports and all resultant materials from the front elevation of the building. Make good any damaged brickwork caused by the removal of the cladding, fixings and supports, in materials to match existing.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
-

Decisions

1. Both Appeals A and B are 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.

Reasons

2. Appeal A seeks planning permission for the development addressed by the enforcement notice in Appeal B. Both appeals raise the same main issue, the

effect of the cladding on the character and appearance of the whole building and surrounding area, and I shall deal with them together. The appeal site is occupied by a single storey flat roofed building. This is attached to a larger, two storey building to the north and a single storey unit to the south. The appellant has acknowledged that the two storey building presents an imposing façade to Aintree Road and is something of a local landmark. He further contends however that the adjacent buildings have no architectural merit and make no worthwhile contribution to the street scene with or without the cladding. From my observations, I agree with the former statement but I take issue with the latter.

3. The two storey element is in brown brick with some smooth areas of render. From the photographs provided by the Council, the appeal building has a brick front elevation complementing the larger building but this has now been covered by the white upvc cladding. The original façade, because of its elevational materials, integrated well with its taller counterpart, adding to its distinctiveness and character. From my observations, that is not the case now that the cladding has been imposed. This elevational treatment creates a significant visual contrast with the two storey element causing the appeal element to be out of keeping with the character and appearance of the larger building.
4. The front elevation of the building to the south of the appeal site is finished in white upvc cladding but the extension of the cladding to the façade of the appeal building merely accentuates the awkward contrast with the two storey element. The overall effect of the unauthorised cladding therefore, in my judgement, materially detracts from the character and appearance of the larger building of which the appeal building forms part and the visual amenity of the street scene. I am also mindful that part of the upvc cladding is covered by fascia signs which the Council says are unauthorised. If these were to be removed then this would make the cladding even more prominent in its relationship to the two storey element.
5. The appeal site faces towards a modern retail park on the opposite side of Aintree Road, a busy dual carriageway which has a service road adjoining the appeal site. The park comprises buildings which are predominantly finished in metal cladding and there are other fairly modern retail buildings with cladded elevations on the same side of Ormskirk Road both to the north and the south of the site. Nevertheless, the adjacent detached building to the north is a two storey brick structure which more directly contributes to the immediate site context. I accept that retailers may wish to impose their corporate identity on premises but this should not be at the expense of the visual amenity of the street scene.
6. Policy MD5 of the Sefton Unitary Development Plan (2006) [UDP] requires that commercial frontages form an integral part of the whole building. The elements of the building are connected and changes to the frontage which adversely affect the character and appearance of the whole building fail to meet this requirement. Furthermore, Policy DQ1 of the UDP, in relation to the site context, aspires to only permit development which responds positively to the character and form of its surroundings and this would include an adjoining building. Likewise, Policy CS3 of the UDP seeks to withhold permission for development which causes significant harm to the character or appearance of

the surrounding area. I find therefore that the installation of the cladding conflicts with the above policies.

Conclusion

7. For the reasons given above I conclude that both Appeals A and B should not succeed. The enforcement notice is upheld and planning permission on the deemed application is refused.

Alan M Wood

Inspector



Appeal Decision

Site visit made on 20 December 2011

by Alison Lea MA(Cantab) Solicitor

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

Decision date: 11 January 2012

Appeal Ref: APP/M4320/A/11/2161315
5a Manchester Road, Southport PR9 9EP

- 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 Frances Joyce against the decision of Sefton Metropolitan Borough Council.
 - The application Ref S/2010/1761, dated 17 December 2010, was refused by notice dated 7 April 2011.
 - The development proposed is the erection of a detached 2 storey dwellinghouse at the rear of the premises fronting Walton Street.
-

Procedural Matters

1. At the site visit I also viewed the proposal from No 1 Walton Street and from Nos 5, 5b and 7 Manchester Road, accompanied by the occupiers of those properties and representatives from both main parties.

Decision

2. The appeal is dismissed.

Main Issue

3. The main issue in this case is the effect of the proposal on the living conditions of the occupiers of neighbouring properties with particular reference to outlook.

Reasons

4. The appeal site forms part of the rear garden of No 5a Manchester Road and includes a semi-detached single storey garage fronting Walton Street. The proposal would involve the demolition of the garage and would introduce a detached 2 storey house with access from Walton Street. The adjoining semi-detached garage which belongs to No 1 Walton Street would be retained.
5. The site is located within a primarily residential area and the Council accepts that given that there is currently no housing restraint mechanism in place, the proposal is acceptable in principle. I agree. I also accept that given that there is no prevailing architectural style of dwelling on Walton Street, which is a narrow, one way street with a mix of dwellings, garages and boundary walls to properties on Manchester Road, the scale and design of the proposal would not appear out of keeping with the street scene.
6. No 1 Walton Street is adjacent to the site and has a number of windows in the side elevation which faces the site, including bedroom windows at first floor.

The proposal would introduce a gable wall about 9m from a window serving a bedroom in the rear 2 storey projection of No 1. The ridge height would be about 7.2m although the part of the wall directly facing the window would be lower than this due to the slope of the roof and the rear part of the new house would be single storey. Nevertheless the proposal would be a substantial structure and it would extend above and beyond the existing garage which has a ridge height of about 4m.

7. The distance between the gable wall and the window would be considerably less than the 12m between a habitable room and a blank wall recommended in the Council's supplementary planning guidance "New Housing Development" (the SPG) which has been adopted by the Council following public consultation. Although the SPG refers to the main window to a room, and I note that the bedroom is also served by a window to the rear, nevertheless the window in the side elevation is substantial and I do not agree that it is necessarily secondary to the rear window. I agree with the appellant that distances in the SPG are only guidelines and should not be applied rigidly. Nevertheless they are expressed as minimum distances and in this case, due to the height, scale and proximity of the proposal, I consider that the adverse impact on the outlook from the window would be significant.
8. Furthermore, there is a first floor bedroom window towards the front of No 1 Walton Street which also faces the appeal site. This window is located close to but forward of the existing garage, with views of it at an angle. I note that the appellant states that the front wall of the garage and that of the proposed dwelling would be in the same position. However, the plans show the front elevation of the dwelling located slightly forward of the garage, and although not directly facing the window, the gable wall of the new house, due to its height and close proximity, would appear overbearing and lead to an unacceptable sense of enclosure when viewed from this window.
9. Reference has been made to a number of other recommended distances contained in the SPG which are not met by the proposal. In particular I note that the distance between the front windows in No 2 Walton Street and the windows in the proposed dwelling would be about 16m. However, No 1 Walton Street also faces No 2 Walton Street, is sited at a distance of about 10m and has a number of windows which directly face that property. Although, I accept that the distance of 21m between facing habitable room windows recommended in the SPG would not be met by the proposal, given the existing situation and the fact that the proposal would be set back from the kerbline, I consider that the proposal would not appear overbearing from windows in No 2 Walton Street. Furthermore, although the ridge height of the proposal would be considerably higher than that of the garage to be demolished or the existing boundary wall, given the distance between properties and the design of the appeal proposal I consider that the impact on daylight and sunlight serving the windows would not be significant.
10. The proposed dwelling would face 5a Manchester Road, with a distance of about 20.5m between facing first floor windows, and about 15.5m to the ground floor conservatory at No 5a. Although the Council notes that the occupier of No 5a is the applicant and therefore clearly prepared to accept these distances, concern is expressed about the impact on future occupiers of No 5a. However, the first floor distance is only marginally below the recommended distance of 21m, and at ground floor level the proposed garden

wall would provide screening. In addition, although the remaining rear garden to No 5a would be below the size recommended in the SPG, a garden of a reasonable size would remain, and given the large garden area to the front and the proximity of green space within Southport Town Centre I consider that none of these matters justifies dismissing this appeal.

11. The property adjacent to No 5a Manchester Road has been divided into 2 apartments, No 5 at ground floor and No 5b at first floor. This property faces No 1 Walton Street. The appeal proposal would be set further back from Walton Street than No 1 and would be higher than No 1 which has a flat roof. However, it would be seen at an angle, separated by a garden wall which would provide screening at ground floor level, and given the distances involved I do not agree with the Council that the new house would appear as a prominent and domineering structure when viewed from No 5 or No 5b. Although I note the glass doors at the rear of No 5 which lead onto a patio area, given the proposed siting and design of the new house, and proposed boundary treatment, I do not accept that there would be views into these areas or that the proposal would have a significant effect on privacy or on daylight or sunlight. Similarly, the distance between the proposal and the rear of No 7 Manchester Road is sufficient to prevent any material impacts on the living conditions of the occupiers of that property.
12. However, for the reasons given, I consider that the proposal would have a significant adverse impact on the living conditions of the occupiers of No 1 Walton Street, and that the proposal is contrary to advice in the SPG and to Policies CS3 and DQ1 of the Sefton MBC Unitary Development Plan 2006 (UDP) which, amongst other matters, provides that development will not be permitted if it would cause significant harm to the amenity of the surrounding area or fails to protect the amenity of those adjacent to the site.
13. A number of other concerns have been raised, including the impact on the garage to No 1 Walton Street due to the proposed demolition of the attached garage, an increase in traffic on a narrow street and the existing relationship between properties on Manchester Road. However, none of these matters has been critical to my decision making. Furthermore, the manner in which the Council dealt with the application and reached its decision is not a matter for me to comment on as part of this appeal which I have determined on its own merits.
14. For the reasons given, I dismiss this appeal.

Alison Lea

INSPECTOR



Appeal Decision

Site visit made on 16th January 2012

by Jonathan G King BA (Hons) DipTP MRTPI

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

Decision date: 19 January 2012

Appeal Ref: APP/M4320/H/11/2161801
56 Mersey Road, Crosby L23 6SS

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Delta Garages against the decision of Sefton Metropolitan Borough Council.
 - The application Ref S/2011/0642, dated 15th May 2011, was refused by notice dated 6th July 2011.
 - The advertisement proposed is a fascia sign (sign 3) to side elevation; black lettering.
-

Decision

1. The appeal is dismissed.

Procedural matter

2. The advertisement which is the subject of the appeal has already been erected. I therefore consider the appeal as being in connection with a retrospective application.

Main Issue

3. The main issue in this case is the effect of the advertisement on the visual amenity of the area.

Reasons

4. In addition to the lettering which is the subject of the appeal (sign 3), the building also supports a red "Delta Garages" sign (sign 2) on the same elevation – which I understand the Council at the time of its decision intended to approve - and another on the front which faces the car park. There is also a sign on one of the vehicular gates and 2 small "MoT" signs close to the entrance. In this context, I do not consider that sign 3 represents an essential advertisement. While I recognise the importance to a business of advertising, any potential customer would have no difficulty in identifying the premises. I do not consider that the sign would be critical to the maintenance of the business or its ability to provide employment.
5. Together with sign 2, sign 3 replaces an earlier sign which arguably was more intrusive, owing to its bright colour and style. However, the old sign would in any event have had to be removed in order to make way for sign 2. Sign 3 has not resulted in any additional improvement in appearance.

6. Signs 2 and 3 are of comparatively high quality, but they are of substantial size and prominence, occupying nearly the whole of the length of the wall. Though the building is partly set down below the level of the road, the upper part on which the sign is located is clearly visible. Most of the frontage is marked by railings, fencing and planting. But the latter has been cut back and none screen the signs in views from the road or from the dwellings opposite.
7. The appellants claim that the locality is in mixed commercial and residential use. However, while there is a shopping area close by in Bridge Road, the prevailing character of the area including Mersey Road is almost wholly residential. Indeed, the Delta Garages building is the only commercial premises on that side of the road. In this context, the appeal sign, by adding to the overall quantity of signage, is visually intrusive. Taken together, the number of signs give a cluttered appearance to the premises.
8. The sign is contrary to the objectives of Policy MD7 of the Sefton Unitary Development Plan in that it is an obtrusive and dominant feature in the street scene and contributes towards clutter on the building. While not determinative, this adds weight to my conclusions.
9. Having regard to the foregoing and to all other matters raised, I conclude overall that the proposed advertisement would adversely affect the visual amenity of the area. It is unacceptable; and consequently the appeal fails.

Jonathan G King

Inspector



Costs Decision

Site visit made on 6 December 2011

by **Alan M Wood MSc FRICS**

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

Decision date: 13 January 2012

Costs application in relation to Appeal Ref: APP/M4320/C/11/2154626 2 Clovelly Drive, Southport, Merseyside, PR8 3AJ

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Patricia Geissler for a full award of costs against Sefton Metropolitan Borough Council.
 - The appeal was against an enforcement notice alleging that, without planning permission, erection of 15 timber fence posts in excess of 1 metre in height on the boundary of Clovelly Drive adjacent to the highway.
-

Decision

1. The application for an award of costs is refused.

The Submissions for Mrs Patricia Geissler

2. The costs application was submitted in writing. A full award is sought.

The Response by the Council

3. This was also made in writing.

Reasons

4. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The appellant's main reasons for seeking a costs award are that (a) the Council took enforcement action against her despite earlier assurances to the contrary; (b) rather than granting permission prior to reaching that stage, an email was received from an officer of the Council dated 29 March 2011 stating that "*if you want to retain the posts and erect a fence you will need to submit an application immediately or alternatively you can appeal the enforcement notice when we issue it and use that appeal to have planning permission granted*"; and (c) at a very late stage in the enforcement process the Council stated that all but one fence panel may be erected around the perimeter and a compromise could have been reached.
6. The timber fence posts were erected by the appellant with the intention of proceeding with a timber fence arrangement above the existing boundary wall of the appeal site. Work ceased when the Council informed the appellant that planning permission would be required for the proposed fence. From the evidence before me, the appellant was advised by the Council in November

2007 of the need to submit a planning application. Further correspondence from the Council in April 2008 reiterated this requirement and in June 2008 pre application advice was sought by the appellant.

7. The Council responded in writing stating that a 2m high fence at the rear of the existing wall would fail to comply with the Council's planning policy as its appearance and size would seriously detract from the character and appearance of the area. The planning officer would be unable therefore to make a favourable recommendation should a formal application be submitted for the fence. The letter however made it clear that this advice represented an officer's opinion and was without prejudice to any recommendation and the Council's formal determination of any subsequent planning application. The Council continued to pursue the submission of an application. At the appellant's request a meeting between the parties took place in September 2009. However no compromise was reached and no application was submitted. The Council finally issued an enforcement notice on 9 May 2011 requiring the removal of the 15 fence posts or their reduction in height to at least 1m.
8. Pre application advice is essentially informal in nature and does not bind either party. The Council did inform the appellant that any advice given was the opinion of an officer. The Council could take a contrary view when a formal application was considered. In these respects I do not consider the Council acted unreasonably. Nor did the Council pursue formal enforcement action before the opportunity had been taken to seek a resolution of the breach and the enforcement notice clearly explains why the Council considered it expedient to issue the notice. The email referred to above also gave prior indication that a notice would be issued. If a compromise has been achieved which is acceptable in principle to both parties then an application could be submitted on that basis for consideration. There is however no written confirmation in this respect by the Council and its response to the costs application dated 10 October 2011 indicates that the parties have been unable to reach a compromise agreement.
9. In terms of the email, the enforcement notice had not been issued at that point and the appeal process is designed to facilitate an independent consideration of the case. I find no direct inference in the email that if a planning application was to be submitted it would necessarily be considered favourably by the Council. If an application for the proposed fence had been submitted and subsequently refused, an appeal could have been lodged in any event under section 78 of the Town and Country Planning Act 1990 as amended. The enforcement notice has to relate to the alleged breach which in this case is the erection of the timber posts. Had the appeal been successful then planning permission would have been granted for the timber posts although not for the fence. The appeal related to a single issue namely the effect of the timber posts on the character and appearance of the surrounding area and in this case I have found in the Council's favour.
10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009 has not been demonstrated and that an award of costs is not justified.

Alan M Wood

Inspector



Appeal Decision

Site visit made on 6 December 2011

by Alan M Wood MSc FRICS

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

Decision date: 13 January 2012

Appeal Ref: APP/M4320/C/11/2154626

2 Clovelly Drive, Southport, Merseyside, PR8 3AJ

- 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 Patricia Geissler against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The Council's reference is COMN/2007/00678.
- The notice was issued on 9 May 2011.
- The breach of planning control as alleged in the notice is without planning permission, within the last four years, erection of 15 timber fence posts in excess of 1 metre in height on the boundary of Clovelly Drive adjacent to the highway.
- The requirements of the notice are: remove the 15 timber fence posts on the boundary of Clovelly Drive; or reduce the height of the 15 timber fence posts on the boundary of Clovelly Drive to a height not in excess of 1 metre measured from ground level.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the notice is upheld.

Application for costs

1. An application for costs was made by Mrs Patricia Geissler against Sefton Metropolitan Borough Council. This application is the subject of a separate Decision.

Main Issue

2. The effect of the fence posts on the character and appearance of the surrounding area.

Reasons

Ground (a)/the deemed application for planning permission

3. The ground of appeal is that planning permission should be granted. The fence posts have been erected with the intention of proceeding with a timber fence arrangement above the existing boundary wall of the appeal site. Work ceased when the Council informed the appellant that planning permission would be required for the proposed fence. No planning application has been submitted by the appellant, nevertheless the fence posts remain in place. However, when considering a deemed application for planning permission under section 177(5) of the 1990 Act as amended (TCPA), section 174(2) (a) of the TCPA states that the appeal must relate to the breach of planning control which may be constituted by the matters stated in the notice. In this case, the notice refers

to the erection of the 15 timber fence posts in excess of 1m in height as this constitutes the unauthorised development at the appeal site. The proposed fence is not therefore before me for consideration.

4. From my observations, because of their height and location, the fence posts appear as prominent, isolated and discordant features which are out of keeping with the general street scene and adversely affect the visual amenity of the immediate locality. The fence posts therefore unacceptably harm the character and appearance of the surrounding area. Policy DQ1 of the Sefton Unitary Development Plan (2006) [UDP] states that development should make a positive contribution to its surroundings in terms of scale and form. Policy CS3 of the UDP seeks to withhold permission for development which causes significant harm to the character or appearance of the area and this requirement is reinforced by Policy MD1 of the UDP. I find therefore that the 15 timber fence posts conflict with the above policies.

Conclusion

5. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

6. 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 TCPA.

Alan M Wood

Inspector