

## APPENDIX

**Committee:** PLANNING

**Date Of Meeting:** 11<sup>th</sup> November 2009

**Title of Report:** TOWN AND COUNTRY PLANNING ACT 1990 APPEALS

**Report of:** A Wallis Planning and Economic Regeneration Director  
**Case Officer:** Telephone 0151 934 4616

This report contains	Yes	No
Confidential information		✓
Exempt information by virtue of paragraph(s) ..... of Part 1 of Schedule 12A to the Local Government Act 1972		✓
Is the decision on this report DELEGATED?	✓	

### Purpose of Report:

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.

### Corporate Objective Monitoring

Corporate Objective	Impact		
	Positive	Neutral	Negative
1 Creating A Learning Community		✓	
2 Creating Safe Communities		✓	
3 Jobs & Prosperity		✓	
4 Improving Health & Well Being		✓	
5 Environmental Sustainability		✓	
6 Creating Inclusive Communities		✓	
7 Improving The Quality Of Council Services & Strengthening Local Democracy		✓	

### Financial Implications

None.

### Departments consulted in the preparation of this Report

None.

### List of Background Papers relied upon in the preparation of this report

Correspondence received from the Planning Inspectorate.

# Appeals Received and Decisions Made

From 01 October 2009 to 30 October 2009

## New Appeals

### Lidl 4 Virginia Street, Southport

N/2009/0174 - 2112682

Advertisement Consent for the erection of 2 free standing non-illuminated 48 page billboards, one to the front of the store and one on the access road

**Appeal Type:** Written

**Lodged Date:** 01 October 2009

**Decision:**

**Decision Date:**

## Decisions

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### 80 Raven Meols Lane, Formby

S/2008/0804 - 2103688

Erection of a two storey extension at the side, a single storey extension at the rear, installation of a porch at the front, two dormer windows to the front and a dormer to the rear of the dwellinghouse

**Appeal Type:** Written

**Lodged Date:** 12 May 2009

**Decision:** REF&GRANT

**Decision Date:** 08 October 2009

## Decisions – Enforcement Appeals

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### 80 Raven Meols Lane, Formby

ENF0304 – 2101290 (Enforcement Appeal)

Erection of a two storey extension at the side, a single storey extension at the rear, installation of a porch at the front, two dormer windows to the front and a dormer to the rear of the dwellinghouse

**Appeal Type:** Written

**Lodged Date:** 27 May 2009

**Decision:** REF&GRANT

**Decision Date:** 09 October 2009

### 56 Bushbys Lane, Formby

2099544 (Enforcement Appeal)

Breach of planning control - without planning permission, the erection of a tree house.

**Appeal Type:** Written

**Lodged Date:**

**Decision:** DISMISSED

**Decision Date:** 21 October 2009

### 451-455 Stanley Road, Bootle

COMS/2009/00129 - 2099013 (Enforcement Appeal)

Breach of planning control - without planning permission, the change of use of the premises from car sales to a car wash and valetting facility.

**Appeal Type:** Written

**Lodged Date:**

**Decision:** DISMISSED

**Decision Date:** 13 October 2009



# Appeal Decisions

Site visit made on 6 October 2009

by **David Baldock MA DipTP DMS MRTPI**

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

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**Decision date:**  
**9 October 2009**

## Appeal Ref: **APP/M4320/C/09/2101290**

### **80 Raven Meols Lane, Formby, Liverpool L37 4DG**

- 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 Ms S Shone against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The Council's reference is CLB/ENF0304.
- The notice was issued on 5<sup>th</sup> March 2009.
- The breach of planning control as alleged in the notice is without planning permission, with the last 4 years, erection of a porch/hall extension at the front of the dwellinghouse involving alterations to the existing roof.
- The requirements of the notice are:
  - A. Demolish the porch/hall extension at the front of the property.
  - B. Reinstatement the bay window as shown on the photographs NC1 & NC2 appended.
  - C. Remove the concrete pantiles and reinstatement the roof of the dwelling with matching rosemary clay tiles.
  - D. Remove all resultant materials to an authorised place of disposal.Or
  - E. Construct the porch/hall extension in accordance with the approved plan Drawing number 1144/02 of application N/2008/0530.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

## Appeal Ref: **APP/M4320/A/09/2103688**

### **80 Raven Meols Lane, Formby, Liverpool L37 4DG**

- 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 D Shone against the decision of Sefton Metropolitan Borough Council.
- The application Ref S/2008/0804, dated 6<sup>th</sup> October 2008, was refused by notice dated 7<sup>th</sup> November 2008.
- The development proposed is the erection of a side extension and brick pillars and roof extension to the porch (as described on the application form).

## Decisions

### Appeal Ref: **APP/M4320/A/09/2103688**

1. I dismiss the appeal insofar as it relates to an extension to the hall. I allow the appeal insofar as it relates to the erection of a side extension and I grant

planning permission for that development at 80 Raven Meols Lane, Formby, Liverpool L37 4DG in accordance with the terms of the application, Ref S/2008/0804, dated 6th October 2008, and the plans submitted with it so far as relevant to that part of the development hereby permitted and subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building (this condition does not apply to the tiles used in external elevations).
- 3) No development shall take place until samples of the tiles to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plan 1144/02B.

**Appeal Ref: APP/M4320/C/09/2101290**

2. I allow the appeal on ground (g), and direct that the enforcement notice be varied by the deletion of 3 months as the period for compliance and the substitution of 6 months.
3. Subject to this variation I uphold the enforcement notice.

**Procedural matters**

4. Planning permission was granted in August 2008 for extensions to this semi-detached dormer bungalow. The approved development included a side extension by 4.5 m and a porch projecting 1.4 m.
5. The description of the Section 78 appeal proposal set out in the above bullet point preamble is based on the application form. It relates only to a side extension, which would be increased in width to 5.8 m, and an extension to the hall. The appellant has disputed the description of the development used in the Council's notice of refusal. I accept that the application is not intended to include the single storey rear extension and the new front dormer in the roof of the original building, which were permitted in 2008. However in neither case does the description of the front extension accord with what is shown on the application plan, which is an extension to the hall. Thus I am treating the Section 78 appeal as being for the erection of a side extension and an extension to the hall. The development as carried out on site has included re-roofing the original hall. I regard the description in the enforcement notice of the development alleged to have taken place as clear and accurate.

**Appeal under Section 78**

6. The main issue in the appeal is the effect of the side extension and of the hall extension on the character and appearance of the area.

7. The Council's objection to the side extension concerns the proximity of the building to Park Road and the effect this would have on the spaciousness of the surroundings. Policies in the Sefton Unitary Development Plan require that development responds positively to the character of the surroundings and harmonises with the existing dwelling. Supplementary Planning Guidance on house extensions suggests a minimum separation from a side boundary of 4 m but acknowledges that the particular circumstances must be taken into account.
8. Both sides drew my attention to a number of dwellings on corner plots nearby and as part of my site visit I looked at all of these and also at the general character of the area. The corner properties all have side boundaries to roads joining Raven Meols Lane or to Park Avenue and nearby roads to the south of the site. There is a wide variety in the age and character of buildings but typically buildings are substantially set back from Raven Meols Lane to give a spacious appearance and general consistency. This is not necessarily the case in relation to the spacing between the side elevation of dwellings and roads joining Raven Meols Lane. The appellant referred to numbers 55, 57, 65 and 119 Raven Meols Lane, which are all two storey buildings to some degree closer to the side road than the separation proposed here from Park Road. Some are old buildings and not necessarily good examples for that reason but that is not the case with respect to numbers 55 and 57. There the side road is curving so that measured distances are deceptive but the visual impact is greater than would be the case here because those are full two storey buildings whereas the appeal building is not.
9. The Council seeks in its evidence to distinguish side roads which are through routes from those which are culs de sac but I do not accept that that distinction is necessarily significant when judging character and visual impact. In the case of the appeal building there would not be a long view of the extended structure in the context of a consistent line of set back buildings. The obtrusiveness of the structure would also be less than full two storey buildings and it would be seen in the context of the side boundary wall/fence permitted in 2008. Overall I have concluded that the side extension would retain reasonable spacing from Park Road and would accord with the development plan, so that planning permission will be granted.
10. Turning to the hall extension, the Council's report on the appeal application found this part of the development acceptable, so that it is not criticised in the reason for refusal. The appellant also argues that based on the reasons for issuing the enforcement notice it is only the materials which are objected to. I agree there is some ambiguity but the starting point is that the porch (or porch/hall) "has a significant impact on the street scene". In deciding the merits of the hall extension I need to have regard to the development plan, to the Council's evidence, and to the views of the occupier of the adjoining dwelling.
11. In my view the hall extension is significantly detrimental to the appearance of the building and to its surroundings. This is because of its size, projection, and design. It contrasts adversely with the approved porch, which would be a smaller subservient addition that would harmonise with the main structure. It has been designed as a full addition to the original structure, carrying forward the roof, and unbalances the appearance of the pair of dwellings. My

assessment has been based on the proposed use of tiles to match the existing (and a render finish to the walls), as stated on the application plan. In practice, as currently partly constructed, the adverse appearance has been increased by the use of red pantiles. Thus this part of the proposal would be contrary to the development plan and the appeal in this respect will be dismissed.

12. The Council has proposed one condition, that the materials should match the existing building. This is consistent with the notes on the application plan. However it is apparent from the Section 174 appeal that there is some potential for ambiguity here. The planning application form states that Marley Red concrete tiles will be used whereas the original building is currently roofed with what I believe to be clay tiles (the appellant does not dispute the factual description in the enforcement notice as "rosemary clay tiles"). The tiles to be used will be a very important part of the completed building and I shall therefore require that these be approved by the Council. It will be for them to decide whether any alternative would achieve a satisfactory appearance or whether the use of identical clay tiles is essential. I shall also repeat the general terms of condition 3 of the 2008 permission because of the importance of ensuring that the development conforms strictly with the plans being approved.

#### **The appeal against the enforcement notice - ground (f)**

13. This ground of appeal is directed at requirements A-C. In relation to requirement A the appellant proposes changing the materials of the porch, such as by rendering the walls or replacing the roof tiles used. However, for the reasons given in relation to the Section 78 appeal, I have found this part of the development unacceptable as proposed therein, that is with an external render finish and tiles to match the existing. The roof tiles currently used do not match the existing, but they are not what was proposed.
14. As to requirement B, it is argued that the requirement to reinstate the bay window is excessive since this could have been replaced with an alternative appearance as permitted development. I accept that the details of the elevation would normally be a matter for the appellant. The requirements of the notice must be specific (for example, it is not possible to require details to be submitted for approval) and no specific alternative has been proposed. I have considered deleting this requirement altogether but this might disadvantage the appellant, since any bay window would extend forward of the remaining front wall of the original dwelling. Thus planning permission might be required if a bay rather than a flat design were selected. In these unusual circumstances, I shall not delete or vary the requirement. Substituting an alternative design for the elevation could be dealt with by the appellant asking the Council to use its powers under Section 173A. Furthermore, it seems more likely that the appellant will implement the 2008 planning permission, which is the subject of the alternative requirement E.
15. Finally, the appellant opposes requirement C. In my view the tiles on the original dwelling are an important part of its appearance and are replicated on other nearby dwellings, for example those in Park Road. No satisfactory alternative has been identified which could be substituted.

16. The condition to be imposed on the planning permission being granted will require details of the tiles to be used on the side extension to be approved. It may be that there will be no satisfactory alternative to the tiles specified in the enforcement notice. But if an alternative is approved, it would be possible for the Council to agree to substitute this in the requirement of the enforcement notice under Section 173A.
17. The appeal on ground (f) therefore fails.

**The appeal against the enforcement notice - ground (g)**

18. In order to carry out the works required to comply with the notice, three months is a reasonable period. The only potential grounds for delay concerns settling the tile needed for the development. In order to provide some additional flexibility to do this, I shall extend the period to comply to six months. The appeal on this ground succeeds to that extent.

*David Baldock*

INSPECTOR



# Appeal Decision

Hearing held and site visit made on  
13 October 2009

by **David Pinner BSc (Hons) DipTP MRTPI**

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

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**Decision date:**  
**21 October 2009**

## Appeal Ref: APP/M4320/C/09/2099544

### 56 Bushbys Lane, Formby, Liverpool, L37 2DZ

- 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 Dr W J C Hobbs against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The notice was issued on 2 February 2009.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a tree house.
- The requirements of the notice are to demolish the tree house and remove all resultant materials to an authorised place of disposal.
- The period for compliance with the requirements is 28 days after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
- An application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

## Decision

1. I direct that the enforcement notice be corrected by the deletion from the requirements of the words "to an authorised place of disposal" and their substitution with the words "from the land". I further direct that the notice be varied by the deletion of "28 days after this notice comes into effect" and its replacement with "by 31 March 2010" as the period for compliance. Subject to these corrections and variations, I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## The notice

2. The notice is defective in its requirement to remove the materials arising from the demolition of the tree house to an authorised place of disposal. It is possible to require that the materials be removed from the land. However, it is a matter for the person complying with the notice to decide where to remove them too and any illegal dumping would be a matter for other legislation. Furthermore, in many cases, it would be possible to salvage materials for re-use on other projects. As drafted, the notice deprives the recipient of this opportunity. Nevertheless, I am satisfied that I can correct the notice, simply to require that the materials are removed from the land, without prejudice to the interests of either party.

## Ground (a)

3. The appeal site lies in a predominantly residential area of mainly large houses set within good-sized gardens. There are many mature trees, greatly contributing to the area's overall character of an attractive leafy suburb. The appeal property itself has boundary planting of mature evergreen hedges,



supplemented by deciduous trees. There are some small gaps in the planting and it is in one of these gaps that the tree house can be seen above the boundary fence.

4. I accept that the tree house is only visible from limited vantage points around the junction of Bushbys Lane, St Lukes Church Road and Lifeboat Road. It has also been stained green to reduce its prominence. Nevertheless, it is readily visible, especially as it has been constructed right up to the boundary fence. This has left no space to plant additional evergreens to make up the gap in the hedge and which, if of a quick-growing variety, would have hidden the treehouse from view within a reasonably short period.
5. The treehouse is a functional structure and has no intrinsic design quality that enables it to make a positive contribution to the character and appearance of the area, as required in particular by saved policy DQ1 of the Sefton Metropolitan Borough Unitary Development Plan. The conflict with the development plan and the fact that St Lukes Church Road attracts a great deal of pedestrian traffic at weekends, so that the treehouse will be seen by many passers-by, weigh against granting planning permission for it as it stands. The fact that there have been no complaints from neighbours; letters and a petition in support and the benefit to the appellant's children and their friends of having an opportunity for exciting and energetic play in the fresh air weigh in its favour.
6. Having weighed all the considerations, I have reached the conclusion that the balance is tipped against granting planning permission for the treehouse in its current form. The reason for this is that there is a better alternative that would eliminate the harm, albeit slight, that the treehouse causes to the appearance of the streetscene.
7. During discussions on site, the appellant indicated that he was willing to dismantle part of the treehouse to move it away from the boundary fence, thereby creating a space which could be planted with quick growing conifers. I think that if this were to be done, the Council would not have strong grounds for refusing to grant planning permission. However, much would depend on what specific proposals on these lines were to be put forward. In any case, it is beyond the scope of this appeal for me to consider anything other than the development as it currently stands. As I have found that to be unacceptable, I must uphold the notice.
8. Nevertheless, as there does seem to be a good chance of a mutually acceptable outcome, I shall extend the period for compliance with the notice to give the appellant time to submit revised proposals to the Council, (which would have to be in the form of a planning application), for the Council to deal with the application and, assuming it is approved, allowing time for the appellant to implement the scheme, including carrying out the necessary planting during the current planting season. I have therefore extended the compliance period to 31 March 2010.

*David C Pinner*

Inspector

## APPEARANCES

### FOR THE APPELLANT:

Dr WJC Hobbs  
Mr A Hobbs

Appellant  
Appellant's father

### FOR THE LOCAL PLANNING AUTHORITY:

Mr N Mackie  
Ms N Cuthbertson

Planning Officer, Sefton MBC  
Enforcement Officer, Sefton MBC

## DOCUMENTS

- 1 Council's letter of notification of the appeal and list of those notified
- 2 List of those present at the hearing



# Appeal Decision

Site visit made on 6 October 2009

by **David Baldock MA DipTP DMS MRTPI**

**an Inspector appointed by the Secretary of State  
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**Decision date:  
13 October 2009**

## **Appeals References: APP/M4320/C/09/2099013 and 2099015 Land and buildings at 451-455 Stanley Road, Bootle**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Brian and Valerie Bolger against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The Council's reference is Coms/2008/00129 Clb enf 0297.
- The notice was issued on 28<sup>th</sup> January 2009.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the premises from car sales to a car wash and valetting facility.
- The requirement of the notice is to cease using the premises as a car wash and valetting facility.
- The period for compliance with the requirement is 28 days.
- The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

## **Decision**

1. I dismiss the appeals and uphold the enforcement notice.

## **Reasons**

2. The appeal site consists of a single storey building on the road frontage and an open yard behind. Access is available both into the frontage building and from Ibstock Road into the yard, although at the time of my site visit the gates into the yard were locked. There is no dispute that the former use of the site was for the sale of vehicles.
3. The site is being used for the washing and valeting of cars. That is evident from the photographs provided by the Council, the signs advertising the business, and what I saw at the time of my visit. It seems to me this was the primary use at the date of issue of the notice, which is the decisive date in the appeal, and continued to be so at the time of my site visit. The appellants claim that car sales have continued and that the washing that occurs is ancillary to this. That is not supported by the factual evidence and is only weakly argued by the appellants, who say that car sales have continued "on a limited basis". The available evidence suggests that any such display and sales are very minor.
4. In my view the activities associated with the former and current uses are materially different. There is greater activity associated with the washing and valeting of vehicles with the potential for noise disturbance, the effects of the

water used discharging from the premises, and the increased coming and going of vehicles. That there are these differences is supported by the petition submitted by local residents. This is not equivalent to any ancillary preparation of vehicles that might have occurred when the site was being used for the sale of cars (although there is no evidence about the character of the former use justifying a conclusion that this was a significant occurrence).

5. The appellants rely on the appeal decision relating to 75-79 Kensington Road, Southport<sup>1</sup>. That is not comparable to the circumstances here since the Inspector found that, on the facts of that case, a change of use from use as a petrol filling station to use for hand car washing would not be material. Thus in that case the former lawful use was different to that here and the conclusion reached is not applicable here.
6. For these reasons I have concluded that there has been a material change of use for which planning permission is required, so that the appeal on ground (c) fails.

*David Baldock*

INSPECTOR

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<sup>1</sup> APP/M4320/C/07/2035627