

APPENDIX

Committee: PLANNING

Date Of Meeting: 10th March 2010

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.

APPENDIX

Appeals Received and Decisions Made

From 28 January 2010 to 26 February 2010

Decisions

Kenton Wood Stables Little Brewery Lane, Formby

S/2009/0538 - 2115616

Retention of 6 free standing floodlights at height of 4.3 m (alternative to S/2009/0277 approved 2 June 2009)

Appeal Type: Written

Lodged Date: 12 November 2009

Decision: Allowed

Decision Date: 23 February 2010

90 Stephenson Way, Formby

S/2009/0505 - 2111915

Retention of 2 no. non-illuminated hoarding signs either side of the entrance gates to the front of the premises

Appeal Type: Written

Lodged Date: 11 September 2009

Decision: Dismissed

Decision Date: 29 January 2010

23-27 Segars Lane, Southport

N/2009/0173 - 2112473

Advertisement Consent for the retention of a non-illuminated sign mounted on the boundary wall at the junction of Segars Lane and Mill Road

Appeal Type: Written

Lodged Date: 01 October 2009

Decision: Dismissed

Decision Date: 28 January 2010

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: Dismissed

Decision Date: 09 February 2010

412 Hawthorne Road, Bootle

S/2009/0607 - APP/M4320/A/09/2116938

Change of Use from (A1) Retail to (A5) Hot Food Takeaway and installation of an external flue to the front roof elevation

Appeal Type: Written

Lodged Date: 23 November 2009

Decision: Dismissed

Decision Date: 23 February 2010

33 Pilkington Road, Southport

N/2005/0832 - APP/M4320/C/09/2117110

Erection of a dormer extension and a first floor roof garden with balcony and an external staircase to the rear of the dwellinghouse (alternative to N/2005/0007 withdrawn 09/02/2005)

Appeal Type: Written

Lodged Date: 26 November 2009

Decision: Dismissed

Decision Date: 17 February 2010

New Appeals

18 York Gardens, Birkdale

S/2009/0804 - APP/TPO/M3420/980

Tree Preservation Order Consent to fell one oak tree at the front of the dwellinghouse (lies within TPO No. 142, 35-39 York Road, Southport)

Appeal Type: Informal

Lodged Date: 28 January 2010

Decision:

Decision Date:

37 Kingston Crescent, Southport

S/2009/0798 - APP/M4320/D/10/2121739

retention of a 2 metre high timber boundary fence facing Surrey Close

Appeal Type: Written**Lodged Date:** 03 February 2010**Decision:****Decision Date:**

86a Moss Lane, Lydiate

S/2009/0971 - 2121293

erection of a two storey extension to the rear and a porch to the front of the dwellinghouse together with a detached outbuilding to the side after demolition of the existing barn (Re-submission of S/2009/0446, refused 05/08/2009)

Appeal Type: Written**Lodged Date:** 03 February 2010**Decision:****Decision Date:**

86a Moss Lane, Lydiate

S/2009/0971 - 2121293/WF

erection of a two storey extension to the rear and a porch to the front of the dwellinghouse together with a detached outbuilding to the side after demolition of the existing barn (Re-submission of S/2009/0446, refused 05/08/2009)

Appeal Type: Written**Lodged Date:** 17 February 2010**Decision:****Decision Date:**

38A Hall Street, Southport

S/2009/0892 - 2122648

erection of a galvanised steel mesh security fence with razor wire above to boundary at 38A Hall Street

Appeal Type: Written**Lodged Date:** 22 February 2010**Decision:****Decision Date:**

Enforcement Appeal Decision

Lady Green Fisheries Orrell Hill Lane, Ince Blundell

S/2009/0169 – APP/M4320/C/09/2115474/COMN/2008/00521

Retention of decking area on the existing caravan, retention of a detached central heating LPG gas tank and retention of a detached mobile satellite dish and detached TV aerial for a temporary period of two years

Appeal Type: Written**Lodged Date:** 10 November 2009**Decision:** Dismissed**Decision Date:** 8 February 2010

New Enforcement Appeal

Land to rear of 2-14 Ibstock Road, Bootle

DOCS/2009/0055

Discharge of conditions 12 on Planning Application S/2006/1031

Appeal Type: Written**Lodged Date:** 16 February 2010**Decision:****Decision Date:**



Appeal Decision

Site visit made on 1 February 2010

by **J D Westbrook BSc(hons) MSc MRTPI**

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

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Decision date:
23 February 2010

Appeal Ref: APP/M4320/A/09/2115616

Kenton Wood Stables, Little Brewery Lane, Formby, L37 7DY

- 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 Roger Rimmer against the decision of Sefton Metropolitan Borough Council.
- The application Ref S/2009/0538, dated 23 June 2009, was refused by notice dated 24 August 2009.
- The development proposed is the retention of 6 free standing floodlights at a height of 4.3 metres.

Decision

1. I allow the appeal, and grant planning permission for the retention of 6 free standing floodlights at a height of 4.3 metres at Kenton Wood Stables, Little Brewery Lane, Formby, L37 7DY, in accordance with the terms of the application, Ref S/2009/0538, dated 23 June 2009, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby approved shall be implemented in full in accordance with Drawing No 07-134-10 (revision F) within 2 months of the date of this permission, and shall not thereafter be varied other than by prior agreement in writing by the Local Planning Authority.
 - 2) The proposed lighting shall not be illuminated outside the hours of 0800 to 2000 hours.

Main issues

2. I consider the main issues in this case to be:
 - Whether the floodlights maintain the openness of the Green Belt or conflict with the purposes of the Green Belt, and
 - Whether the floodlights are harmful to the living conditions of nearby residents by way of light pollution.

Reasons

3. There are 6 floodlights in place within the manège at the appeal site. All are 4.3 metres high. Planning permission already exists for the floodlighting columns referred to as columns 1-4 to remain at 4.3 metres. The permission requires columns 5 and 6 to be limited to a height of 3 metres. The proposal is to retain columns 5 and 6 at 4.3 metres and to move column 4 to the western side of the manège.
-

Green Belt issues

4. The manège has low rise stable blocks to the north and west sides, and also along part of the south side. To the east and south east are paddocks. Beyond the stable block to the north is a large, taller, agricultural-type building with a corrugated roof. Lighting columns Nos 4, 5 and 6 are along the northern side of the manège, and are seen from the south and south-east against this building. To the west of the stables complex are two-storey residential properties off Little Brewery Lane. When viewed from the east, the lighting columns are seen against a background of these dwellings.
5. In view of the screening effects of the surrounding buildings, both within the stables complex and outside, most of which are taller than the lighting columns, I consider that to reduce the height of columns Nos 5 and 6 to 3 metres would have no significant benefit to the openness of the Green Belt. The existing columns are currently well contained within the stables complex and are barely visible from the surrounding areas to the east and south east. In my opinion, they do not harm the openness of the Green Belt. Furthermore, they do not contribute to sprawl neither do they cause encroachment on the countryside. In these respects they do not conflict with the purposes of the Green Belt, nor with policy GBC2 of the Sefton MBC Unitary Development Plan.

Effect on living conditions

6. Residents of a number of adjacent dwellings have complained that light from the floodlights causes disturbance. I note that the removal of lighting column No 4 to the western side of the manège would minimise any light pollution from this source. Columns 5 and 6 are further from residential properties. Whilst they point in the general direction of houses in Paradise Lane and Brackenway, they would appear to be over 100 metres distant and there are a significant number of mature trees to the rear of these properties. In my opinion, at this distance the trees would largely shield these houses from the effects of the floodlights. Furthermore, I note that the lights are to be angled down to an angle of deflection of 45 degrees and that they will incorporate baffles and hoods to eliminate light glare. The Council's Lighting Engineer and Environmental Protection Director have no objections to the lighting columns on the basis of the designs proposed and I concur with their views.
7. On this issue, therefore, I conclude that the floodlights, at a height of 4.3 metres and a 45 degree angle of deflection, would not significantly harm the living conditions of the occupiers of nearby residential properties by way of light pollution, and that the lights would not conflict with advice in the Council's Supplementary Planning Guidance: *Development in the Green Belt*.
8. I have attached a condition relating to the design of the lights in order to minimise light pollution in the vicinity. I have also added a condition restricting the hours of use of the floodlights, in order to minimise any possible effects of disturbance to the living conditions of the occupiers of nearby dwellings by way of light pollution.

J D Westbrook

INSPECTOR



Appeal Decision

Site visit made on 15th January 2010

by **Alison Roland BSc DipTP MRTPI**

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

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Decision date:
29 January 2010

Appeal Ref: APP/M4320/H/09/2111915

Total Timber, 90 Stephenson Way, Formby, Merseyside, L37 8EG.

- 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 Total Timber against the decision of Sefton Council.
- The application Ref: S/2009/0505, dated 13 June 2009, was refused by notice dated 28 July 2009.
- The advertisements under appeal are 2 No advertising signs each side of entrance gates each 2.27m wide x 2.15m high; 100mm above ground level.

Decision

1. I dismiss the appeal.

Main Issue

2. The effect of the advertisements on the character and appearance of the area.

Reasons

3. The signs are already in place, mounted onto palisade fencing to either side of the site entrance. Because of their size and prominent siting, I consider they dominate the entrance to the site and amount to an excess of adverts at this location which is unduly assertive when viewed from Stephenson Way. In addition, the sign to the left side of the entrance on egress is positioned close to other signs mounted above the fencing and a further sign serving the adjacent premises. This lends a clumsy and cluttered appearance to this particular part of the street.
4. I recognise there is a miscellany of signs on the estate and at the nearby Tesco store. However, the Council say that many of them are unlawful and under investigation in an attempt to improve the appearance of the estate. It is therefore difficult to make a meaningful comparison with the appeal proposal, which I must consider on its merits. The appellant stresses that there is a commercial need for the sign, particularly given the economic downturn. However, the Regulations require decisions to be made only in the interests of amenity and where applicable, public safety. The latter issue is not raised in this appeal and thus it is the issue of visual amenity that must be decisive in my decision.
5. Overall, for the reasons given above and having regard to all other matters raised, I conclude that the signs are harmful to the amenity of the area. The Council refer to Policy MD7 of the UDP, but it has not been supplied. Either way, for the reasons given, I consider the signs are unacceptable.

ALISON ROLAND

INSPECTOR



Appeal Decision

Site visit made on 15th January 2010

by **Alison Roland BSc DipTP MRTPI**

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Decision date:
28 January 2010

Appeal Ref: APP/M4320/H/09/2112473

Total Gas Safety Ltd, 23-27 Segar's Lane, Southport, Merseyside, PR8 3JA.

- 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 Total Gas Safety Ltd against the decision of Sefton Council.
- The application Ref: N/2009/0173, dated 12 February 2009, was refused by notice dated 2 July 2009.
- The advertisement under appeal is a single sided white board 1.5m high x 6m wide with coloured logo and lettering.

Decision

1. I dismiss the appeal.

Main Issue

2. The effect of the advertisement on the character and appearance of the area and the visual outlook of local residents.

Reasons

3. The sign is already in place and mounted on a concrete wall to the side of the premises. Because of its size, bold colours and prominent position at the junction of Mill Road with Segar's Lane, I consider it appears as an unduly assertive feature in the streetscene and is out of scale with the generally domestic scale of surrounding buildings. It will also appear somewhat garish in the outlook from No 46 Segar's Lane opposite, although as views from other nearby houses are at a more oblique angle, I do not consider the outlook therefrom is seriously affected. I accept that some form of advertisement is to be expected on commercial premises of this nature and there are various displays related to other commercial premises nearby. However, I consider that this particular sign is excessive and intrusive in its surroundings.
4. There is a large hoarding on the gable of the appeal premises and the Council state that this is likely to be removed in the near future. It is unclear whether this benefits from consent, but even if it were removed, I do not consider that would render the appeal proposal acceptable. I also have no reason to doubt that graffiti is easier to clean from the sign than the wall behind it, but any benefit in this regard does not outweigh the harm I have identified. The appellant also refers to previous signage on the building now removed, but I must consider the proposal on its own merits.
5. Overall, I conclude that the sign detracts from the character and appearance of the area and intrudes unacceptably into the outlook from the house opposite. The Council refer to Policy MD7 of the UDP which has not been supplied. Either way, for the reasons given, I consider the proposal is unacceptable.

ALISON ROLAND

INSPECTOR



Appeal Decision

Site visit made on 15th January 2010

by **Alison Roland BSc DipTP MRTPI**

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Decision date:
9 February 2010

Appeal Ref: APP/M4320/H/09/2112682

Lidl Uk GMBH, Virginia Street, Southport, Merseyside, PR8 6RZ.

- 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 Lidl Uk GMBH against the decision of Sefton Council.
- The application Ref: N/2009/0174, dated 2 April 2009, was refused by notice dated 3 July 2009.
- The advertisements under appeal are 2 No 48 sheet colour billboards.

Decision

1. I dismiss the appeal.

Procedural Matters

2. The siting of the easternmost hoarding was not entirely clear, as the position depicted on a site layout plan appeared to differ to that marked on a colour photograph. The appellant clarified that the position marked on the plan was the correct position at the time of the application, but that in response to a third party objection, a revised siting was submitted with the appeal documents. The revised siting would be immediately alongside the gable end of a red brick building abutting the car park, some several metres to the North of the original position. Whilst the appellant states that he has notified the particular third party concerned, I cannot be certain that all parties are aware of the revised position and have had the opportunity to comment. Because of this and as the siting is significantly different to that indicated on the original application, I intend to determine the appeal on the basis of the plan submitted with the application.
3. The postcode on the application form differs to that on the appeal form. The former appears to be in error and I have therefore adopted the latter. In any case, this matter is not material to the substance of my decision.

Main Issues

4. The effect of the hoardings on the character and appearance of the area and the outlook from neighbouring property.

Reasons

5. One of the hoardings would be sited at the end of the building fronting Virginia Street. Although sizeable in its own right, I do not consider it would appear out of scale with the backdrop of the substantial building against which it would be viewed. However, as a freestanding structure immediately in front of the building, it would have a somewhat clumsy "bolted on" appearance, which would appear ungainly. The photograph submitted with the application also suggests it would rise above the eaves of the building and the bottom edge of the cladding which
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strongly defines the gable of this façade. This would heighten its ungainly appearance. Moreover, as it would be viewed in close association with a further hoarding close by in the car park, I consider the 2 hoardings together would be overly assertive and amount to an excess of advertising in this location.

6. The second hoarding would be sited at the eastern site perimeter facing the car park. It would partially back onto a red brick building, but also the rear garden wall to No 20 Virginia Street. In this position and given its substantial size, I consider it would dominate the outlook from the rear of the house and appear highly intrusive when viewed from the rear garden.
7. The Council refer to the amenities of other dwellings on the opposite side of Virginia Street. However, these are sited some distance away from both hoardings and views of them would be at an angle. Accordingly, I do not consider the outlook therefrom would be unduly affected. Reference is made to flats to the rear of Eastbank Street, but it is unclear which properties are being referred to. The nearest windows to the West of the hoarding on the building frontage appeared boarded up and/or had railings in front of the windows. Either way, that hoarding would be seen in the context of and against the backdrop of the existing building, where it would not to my mind, dominate the outlook from neighbouring properties.
8. Whilst I have found partially in favour of the appeal, this is outweighed by my concerns in relation to visual impact of the hoarding to the building frontage and the dominance of the hoarding to the East of the car park in relation to the occupiers of No 20 Virginia Street.
9. The appellant refers to a consent issued for a 48 sheet hoarding in 2008 (N/2008/0684) which was apparently closer to the highway than those proposed in this appeal. This may be the existing hoarding, to which I refer in paragraph 5 above, although it is not entirely clear. Nonetheless, whatever the circumstances surrounding that approval, I have assessed the proposal on its merits, including its relationship to the building, cumulative impact with the existing hoarding and effect on the outlook of nearby occupiers. There is no evidence to suggest that these same issues applied to the earlier approval.
10. The Council cite Policy MD7, but I am unable to assess the proposal in relation to it as it has not been supplied. Either way, for the reasons given I have found the proposal is unacceptable.

ALISON ROLAND

INSPECTOR



Appeal Decision

Site visit made on 1 February 2009

by **J D Westbrook BSc(hons) MSc MRTPI**

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**Decision date:
23 February 2010**

Appeal Ref: APP/M4320/A/09/2116938 412a Hawthorne Road, Bootle, L20 9AY

- 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 John Baines against the decision of Sefton Metropolitan Borough Council.
- The application Ref S/2009/0607, dated 31 July 2009, was refused by notice dated 17 September 2009.
- The development proposed is a change of use from (A1) retail to (A5) hot food takeaway, including installation of an external flue to the front roof elevation.

Decision

1. I dismiss the appeal.

Main issues

2. I consider the main issues in this case to be the effect of the proposed change of use on:
 - The living conditions of the occupiers of neighbouring residential properties by way of noise and general disturbance,
 - Highway safety, and
 - The regeneration of the surrounding Pathfinder Area.

Reasons

3. The appeal site comprises a retail unit with a residential apartment above. At the time of my site visit the retail unit was in use as a discount carpet shop. It forms part of a small row of Class A uses on the eastern side of Hawthorne Road. Adjoining it to the south is a public house and to the north is an A5 take-away unit. Other units in the row include a betting shop, a pie and sandwich shop, and two general stores.
 4. Hawthorne Road is a busy highway and bus route with limited on-street parking in the vicinity. There are 3 – 4 parking spaces outside of the dwellings Nos 424 – 430 Hawthorne Road and some limited parking on Earl Road. There is a bus stop outside the appeal site. The area around the appeal site comprises largely terraced housing, with older properties to the east and more recent housing to the west. There would not appear to be any other retail properties serving the surrounding housing area, whilst other small rows of shops further north along Hawthorne Road are now closed and boarded up.
-

Living Conditions

5. If the proposed change of use were to take place, there would be a contiguous group of properties including a public house and two A5 uses. At this point there is very little on-street parking and apparently no off-street parking to serve the row of shops or the public house. In my opinion, this arrangement would result in an increase in random parking in the nearby streets to the detriment of the residential amenities of the occupiers of houses in the area, by way of noise and general disturbance. In addition, the greater concentration of A5 and public house uses would, I consider, result in more activity on the pavement outside of these premises and this would add to the general disturbance to residents in nearby dwellings, particularly during the evenings when traffic noise would be lighter.
6. I conclude on this point, therefore, that the proposed change of use would be detrimental to the living conditions of the occupiers of nearby dwellings by way of increased noise and disturbance from customers travelling by car, and also from increased general activity outside of the appeal premises. In this respect it would conflict with saved policies H10, EP6 and MD6 of the Sefton MBC Unitary Development Plan (UDP).

Highway Safety

7. Hawthorne Road is a busy highway with waiting and loading restrictions. There is no on-site car parking at the site and only very limited on-street car parking in the vicinity of the appeal premises. There is a bus stop immediately outside of the premises and a pedestrian crossing approximately 50 metres to the south. The Council's Highways Team contend that the proposal would result in motorists who intend to use the take-away parking their cars in the bus stop or along areas of the road where parking is restricted and loading prohibited. This would cause an obstruction to free flow of traffic with the possibility of congestion and potential highway safety. I concur with this view and find that the proposal would conflict with saved policy AD2 of the UDP.
8. The appellant contends that planning conditions or legal agreements may be used to overcome deficiencies in meeting the criteria laid out in policy AD2. However, the appellant suggests no examples of such methods and, in my opinion, the parking and access problems associated with the proposed use could not be effectively dealt with in either of these ways. I therefore find that the proposed change of use would be harmful to highway safety.

Regeneration of the Pathfinder Area

9. The site lies within a Housing Market Renewal Pathfinder Area. The appellant contends that the proposal would generate some local employment and that this would comply with one element of saved policy UP1 of the UDP, which relates to this area. I agree with this viewpoint. However, this row of shops would appear to be the only such facility in the vicinity, and it is also important for regeneration purposes that a range of retail outlets is available to provide choice to residents of the area. The proposal would alter the balance between A1 and other Class A uses in the row, and I have concerns that this would hinder the effective regeneration of the area by reducing choice with regard to convenience shopping. In this respect, it would conflict with policy UP1.

10. The appellant has indicated that a range of different retail uses have occupied the appeal premises over the past 3 years, and that all have failed. I have some sympathy with the appellant's situation, but I have no details of the nature of the terms under which these uses were trading, and it would seem to me that many of them had little time to build up a client base. I am not convinced that an appropriate A1 use would, of necessity, be unsuccessful here – particularly as housing improvements and/or new housing developments take place within the Pathfinder Area.
11. There is an existing retail use in the appeal premises and the proposal would not be bringing a vacant unit back into use. Furthermore, for my reasons given above, I consider that the proposed change of use would have an adverse effect on the overall range of uses in this small shopping parade. On balance, therefore, I conclude that it would conflict with saved policy R7 and elements of policy UP1 of the UDP, and would be detrimental to the regeneration of the Housing Market Renewal Pathfinder Area.

J D Westbrook

INSPECTOR



Appeal Decision

Site visit made on 1 February 2010

by **P N Jarratt BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State
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**Decision date:
17 February 2010**

Appeal Ref: APP/M4320/C/09/2117110

Land and Buildings at 33 Pilkington Road, Southport, PR8 6PD

- 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 T R P Edwards against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The Council's reference is CLB/ENF0330/N/2005/0832.
- The notice was issued on 22 October 2009.
- The breach of planning control as alleged in the notice is without planning permission, within the last four years, the erection of timber stairs on the southern side of the single storey rear extension and a timber decking area with surrounding timber balustrade on the roof of the single storey extension at the rear of the property.
- The requirements of the notice are:
 - Remove the timber decking and the surrounding timber balustrade from the roof of the rear of the extension and the timber staircase, or
 - Carry out the development in accordance with the details approved on planning application reference number N/2005/0832 approved on 20th October 2005.
- The period for compliance with the requirements is 30 days.
- The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.

Summary of the Decision: the appeal is dismissed and the enforcement notice upheld

Reasons

The deemed planning application

1. The main issue in this appeal is the effect of the unauthorised development on the living conditions of the occupiers of neighbouring property at 31 Pilkington Road.
2. Planning permission was granted in 2005 for the erection of a dormer extension and a first floor roof garden with balcony and an external staircase to the rear of the dwelling house (Council's Ref, N/2005/0832). The appellant did not construct the roof garden, balcony and external staircase in accordance with the approved plans as the roof garden had been extended across the whole width of the flat roof and the staircase built adjacent to No. 31. At the time of my site inspection, the timber balustrades and staircase had been removed but the timber decking remained on the flat roof of the rear extension.
3. The gardens of neighbouring dwellings are visible from the upper floor rear windows of the appeal property. However, in the case of balconies, their use has a greater effect on the privacy of neighbours as a result the activities taking place on a balcony. The Council, when considering the planning

application that was subsequently approved, had particular regard to the impact of the proposal on the privacy of nearby occupiers. They considered that the approved scheme provided satisfactory levels of privacy.

4. The appellant argues that the decking was extended to protect the roof and to maintain the rear of the property. He also argues that the unauthorised development is necessary as an emergency escape route and that the emergency platform is not used for recreational purposes. However I fail to see why his safety concerns cannot be met by the approved scheme.
5. The fact that the occupants at No 31 have changed since the unauthorised development took place does not preclude the current occupants from expressing their concern over the impact that the development has had on their privacy.
6. Although the appellant has suggested he could overcome the harm by extending the privacy fencing or extending it in brick, such details are not before me and although this might mitigate the impact on privacy, I do not consider that high walling or fencing on a first floor decked area would necessarily be compatible with the character or appearance of either the house or the area.
7. The unauthorised development brings a greater area of the first floor roof garden into active use by the appellant which, with the staircase, would be closer to No 31 than the approved scheme. I consider that this would significantly harm the living conditions and privacy of the occupants of No. 3 and be contrary to Policy MD1 of the Sefton Unitary Development Plan. The deemed application is therefore refused.

The appeal under ground (f)

8. An appeal under this ground is that the steps to comply with the notice are excessive and lesser steps would overcome the objection. The appellant states that he would be prepared to take the steps down and erect them on the east side as indicated on the original planning permission.
9. The purpose of the requirements of a notice is to remedy the breach by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with. The appeal under ground (f) therefore fails.

Formal Decision

10. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

P N Jarratt
Inspector



Appeal Decision

Site visit made on 1 February 2010

by **P N Jarratt BA (Hons) DipTP MRTPI**

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

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**Decision date:
8 February 2010**

Appeal Ref: APP/M4320/C/09/2115474

Land at Lady Green Fisheries, Orrell Hill Lane, Ince Blundell, Liverpool, L38 5DA

- 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 Donald Tracey against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The Council's reference is comn/2008/00521 clb/enf0326.
- The notice was issued on 17 September 2009.
- The breach of planning control as alleged in the notice is, without planning permission, within the last 4 years, erection of decked area with concrete base.
- The requirements of the notice are:
 - A. Remove the decked area and associated materials
 - B. Remove the concrete base.
 - C. Restore the land to its former condition
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Decision: The appeal is dismissed.

Reasons

1. The main issues in this appeal are:
 - i) Whether the development is inappropriate development in the Green Belt for the purposes of PPG2¹ and development plan policy;
 - ii) Its effects on the openness of the Green Belt and on the character and appearance of the area;
 - iii) If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.
2. The appeal site is located in open countryside in the Green Belt on land where the appellant is currently implementing a planning permission for the creation of recreational fishing ponds. There is a single-storey, pitched roof, log cabin style structure on the land which is described by the appellant as a construction workers caravan and this has been accepted as permitted development by the Council.

¹ PPG2 - Planning Policy Guidance: Green Belts

3. A timber deck with a balustrade and constructed on a concrete base adjoins the 'caravan' on three sides. The decking and concrete base is unauthorised operational development and the subject of the enforcement notice. At the time of my site visit there was a rotary clothes drier together with refuse bins situated on the decking. The appellant has at some time removed play equipment, a satellite dish and an aerial. He has also revised the decking so that the 'caravan' is freestanding of it.
4. The decking appears to have a degree of permanence and amenity that would not normally be associated with a temporary construction workers caravan.
5. The appellant contends that the decking is appropriate development in the Green Belt because it is ancillary to the 'caravan' which is connected exclusively with agricultural and recreational development. However, the timber decking and concrete base do not fall within any of the categories of development considered to be permissible in the Green Belt as set out in paragraphs 3.4-3.12 of PPG2. Paragraph 3.12 indicates that the making of a material change in the use of land is inappropriate development unless it maintains openness and does not conflict with the purposes of including land in the Green Belt. The use of the land as a caravan site does not in my view maintain openness and it follows therefore that the 'caravan' is inappropriate development, notwithstanding the fact that the Council regard it as being permitted development under Schedule 2, Part 5 of the Town and Country (General Permitted Development) Order 1995. I conclude therefore that the decked area and the concrete base is inappropriate development, contrary to the advice of PPG2, and that the resultant harm should be given substantial weight in determining this appeal. It is also contrary to Policy GBC2 of the Sefton Unitary Development Plan.
6. Openness is the most important attribute of Green Belts. The scale of the decking is significant. It extends some 6.5m at one end of the 'caravan' and it is over 11m wide. It also extends around two other sides of the 'caravan' and the decking is elevated above the adjoining ground level. As the decking increases the amount of development on the land it reduces the openness of the Green Belt, causing additional harm, contrary to the advice of PPG2.
7. The decking is in open countryside which is relatively flat but having no exceptional character. The overall impression of the land is one of change largely because of the engineering operations associated with the recreational fishing pools that are currently in progress. There are what appear to be relatively new domestic style concrete and timber fences alongside the fishing ponds and the three large storage sheds, and also along the vehicular access to the site. Notwithstanding these changes, the unauthorised decking imparts a domestic appearance and this increases the overall visual impact of the 'caravan' and the fencing, which I consider to be harmful to the character and appearance of the countryside contrary to Policy GBC6 of the Unitary Development Plan.
8. I now turn to other considerations. The appellant states that the decking is required because of the boggy nature of the ground. I am not convinced by this as dealing with such a problem does not require an extensive deck that is clearly used as an amenity for the 'caravan'. The appellant also refers to

supportive policies in PPS7² (which have now in part been superceded by PPS4³). However, the decking serves no economic purpose in terms of the recreational fishing enterprise; it serves as an amenity for the construction workers caravan which is permitted for a temporary period only.

9. The Council is concerned over the time being taken to implement the fishery which the appellant considers will take a further 4 years. He has offered to provide a Section 106 unilateral undertaking to complete the works by 2013. However this undertaking has not been completed and I place little weight on it. I have considered whether a temporary permission would be appropriate but I see no reason why the harm presently caused by the decking should be permitted to continue, even for a temporary period. The appellant has also offered to reduce the area of the decking and concrete base. Whilst this could be controlled by condition, I consider that the remaining decking would still have an impact on openness and on the character and appearance of the countryside, albeit slightly reduced.
10. The appellant states that it is his intention to seek planning permission to use the 'caravan' as an agricultural worker's temporary dwelling. However, that is not a matter before me and I attach little weight to this intention.
11. The harm caused by the inappropriateness of the development and its effect on openness and on the character and appearance of the area carry substantial weight. In contrast the other considerations carry little weight. For the reasons given above, and having regard to all other matters raised, I conclude that there are no considerations sufficient to clearly outweigh the harm to the Green Belt. There are, therefore, no very special circumstances to justify the decked area and concrete base. It conflicts with Policies GBC2 and GBC6 of the Unitary Development Plan and with the advice in PPG2. The appeal is dismissed.

Decision

12. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

P N Jarratt

Inspector

² Planning Policy Statement 7: Sustainable Development in Rural Areas

³ Planning Policy Statement 4: Planning for Sustainable Economic Growth