



# Planning Appeals Update

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## **Planning Committee**

### **Report of Head of Planning and Infrastructure**

#### **DATE OF COMMITTEE**

**September 2019**

#### **PLANNING APPEALS**

#### **WRITTEN REPRESENTATION**

#### **HEARINGS**

#### **HOUSE HOLDER**

HH/342954/19      3 Farmstead Close, Failsworth, Manchester, M35 9NU

#### **ADVERTISEMENTS**

#### **APPEAL DECISIONS**

PA/341852/18	Hawthorn Cottage, Lee Side, Kiln Green, Diggle, Oldham, OL3 5JY
Original Decision	Del
Appeal Decision	Dismissed

HH/340889/17	Land at High Street/Hill End Road, Delph, Oldham, OL3 5HW
Original Decision	Del
Appeal Decision	Dismissed

**RECOMMENDATION -**      That the report be noted.

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The following is a list of background papers on which this report is based in accordance with the requirements of Section 100D (1) of the Local Government Act 1972. It does not include documents, which would disclose exempt or confidential information as defined by that Act.

**Files held in the Development Control Section**

The above papers and documents can be inspected from 08.40am to 4.30pm on level 12, Civic Centre, West Street, Oldham.



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## Appeal Decision

Site visit made on 15 July 2019

by **Laura Renaudon LLM LARTPI Solicitor**

an Inspector appointed by the Secretary of State

**Decision date: 15 August 2019**

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**Appeal Ref: APP/W4223/W/19/3227776**

**Hawthorn Cottage, Lee Side, Kiln Green, Diggle, Oldham OL3 5JY**

- 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 & Mrs Broadbent against the decision of Oldham Metropolitan Borough Council.
  - The application Ref PA/341852/18, dated 17 May 2018, was refused by notice dated 1 November 2018.
  - The development proposed is described as a single storey extension to form bedroom and extension of small section of existing pitched roof to create porch.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The description of the proposal was amended by agreement during the course of the Council's determination of the application. The Council's refusal of permission was for 1) change of use of land to extend residential curtilage including alterations to land levels 2) part-subterranean extension 3) single storey front extension 4) associated boundary treatment.
3. The principal element of the proposal is to build a part-subterranean extension to the north eastern side of the existing dwelling known as Hawthorn Cottage. The existing curtilage to the dwelling appears to be tightly drawn to this side, with an existing field gate and entrance beyond it, facing the road. The proposal involves excavating the land to build the extension into the field, and then re-grassing the field above it, with a raised ground level of approximately 50cm, and re-hanging the existing gate with the land rising, rather than falling slightly as it does at present, from the roadside to meet it.
4. The area of the proposed extension is within the 'red line' of the application site but, although the amended description of the proposal was agreed during the course of the application, the parties are in disagreement about whether there would be any associated change of use to residential curtilage. A vertical section of the resulting development would reveal two different uses; the residential bedroom below and the field entryway above. There would be no further curtilage area associated with the dwelling. As suggested by the appellants, these changes could be controlled by the imposition of a planning condition, to restrict the use and development of the field area above, if necessary.

5. The Council do not object to the front porch element of the proposal, and so I have considered the proposal as a whole but with particular focus on the bedroom element.

### **Main Issues**

6. The site lies within an area of Green Belt, and also within the Diglea Conservation Area. The main issues arising in the appeal are therefore:
  - (1) whether the proposal would amount to inappropriate development in the Green Belt, having regard to the National Planning Policy Framework ('the Framework') and any relevant development plan policies; and, if so, whether it would affect the openness of the Green Belt and whether there are any other considerations that might amount to very special circumstances to justify the harm to the Green Belt and any other harm that might arise; and
  - (2) the effect of the proposal on the character and appearance of the area, with particular regard to whether the proposal would preserve or enhance the Diglea Conservation Area.

### **Reasons**

#### *Whether inappropriate development*

7. Policy 1 of the Oldham Local Development Framework Core Strategy and Development Management Policies document adopted in November 2011 ('the CS') records that the Green Belt will be maintained, and Policy 22 is permissive of development in the Green Belt where no conflict with national Green Belt policy arises. That national policy is presently expressed in the Framework, which exhorts local planning authorities to regard the construction of new buildings (which would include an extension, as proposed here) as inappropriate in the Green Belt. Exceptions include extensions to buildings, provided that no disproportionate additions to the size of the original building result, and limited infilling in villages.

#### *Extensions*

8. The existing dwelling on the site has the appearance of having been constructed relatively recently, although documents supplied in the appeal suggest that the current dwelling results from the change of use and extensions to the former railway station shop. The external floor area of the proposed extension is said by the appellants to be approximately 40 m<sup>2</sup>. The floor area or volume of the existing dwelling is not given, but from the plans I concur with the Parish Council that the increase appears to be of the order of around 50%. Whilst this is not necessarily a disproportionate extension in itself, I have no information concerning the dimensions of the 'original building', which, if it is the former shop, the Council describe as having been disproportionately extended already to result in the existing dwelling house, 'very special circumstances' having then been demonstrated. Consequently, I cannot conclude that the proposed extension would not be a disproportionate addition to the original building. The fact that much of the development would not be visible does not bear on the objective question concerning the increase in size.

*Limited infilling in villages*

9. The Council do not dispute that the existing dwelling lies within a village. The principal settlement of Diggle lies across the railway line, with the dwelling forming part of a loose line of buildings that appear to be 2 historically separate but closely connected hamlets, Diglea and Kiln Green, the former containing The Diggle Hotel and the latter containing a church and church hall.
10. The appellants have supplied a copy of the Proposals Map showing that most of the village of Diggle is excluded from the Green Belt. This 'settlement boundary' appears relevant to establishing the extent of the village of Diggle, although parts of the settlement area, including the appeal site, appear to lie beyond it. The appeal site lies close to the railway line historically serving the village. Although lying to the other side of the railway tracks from the village centre, it appears closely connected to the centre and is within easy walking distance of the village's main facilities. It was described by the Council's officer on an earlier application as being '*located within an urbanised part of the green belt alongside other dwellings and opposite the Diggle Hotel*'. I consider that the site lies on the outskirts of, but nonetheless within, the village of Diggle.
11. As to whether the development proposed would amount to 'limited infilling', the Council consider this requirement is not met, because the proposal does not amount to the development of a small gap in an otherwise continuous built-up frontage, or the small-scale redevelopment of existing properties within such a frontage. The appellants suggest that a wider interpretation, of buildings within the confines of a group of buildings, is appropriate.
12. There is no definition in the Framework of what constitutes 'limited infilling' and no definition that might be found in local planning policies has been suggested here. The appeal site is surrounded by buildings, albeit in a very loose arrangement, and, as described by the previous Council report, is in an urbanised area. Immediately to its north lies a field, separating it from the next house to the north east by around 30m. The Diggle Hotel lies further away, to the north. A pair of semi-detached dwellings lie to the south west, separated by a field from further dwellings in Kiln Green. Another dwelling lies opposite to the west.
13. Whereas 'infilling' suggests the development of land that is surrounded by existing development on at least 2 sides within reasonable proximity, the requirement for such infilling to be 'limited' requires consideration of both the development site and the scale and form of the proposed development. The proposed development would extend the house by a little more than 5m to its north eastern side, largely below ground level. On this issue I conclude that, although there is some distance across the field to the frontage of the next dwelling, 2 Diglea, to the north east, the spacious nature of this part of Diggle with its loose arrangement of buildings, combined with the small scale and the form of the development proposed, would amount to limited infilling within a village for the purposes of the Framework.
14. Accordingly I find that an exception to the Framework's requirement that new buildings should be considered as inappropriate in the Green Belt to have been established. The proposed development would not amount to inappropriate development in the Green Belt because it would constitute limited infilling within a village. It follows that no assessment of the effects on Green Belt openness or whether very special circumstances exist is necessary.

*Character and appearance*

15. The appeal site lies within the designated heritage asset that is Diglea Conservation Area, and accordingly special regard is to be had to the desirability of preserving or enhancing the Conservation Area when considering development proposals. The Framework advises that great weight should be given to the conservation of heritage assets, and this advice is largely reflected in CS Policy 24, requiring development proposals to have regard to national historic environment policy and to preserve or enhance the character or appearance of conservation areas.
16. The site lies at the south western edge of the Diglea Conservation Area, which consists of a small number of historic pre-Industrial stone buildings, together with buildings, such as the Diggle Hotel, and the appeal property in its original form, having had some association with the adjoining railway line. The site lies very close to the start of the Standedge railway and canal tunnels, which, although lying outside the Conservation Area, are significant examples of the achievements of the Industrial Revolution in the area. Some of the buildings, including the nearest dwelling to the appeal property within the Conservation Area, are listed. They lie on the rising land to the north and east of the appeal site, and are mostly abutted by open fields and the rising moorland beyond. Boundary treatments, in the Conservation Area and elsewhere in the vicinity of the appeal site, are mostly stone walls.
17. The appeal property lies at a prominent location at the junction of Station Road, crossing the railway line, with Lee Side which runs from Kiln Green towards the bottom of the hill up to Diglea which lies above it. The Pennine Bridleway crosses in front of the site, with a finger post sign opposite. Approaching the appeal property over the Station Road railway bridge, the adjoining field gate, marking the location of the proposed extension, lies ahead.
18. The appeal proposals involve raising the apparent land level behind the field gate by around 50cm. The extension would extend to the rear beyond the side of the existing south eastern elevation of the dwelling. The adjoining field slopes down with the road from the north. Insofar as the proposal involves raising the land level towards the front of the property and grassing over the roof of the proposed extension to appear as a continuing part of the field, I find that there would be no adverse impact on the character or appearance of the area, including the Conservation Area.
19. However, the proposal involves further elements that I consider would adversely affect the appearance of the area. The flat roof of the extension would extend into the field well above its existing land levels as they slope down towards the existing curtilage of the dwelling, and would protrude beyond these. Although the easternmost corner of the extension would appear to align with the field level at that point, the land continues to drop away and the development would increase in prominence towards the west, with a marked drop from its surface to the surrounding land level. The corollary of this is that the roof is to be surrounded on its southern sides by a timber fence, containing the area above it and replacing the existing aspect of the open field lying beyond the field gate.
20. The effect of these elements is that the existing views across the site to the countryside beyond would become considerably restricted by the incongruous timber fence, and evidence of the flat roofed extension protruding beyond the

adjoining land form would be readily apparent when viewed from its surroundings, particularly from the Conservation Area to the north east but also to users of the recreational Pennine Bridleway route passing in front of the site. Although the appellants consider that 'underground' or 'built in to the hillside' accommodation is part of the local Saddleworth vernacular, I saw no comparable examples of such development within the Conservation Area or within the vicinity of the appeal site.

21. As a result, the appearance of the area, and therefore the Conservation Area, would be harmed. In terms of the Framework this would amount to 'less than substantial' harm that should be weighed against the public benefits of the proposal.
22. The appellants consider the extension to be of a high architectural standard and an imaginative design. Putting the context aside, I do not dissent, but find the public benefits of this to be limited. Whilst some contribution to the local economy would be likely to result from the ability to house more occupants, this has not been quantified. The construction-related jobs would be a rather ephemeral benefit compared with the permanent harm to the Conservation Area. The ability of the appellants to house family members coming to stay constitutes a private rather than a public benefit.
23. Therefore on this issue I am unable to conclude that there are sufficient public benefits deriving from the proposal to outweigh the harm to the Conservation Area that I have identified. The proposal would thus conflict with heritage policies in the Framework and with CS Policy 24.

#### **Planning Balance and Conclusion**

24. I conclude that the proposal would amount to development constituting limited infilling within a village, and as a result it would not be inappropriate development in the Green Belt. This has a neutral effect on the outcome of the appeal. There would be harm to the Conservation Area, resulting from the protrusion into the landform of the extension and the fence above it. No public benefits arising from the development are sufficient to outweigh this harm, which is contrary to CS Policy 24 as well as the Framework. As no other material considerations have been raised that would justify departing from the development plan for the area, the appeal is dismissed.

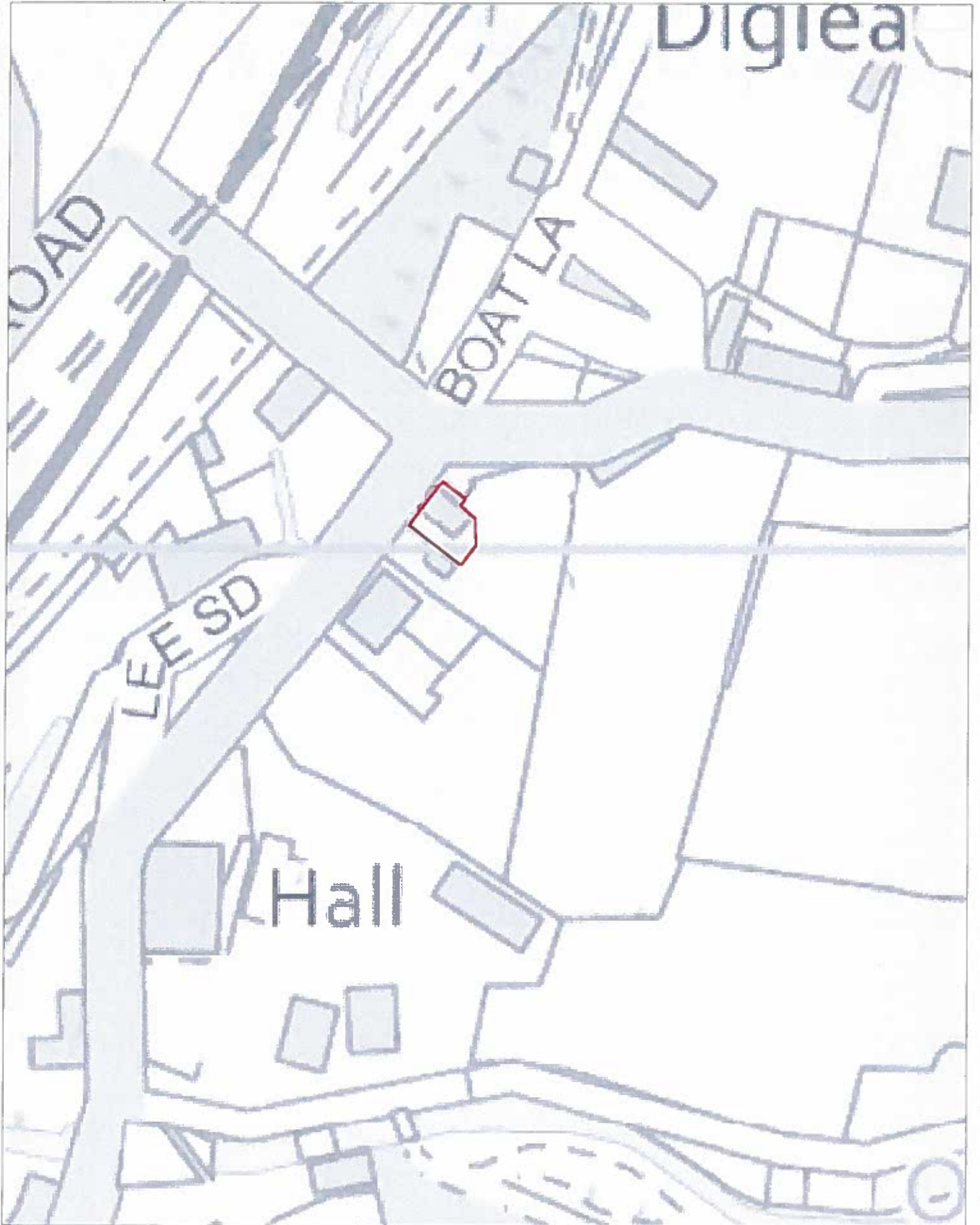
*Laura Renaudon*

INSPECTOR





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## Appeal Decision

Site visit made on 6 August 2019

by **Patrick Hanna MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3<sup>rd</sup> September 2019

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**Appeal Ref: APP/W4223/W/19/3226960**

**Land at High Street/Hill End Road, Delph, Oldham OL3 5HW**

- 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 Rod Lawson against the decision of Oldham Metropolitan Borough Council.
  - The application Ref HH/340889/17, dated 23 January 2018 by the Council, was refused by undated notice.
  - The development proposed is demolition of existing toilets and construction of detached garage.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application site address is different on the application and appeal forms to that on the Council's decision notice. I have used the former, as the only building on the site is a toilet block which would not normally have an address. As different postcodes are also given, I have used that most recently provided.

### Main Issues

3. The main issues are the effect of the proposal on (a) the character or appearance of the Delph Conservation Area, with particular regard to trees, and (b) highway safety.

### Reasons

#### *Character and appearance*

4. The appeal site is a modest area of landscaped open space, with public access, containing a small number of mature trees with full crown coverage of the site. The site slopes diagonally, following the inclines up both High Street and Hill End Road. At the northern corner is a path and steps; to the east there is a small and discreetly sited public toilet building. Beyond, and outwith the site, is an existing domestic garage at higher level. The site is prominent, being located at a key road junction. The appeal proposal would result in erection of a garage building over the footprint of the toilet building, provision of vehicular access on the steeply sloping Hill End Road, and tree removal.
5. This maturely landscaped open space makes a welcome and significant contribution to the Delph Conservation Area, with the Council's Character

Appraisal highlighting the relatively few trees in the core of the village and the contrast of soft landscaping with the dense village core. A primary objective of the Character Appraisal includes retention of trees which are important to the character of Delph. Whilst submissions refer to a tree survey and arboricultural report, I have not been provided with these. Nonetheless, it is clear from the submitted drawings and my observations on site, that the proposed access surfacing would result in the direct loss of the large tree along Hill End Road. Additionally, encroachment of the proposed garage further into the root system of another large tree, centrally located, would put that tree at risk. In the absence of justification for loss, or methodology for protecting roots, given the small size of the site and the limited number of existing trees, the loss of even one or two trees would significantly diminish the character of the open space and the wider locality. In these circumstances, replacement trees would not provide acceptable mitigation.

6. The appellant suggests public benefits in terms of public safety, upgrading the unsympathetic building in line with Character Appraisal objectives, and highway safety. However, my observations on site were that the trees looked healthy, and I have not been provided with any evidence to demonstrate otherwise. Upgrading should not be at any cost and, given my below findings on highway safety, none of the purported public benefits would outweigh the harm found to the character and appearance of the conservation area.
7. I conclude that the proposal would fail to preserve the character or appearance of the Delph Conservation Area and, in the words of the National Planning Policy Framework (NPPF), would cause 'less than substantial' harm to its significance as a designated asset. In the absence of any public benefits to outweigh this harm the proposal would conflict with Policies 9 and 24 of the Oldham Local Development Framework, saved Policy D1.5 of the Oldham Metropolitan Borough Unitary Development Plan, and the NPPF. Together these require development to be appropriate within its context, and within its natural and historic environments, amongst other matters.

#### *Highway safety*

8. The drawings showing the proposed development are not adequately detailed. Proposed levels are not shown, neither are groundworks which would be necessary to accommodate the development on or within sloping ground, particularly given the level base shown on the submitted elevations. Notwithstanding this, my observations on site indicated that, given the lack of turning area and the non-perpendicular layout of the access, reversing onto or from this steep and relatively narrow road, in close proximity to a junction, would be a dangerous manoeuvre. Whilst the traffic on this road may be light, the number of proposed movements may be limited, and any drivers may be exercising due care, the harm I have found is potentially exacerbated by the uncertainty over groundwork levels, and whether sufficient visibility will be available to the east of the access.
9. Reference is made to previous similar planning permissions in the locality, however I have not been provided with details of these and, in any case, I must determine the appeal on its merits. Notwithstanding the intention to use the driveway for access only, it is clear only one vehicle could park on the driveway; the drawings indicate a second would overhang the footway, with resultant risk to pedestrians. The benefits and convenience of off-road parking

would not outweigh the harm I have found, even considering loss of off-street parking elsewhere.

10. Accordingly, I conclude that the proposed development would result in significant adverse impact on highway safety. As such, the proposal would be contrary to Policy 9 of the Oldham Local Development Framework and the NPPF which, in respect of this issue, together require that development does not harm the safety of road users.

*Other matters*

11. Any covenants restricting use of the land are private matters that are outwith my jurisdiction, as is delegation of determination by the Council. I have considered all other matters raised including support from third parties; status of the land as brownfield, previously developed land; reduction in car-related crime; benefits to tourism; provision of electric car charging units; and provision for cycles. However, none of these matters are determinative such that they would outweigh the harm I have found above.

**Conclusion**

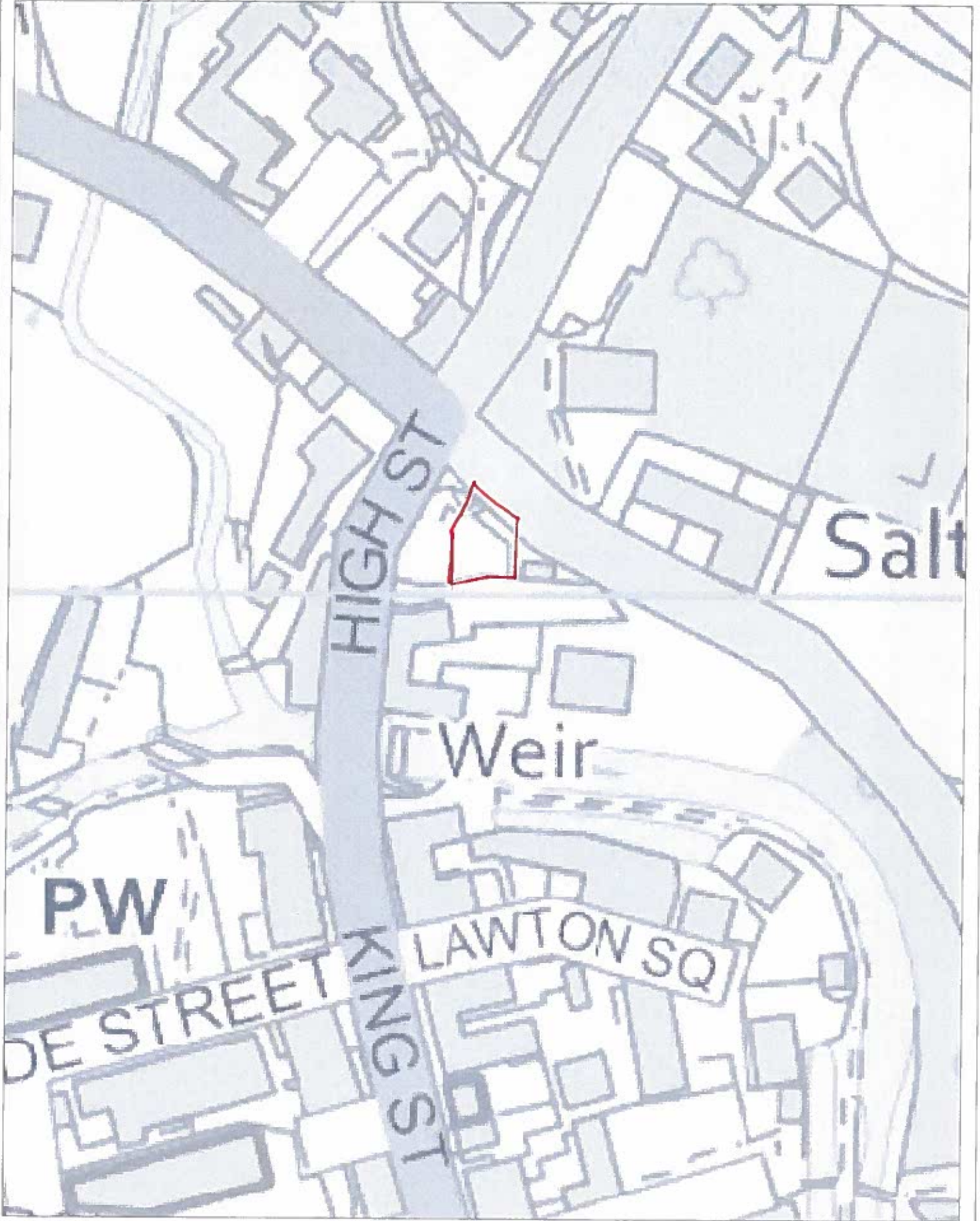
12. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*Patrick Hanna*

INSPECTOR



340889



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