

Planning Appeals Update

Planning Committee

Report of Head of Planning and Infrastructure

DATE OF COMMITTEE

November 2020

PLANNING APPEALS

WRITTEN REPRESENTATION

HEARINGS

HOUSE HOLDER

ADVERTISEMENTS

AD/344827/20 – B and M Bargains, Ellen Street, Oldham OL9 6QR

APPEAL DECISIONS

AD/344390/20 – Dismissed - Junction Trade Park, OL8 4RG
PA/343901/19 – Allowed - 264 Block Lane, Chadderton, OL9 7QB
AD/344807/20 – Dismissed – The motor Finance Group, Shaw Road, OL1 3HZ
HH/344267/19 – Dismissed – 95 Failsworth Road, Failsworth, M35 9NX
CL/335657/14 – Dismissed – Land at Harrop Green Lane, Diggle, Oldham

RECOMMENDATION - That the report be noted.

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



Appeal Decision

Site visit made on 20 October 2020

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2020

Appeal Ref: APP/W4223/H/20/3254877

Junction Trade Park, Manchester Road, Oldham OL8 4RG

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a failure to give notice within the prescribed period of a decision on an application for express consent to display an advertisement.
 - The appeal is made by SSH Property Investment Ltd against Oldham Metropolitan Borough Council.
 - The application Ref AD/344390/20 is dated 17 January 2020. The advertisement proposed is 2no. LED advertisement displays.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal relates to an advertisement consent application that was not determined by the Council within the prescribed period. I have had regard to the appellant's submitted plans and statements and have determined the appeal on that basis.

Main Issues

3. The main issues are the effect of the signage on amenity and public safety.

Reasons

Amenity

4. The site lies in an area of predominantly commercial development. It fronts the wide Manchester Road (A62) corridor, a busy strategic route linking Oldham town centre with Manchester city centre, close to a signal-controlled junction. The site consists of a number of commercial units within a subdivided shed that has been re-fronted with a high modern façade. A parking area lies forward of the building and is enclosed by a wall and railings. At the time of my site inspection, all the units were occupied.
5. The proposed signs would sit close to the site frontage such that they would appear prominent in the street scene. In the context of a commercial area of generally large-scale buildings and the broad measure of the roadway, the hoardings would be appropriate in their scale.
6. However, the displays would be seen against a backdrop of a significant number of large adverts displayed on the front of the building. Large scale signage identifying the businesses contained within each unit is generally set high on the building's façade close to the upper edge of the parapet where they

are highly visible. These are augmented by a significant level of secondary signage set in and about the fascias and above the ground floor openings of most of the units. When taken with the existing totem signage within the car park and the banner advertisements and placards attached to the enclosing railings and gates, the proposed displays would add to a significant clutter of adverts displayed at the site.

7. Despite their set apart positions, the effect of the large-scale displays would be to add to the existing confusion of adverts. This would be particularly so on account of the vivid LED displays and the 'movement' between consecutive static images up to a maximum of one every 10 seconds. Although the displays would be modern in appearance and could be maintained to a high standard with illumination levels controlled, they would serve to draw significant attention to themselves and the broader display of advertisements. Although they would not adversely impact nearby residential living conditions on account of intervening distances, they would add to the existing proliferation of adverts and constitute intrusive and overly dominant features that would cumulatively cause significant harm to the visual amenity of the surrounding area through visual clutter.
8. The appellant has highlighted that there are examples of other high density signage areas along the A62 frontage and LED displays elsewhere. However, the majority of large units have significantly lower levels of displays on their individual elevations and therefore contrast sharply with the case before me, a case I have considered on its own merits. Although the presence of other adverts elsewhere provides part of the commercial context of the site and the A62 corridor, it does not justify the addition of further dominant features which I have identified would cause harm to the streetscene in the vicinity of the site.
9. For the above reasons, I find that the proposed LED displays would add to the visual clutter of advertisements in the locality such as to cause significant harm to its visual amenity.

Public Safety

10. The signs would be sited on private land that is publicly accessible to visitors of the businesses within the adjacent building. The signs would be located clear of the edge of a car park area and set behind a landscape strip to the rear of the pavement on Manchester Road such that they would pose little effect on the continued safe use of those areas.
11. The proposed displays would be readily visible by users of the busy A62 and from the roads serving commercial areas on its opposite side, including Clock Street, Bowling Street and Clowes Street. However, the primary views would be limited to those about the junction of Clowes Street and the A62. This junction is controlled by traffic lights with a combined pedestrian crossing on the northern arm.
12. The position of the signs would be such that driver views of the traffic signals about the junction would be unimpeded and viewed in isolation from the displays. Traffic waiting to turn on to Manchester Road from within the Clowes Street carriageway would see the northernmost sign in the same view as the traffic signals but sufficiently separate from it to avoid confusion and interpretation of the changing road signals.

13. Sideways views of the signs would be available to drivers of vehicles within the main carriageways of the A62. For southbound traffic they would substantially emerge in the field of view after vehicles have navigated the junction on account of the bend in the road and presence of screening buildings on the corner. However, this would be on approach to a bus layby and a major junction with the ring road. In the northerly direction the signs would present late in the approach to the junction with Clowes Street / Baxter Street on account of the landscaping within the central reservation.
14. In both directions, these views would be at points where traffic is slowing, potentially stopping, or manoeuvring between lanes. Although forward visibility is generally good and the area benefits from street lighting, the size, siting, illumination and changing character of the displays, whether synchronised or not, when taken with the backdrop of other advertisements, would inevitably draw the attention of drivers. The side-on position and late emergence in the field of view would increase the potential for distraction with attendant possibility for shunts and collisions between vehicles on those sections of the road.
15. In support of the appeal the appellant indicates that the accident record for the locality is low and distraction was not a factor in the instances recorded. However, this is without the presence of the LED displays. Additionally, details of examples of other LED adverts sited close to main roads and junctions are provided, including before and after accident records. However, in the absence of full details of the cases I am unable to draw comparisons between their circumstances and those of the case before me. Furthermore, although the cases generally indicate that there is no statistically significant association with the erection of LED displays, the limited data and other potential variables do not provide firm ground to conclude that no adverse impact on highway safety would arise in the circumstances of this case.

Other Matters

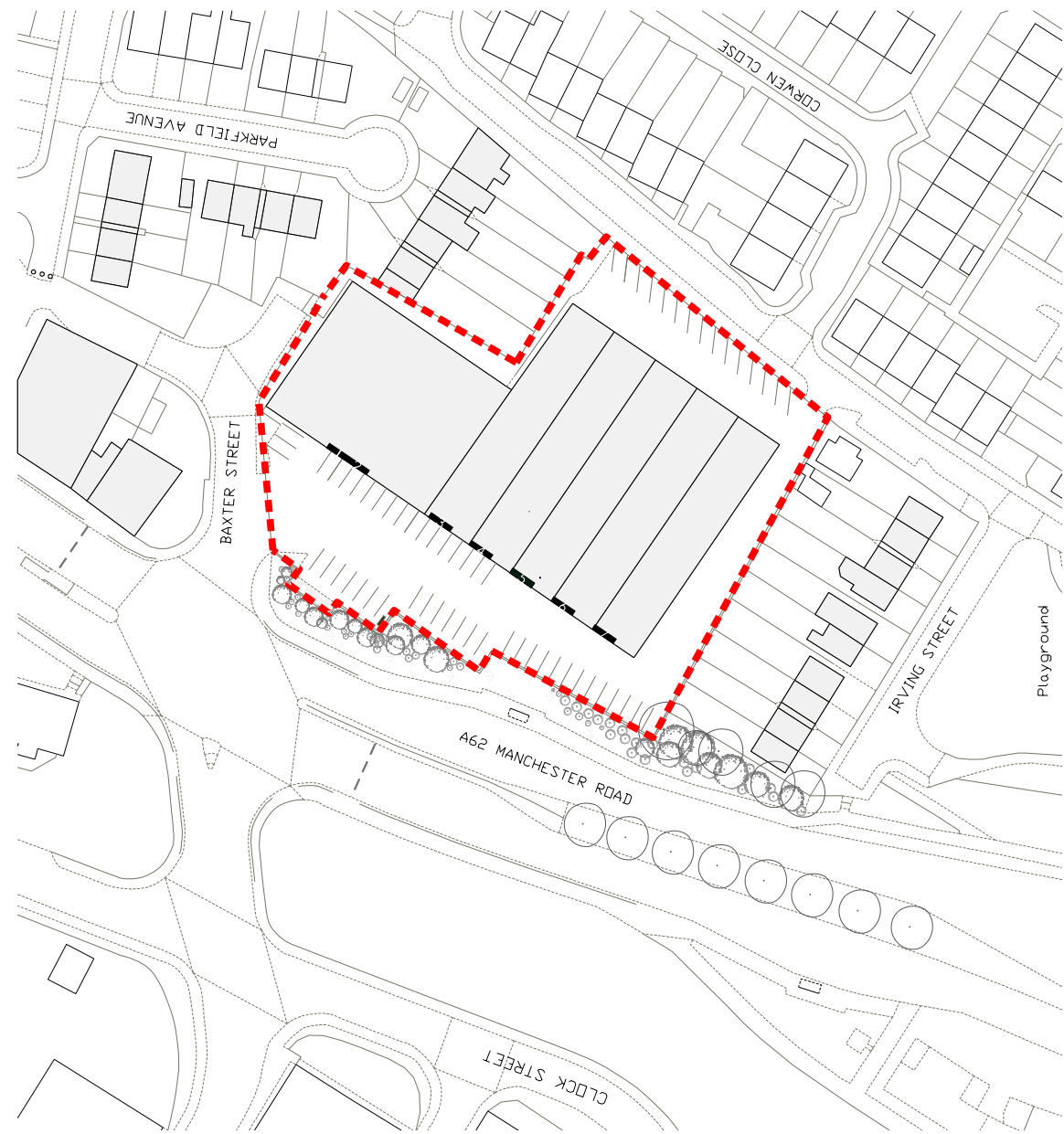
16. I note the frustrations expressed by the appellant in relation to the level of communication from the Council leading up to this appeal. However, this is not a matter for the appeal.

Conclusion

17. I have taken into account the provisions of the development plan, so far as they are relevant, in accordance with the Regulations. I have had regard to Policy 9 of the Oldham Local Development Framework Development Plan Document – Joint Core Strategy and Development Management Policies (2011) as it seeks to protect amenity and the safety of road users, together with paragraph 132 of The National Planning Policy Framework. Having found that the proposal would cause harm to local amenity and highway safety, the proposal conflicts with those policies.
18. For the above reasons, I conclude that the appeal should be dismissed.

R Hitchcock

INSPECTOR



ISSUE				
Rev	Description	By	Chk	Date

All dimensions to be as noted (to be checked on site prior to manufacture). Do not scale the drawing. Report any discrepancies to the Architect/CA immediately. All drawings copyright of Gas Studio Ltd. drawings are not to be reproduced without written consent.

Project	Junction Trade Park	Project No.	19-21	Rev.	00
		Dwg. No.	L(-2)001	By	MB
Title	Location Plan	Date	Dec 19	Chk.	MJG
		Scale	1:1250 @ A3	App.	00

Key Notes
Site Boundary



STUDIO

mail@gasstudio.co.uk

www.gasstudio.co.uk

tel. 0161 835 3538

Architects / Masterplanning / Urban Design



Appeal Decision

Site visit made on 8 September 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2020

Appeal Ref: APP/W4223/W/3248687

Land to the side of 264 Block Lane, Chadderton, Oldham OL9 7QB

- 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 Paul Carr against the decision of Oldham Metropolitan Borough Council.
 - The application Ref PA/343901/19, dated 12 September 2019, was refused by notice dated 19 November 2019.
 - The development proposed is a new dwelling.
-

Decision

1. The appeal is allowed and planning permission is granted for a new dwelling at Land to the side of 264 Block Lane, Chadderton, Oldham OL9 7QB in accordance with the terms of the application, Ref PA/343901/19, dated 12 September 2019, and the plans submitted with it, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Paul Carr against Oldham Metropolitan Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the proposed development on highway safety.

Reasons

4. The appeal site is a triangular piece of land fronting Block Lane to its south east, and bounded by the Metrolink light rail embankment to the west and residential properties to the east. Block Lane is a classified 'B' road with a 30mph speed limit, with the appeal site situated on the inside of a long and gentle curve in the road. The Metrolink line crosses Block Lane on a skew bridge a short distance to the west of the site. The proposal is to erect a single storey, two-bedroom dwelling, which would be situated towards the northern corner of the site close to the boundaries with 264 Block Lane and the Metrolink embankment. Parking provision for two vehicles is proposed within the site, and there would be room for vehicles to turn within the site to enable exit in a forward gear.
5. There is a bus stop with a shelter on the north side of Block Lane immediately outside the appeal site, and the development would require the formation of a

new access crossing the pavement next to this. The shelter would obstruct the view east along Block Lane for drivers leaving the appeal site, and so would increase the risk of road accidents taking place. The positioning of the bus shelter is also such that pedestrians passing by must either walk on a hard surfaced area to the rear of the shelter, which is in the appellant's ownership and within the appeal site 'red line' boundary, or on a narrow section of footway in front of the shelter which is not wide enough to provide safe passage for people using wheelchairs or buggies. Transport for Greater Manchester has agreed with the appellant that, if planning permission for the development is granted, it will remove the existing bus shelter and replace it with a pole-type bus stop.

6. The length the view west Block Lane for drivers leaving the site would be limited by the Metrolink bridge abutment. However, the appellant has provided drawings showing that, following removal of the bus shelter, visibility splays of 2.4m x 43m in both directions could be created. These splays would be in line with the standard sought by the Highway Authority for a road with a 30mph speed limit. Nonetheless, the Council considers that there would remain a risk to safety from possible conflict between people waiting at or near the bus stop and drivers entering or leaving the site, as well from the site access being obstructed by any bus waiting at the stop.
7. Collision data submitted by the appellant, which has not been disputed, shows that during the five years from 2014 to 2018 inclusive there were three traffic incidents within 200m of the appeal site which led to 'slight' injuries. While accidents of any sort are of course regrettable, the evidence does not suggest that Block Lane is substandard or has dangerous traffic conditions at present. From what I saw at the time of my visit it does not appear to carry a heavy traffic flow, and there is no suggestion that the two-bedroom bungalow proposed would be likely to generate a significant number of additional vehicular movements.
8. Two bus routes use the adjacent stop, providing a combined service of three buses per hour. There is no data before me relating to passenger usage of the bus stop but, while I recognise they represent only a snapshot at a weekday lunchtime, my observations on my site visit did not suggest that it is especially heavily used. It therefore seems unlikely to me that there would be serious conflict between drivers entering or leaving the site and people using the bus stop, or that the number of people using the stop would obstruct the view east along Block Lane for drivers leaving the appeal site to a harmful degree. Although a bus waiting at the stop would block the proposed dwelling's driveway and prevent a vehicle entering or leaving, this would most likely be for only a very short period and any conflict would thus be minor. In urban areas it is not uncommon to find a bus stop next to a driveway or similar vehicular access point, and indeed my attention was drawn to other examples nearby. While each case must be assessed on its own merits, in the context of the wider surrounding area, the proposed arrangement would not present either pedestrians or drivers with an unusual or unexpectedly challenging situation.
9. The Highway Authority has advised that the siting of vehicle crossing over the footway within 17.5m of the rear face of a bus stop pole would not comply with the standard set out in its 2014 Light Duty Vehicle Crossing Policy. There is nothing before me to suggest that the standard has been incorporated into any

adopted planning policy, although it is of course a matter for the Highway Authority to reach its own decision on an application under the Highways Act 1980 for a vehicle crossing. However, in planning terms I conclude that the proposed development would not be significantly harmful to highway safety.

10. The proposal would therefore comply with Policy 9 of the 2011 Oldham Joint Core Strategy and Development Management Policies DPD (the DPD), which among other things seeks to ensure that development is not harmful to safety, including highway safety. I also note in this regard the requirements of Paragraph 109 of the National Planning Policy Framework. This indicates that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe, neither of which I consider to be the case here.

Conditions

11. I have considered the conditions suggested by the Council having regard to the tests in the Framework and the advice in the Planning Practice Guidance. Where necessary I have altered the proposed wording and ordering in the interests of clarity and effectiveness. In accordance with Section 100ZA of the Town and Country Planning Act 1990, the appellant has provided written agreement to the pre-commencement conditions.
12. In addition to the standard time limit condition (1) in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans (2).
13. A condition relating to land contamination (3) is necessary to protect public safety and to comply with Policy 9 of the DPD, although I have amended the wording from that suggested by the Council so that it defines the standard of assessment required. A condition to ensure satisfactory drainage (4) is required to comply with Policy 9 of the DPD. A condition requiring the removal of the existing bus shelter and its replacement with a pole style bus stop is necessary in the interests of highway safety (5). A condition in respect of landscape works is necessary to protect the character and appearance of the site and surrounding area, and to ensure that the hard and soft landscaping does not obstruct the highway visibility splays (6). Conditions 3 to 6 are pre-commencement conditions as they are fundamental to the development being able to take place in a safe and otherwise acceptable manner.
14. A condition in respect of materials (7) is required in the interests of the character and appearance of the area and to ensure compliance with Policy 20 of the DPD, while a condition requiring that the approved off-street parking and turning areas are retained for those purposes (8) is necessary in the interests of highway safety and to ensure compliance with Policies 5 and 9 of the DPD.

Conclusion

15. For the reasons given above the appeal is allowed.

M Cryan

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Proposed Site Plan & Landscaping (Drawing Number: 1257.120)
 - Proposed Floor Plan, Roof Plan & Elevations (Drawing Number 1257.100)
- 3) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority.

If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority.

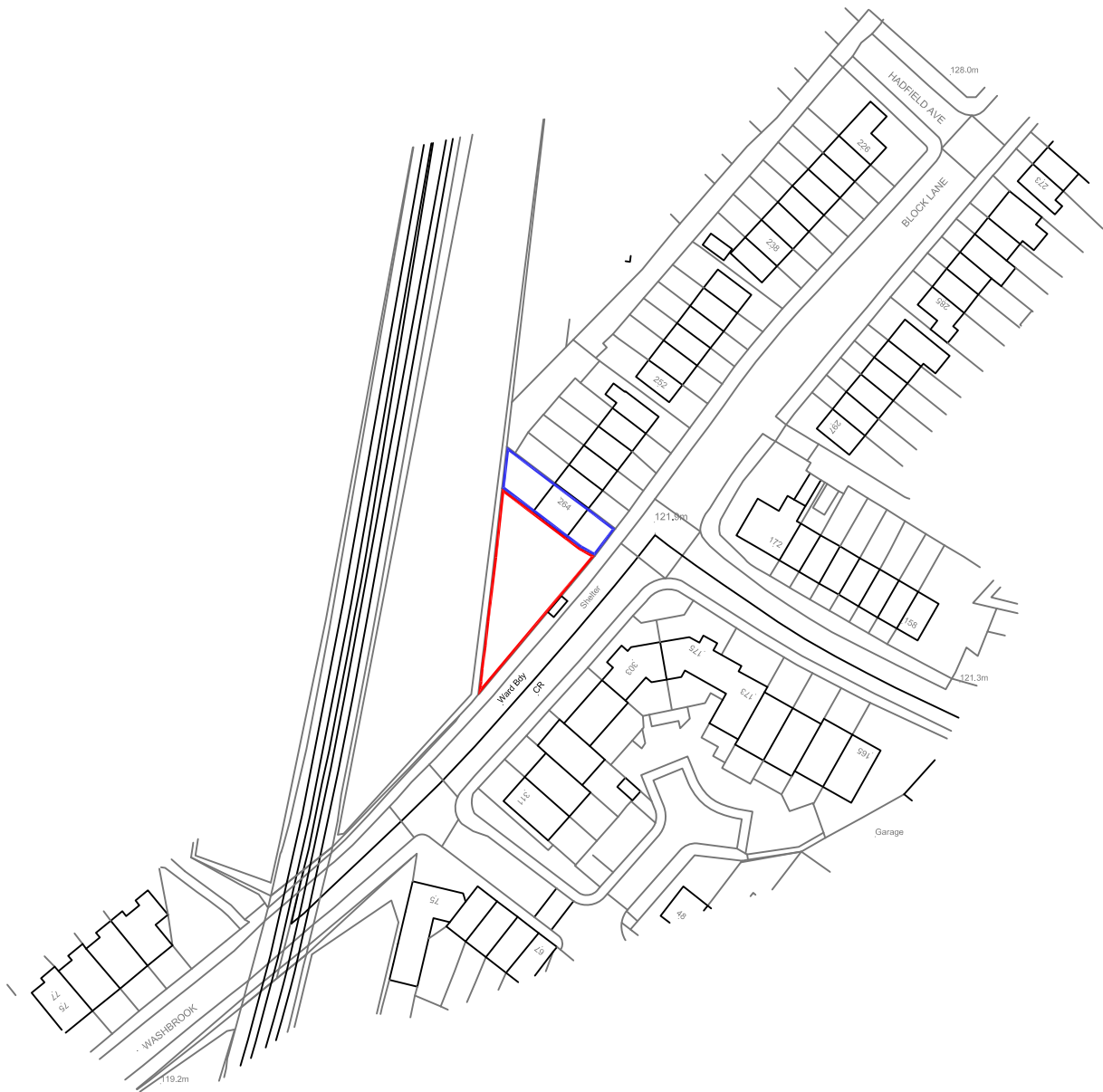
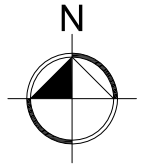
If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 15 days of the report being completed and approved in writing by the local planning authority.
- 4) No development shall commence until a detailed drainage scheme, including surface water discharge, has been submitted to and approved in writing by the Local Planning authority. The scheme shall then be completed in accordance with the approved plans and maintained thereafter.
- 5) No development shall take place until a scheme for the provision and location of a new pole-style bus stop to replace the existing bus stop shelter on the north side of Block Lane adjacent to the appeal site has been submitted to and approved in writing by the local planning authority. The approved dwelling shall not be occupied until the existing bus shelter has been permanently removed and the local planning authority approved replacement bus stop has been erected.
- 6) No development shall take place until full details of both hard and soft landscape works with an associated implementation plan, have been submitted to and approved in writing by the Local Planning Authority. The hard landscape details shall include proposed finished levels or contours; means of enclosure; and hard surfacing materials. The soft landscaping works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass

establishment); schedules of plants and trees, noting species, plant/tree sizes and proposed numbers/densities and the implementation programme.

All planting shall be implemented in accordance with the approved details in the first available planting season following the completion of the development, or such longer period which has previously been approved in writing by the Local Planning Authority, and shall be maintained for a period of 5 years from the agreed date of planting. Any trees or plants which die, become diseased, or are removed during the maintenance period shall be replaced with specimens of an equivalent species and size.

- 7) No development comprising the erection of any external walls shall take place until samples of the materials to be used in the construction of those external surfaces of the development, including any retaining walls and the roof, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. The materials to be used throughout the development shall be consistent in terms of colour, size and texture with the approved details.
- 8) The dwelling shall not be occupied until the access to the site and car parking space for that dwelling has been provided in accordance with the approved plan Drawing Number 1257.120 and the details of construction, levels and drainage, which shall have been submitted to and approved in writing by the Local Planning Authority prior to the commencement of the construction of the access and parking spaces. Thereafter the parking spaces and turning area shall not be used for any purpose other than the parking and manoeuvring of vehicles.

--End of schedule of conditions--



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Client

Mr P Carr

Project Title

Land to side of 264 Block Lane
Chadderton OLDHAM OL9 7QB

Drawing Title

LOCATION PLAN

Drawing Number

1257-LOC

Date

13.11.2018

Scale

1:1250



Appeal Decision

Site visit made on 22 September 2020 by Ifeanyi Chukwujekwu BSc MSc MIEMA CEnv AssocRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

Appeal Ref: APP/W4223/Z/20/3257647

The Motor Finance Group, Shaw Road, Oldham OL1 3HZ

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) against a refusal to grant express consent.
 - The appeal is made by Mr Malik Hussain on behalf of Mayfair Properties (Manchester) Ltd against the decision of Oldham Council.
 - The application Ref AD/344807/20, dated 29 April 2020, was refused by notice dated 13 July 2020.
 - The advertisement proposed is replacement of existing 1 x 48 sheet externally illuminated advertisement hoarding with 1 x 48 sheet freestanding digital advertising display unit.
-

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issue

3. The main issue is the effect the proposed advertisement would have on public and highway safety in the area.

Reasons for the Recommendation

4. The display would be located along Shaw Road in Oldham on the south east side of the junction of Shaw Road and Arnold Street where there is an existing 48 sheet externally illuminated advertisement hoarding. The digital advertisement would first become visible to drivers on approach from the south east on Shaw Road and from the south on Brook Street. Drivers have to negotiate turning into Brook Street from Shaw Road and vice versa. The advertisement would also be right next to the junctions with Arnold Street and Spencer Street. Vehicles exiting those streets could be aiming to merge onto Shaw Road, or to cut across the main highway onto the opposing side streets. Multiple movements are likely and the arrangement of the three junctions, slightly staggered from one another, creates quite a complex road layout where drivers undoubtedly need to exercise caution and have heightened awareness.

5. There is a relatively large volume of vehicular and cycling traffic at these junctions, as observed during my visit to the site and also demonstrated in the appellant's submission of Annual Average daily flow on Shaw Road¹.
6. The appellant contends that drivers would be able to glance at advertisements without distraction from road or traffic movements. However, the digital display of the proposed advertising is by its very nature designed to grab the attention of passers-by whether they be drivers or cyclists. Given the location of the advertisement facing oncoming traffic at a sensitive point in the highway I find that there is a reasonably likelihood that drivers would be distracted in trying to figure out the advertising content as they approach, and the changing sequence is likely to draw more focus.
7. The appellant argues that the 10 second timing is an industry standard and is considered acceptable for urban locations. However, even though the display would not show moving images and the change in specific images would be instantaneous, the rotation of advertising for different products has more potential to catch the eye of a driver than the current fixed display. There is clear potential for a driver travelling in a north-westerly direction on Shaw Road towards the complex junctions with Brook Street, Spencer Street and Arnold Road to be momentarily aware of a changing image. Even a fleeting and inadvertent glance across at the display to register the change could have negative consequences in terms of the impaired ability to notice traffic pulling out of a junction ahead or slowing down to turn into one of the streets off Shaw Road.
8. Whilst the appellant has referred to guidance to suggest that digital displays are not inherently more hazardous than fixed displays², the full content of that guidance has not been provided and, in any event, my concerns do not relate to an inherent danger but one related to the very specific nature of the location and the position of the display at a sensitive location on the highway. I find that the proposal would be more noticeable and more distracting than the existing fixed illuminated display at a point where drivers need to exercise heightened road awareness.
9. Even though traffic speeds are limited in the locality, vehicles will still travel at speeds that could cause injury or worse to pedestrians or other road users. Thus, the proposed illuminated 48-sheet digital advertisement display is likely to have a negative effect on public and highway safety along this section of Shaw Road. Though the Crash Map³ provide by the appellant indicates a few examples of a few slight accidents on Shaw Road as compared to the volume of traffic, this statistic is likely to be exacerbated due to increased driver distraction by virtue of digital display.
10. The appellant has also provided two examples of digital advertisement located in the neighbouring authority area of Manchester City Council, which they contend mirror the Appeal site in terms of display units of similar dimensions and landscape orientation, and which exhibit the same operational characteristics of digital illumination and static images. These examples are supported by Crash Map road accident statistics, which appear to show that the

¹ Appellant's Appendix 14

² Transport for London guidance document entitled "Guidance for Digital Roadside Advertising and Proposed Best Practice (March 2013)"

³ Appellant's Appendix 13

accident levels before and after the installation of the digital displays have remained at a fairly consistent rate, and therefore it is inferred that they have not had a negative impact on road safety in the surrounding areas.

11. However, from the limited information the road junctions do not appear to be directly comparable. The image of the Rochdale Road site shows a much wider highway including bus lanes, with two side streets directly facing each other at the intersection, unlike the staggered and more complex junction arrangement at the appeal site. The Oldham Road site appears to be a traffic light-controlled junction where turning to and from the main highway will be regulated in a different way to the junctions at the appeal site which do not benefit from traffic lights. Consequently, the two examples are not directly comparable and the evidence provided in relation to those schemes does not alter my concern about the impact of a digital display at the appeal site.
12. I conclude, therefore, that the advertisement would have a harmful effect on highway safety. Whilst not decisive, the proposal would not meet with the objectives of the National Planning Policy Framework nor Policy 9 of the Oldham Local Development Framework Development Plan Document- Joint Core Strategy and Development Management Policies (2011) which amongst other things seeks to ensure that new development minimises traffic levels and does not harm the safety of road users.

Conclusion and Recommendation

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

Ifeanyi Chukwujekwu

APPEALS PLANNING OFFICER

Inspector's Decision

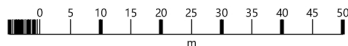
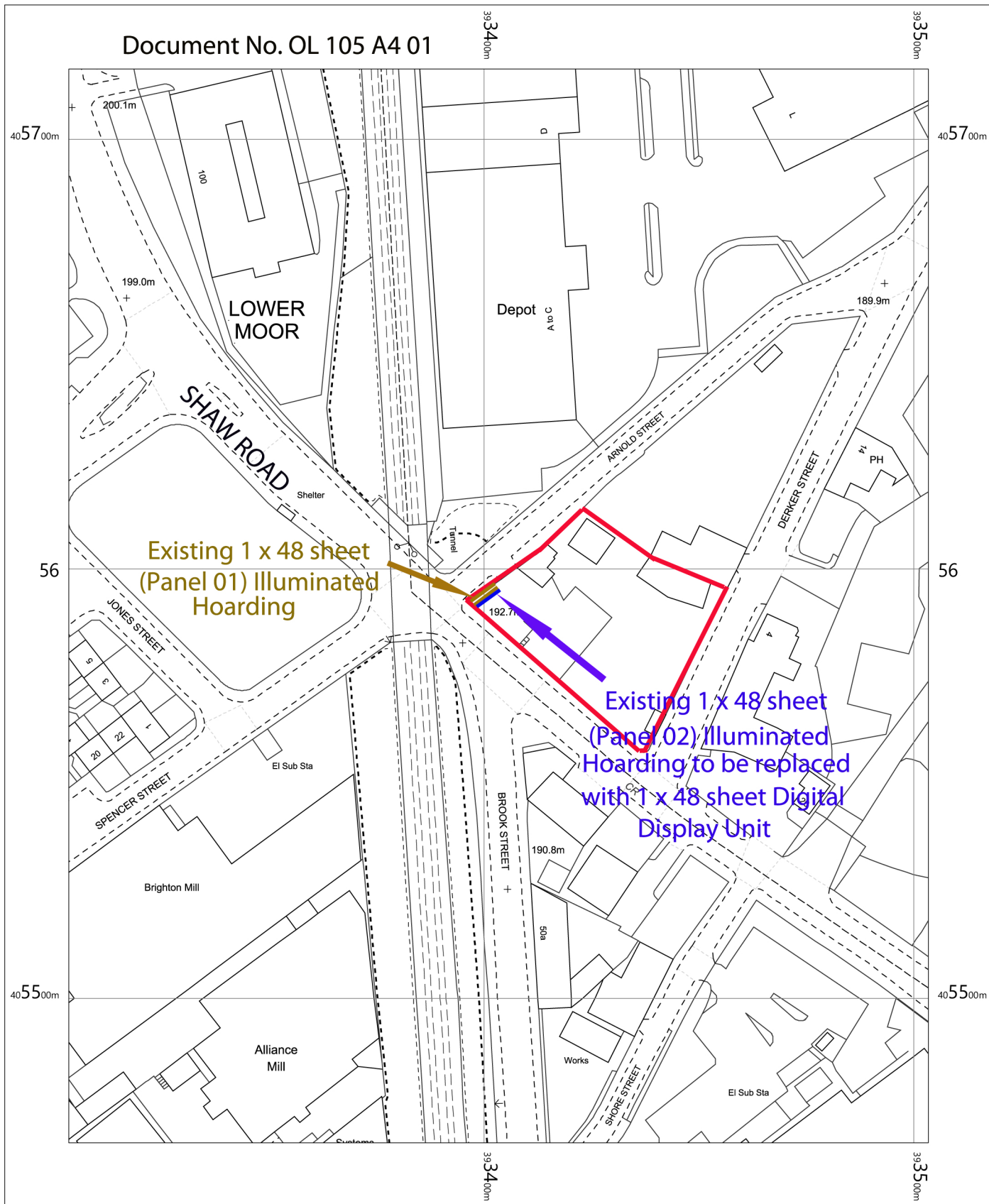
14. I have considered all the submitted evidence and the Appeal Planning Officer's report, and on that basis, I agree that the appeal should be dismissed.

Chris Preston

INSPECTOR

Location Plan Shaw Road

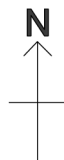
Document No. OL 105 A4 01



OS MasterMap 1250/2500/10000 scale
Thursday, April 23, 2020, ID: BW1-00873464
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1:1250 scale print at A4, Centre: 393403 E, 405591 N

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Appeal Decision

Site visit made on 8 September 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2020

Appeal Ref: APP/W4223/W/20/3248465 95 Failsworth Road, Failsworth M35 9NX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Tom Gilbert against Oldham Metropolitan Borough Council.
 - The application Ref HH/344267/19, is dated 6 December 2019.
 - The development proposed is described as 'a new single storey front roof, single storey side and rear extensions following the demolition of adjoining/party wall to neighbouring half of garage along with the conversion of loft space'.
-

Decision

1. The appeal is dismissed and planning permission for a new single storey front roof, single storey side and rear extensions following the demolition of adjoining/party wall to neighbouring half of garage along with the conversion of loft space is refused.

Procedural Matters

2. The description of development used in the banner heading and formal decision above is taken from the appeal form. I have used that wording for clarity in preference to the description on the original application form, which was longer and included technical information which was not descriptive of the development.
3. The Council had not determined the planning application prior to the appeal. However, it indicated that the application would have been refused due to the effect of the development on the character and appearance of the surrounding area.
4. Since the application was submitted, the Council has granted planning permission for an amended scheme ('the alternative permission')¹, and therefore the greater part of the appeal proposal in fact already has planning permission. The only substantial elements which form part of the appeal proposal which are not also part of the alternative permission are that part of the extended kitchen/dining/living room at the south east corner of the rear of the building, and that part of the pitched roof overhanging the proposed garage/store at south west corner of the front of the building. I have considered the differences between the two schemes in assessing the alternative scheme as a fallback position later in my decision.

¹ LPA Ref: HH/344267/19

5. At the time of my site visit, it was apparent that a considerable amount of building work to implement the alternative permission had already been carried out, and as a consequence, the 'existing' drawings provided in respect of the appeal before me no longer show the appeal property accurately.

Main Issue

6. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

7. The appeal relates to a modern detached house and its garden, sitting alongside a similar pair of semi-detached houses. The prevailing form of development in the immediate surroundings is modern detached houses of various sizes and styles. Originally a two-storey dwelling, at the time of my site visit the appeal property was being altered under the alternative permission, and the loft had been converted to living accommodation by the addition of rooflights and tall windows at the apexes of the gable ends.
8. The appeal site lies within the Woodhouses Conservation Area (the Conservation Area). I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. As heritage assets are irreplaceable, the National Planning Policy Framework (the Framework) states that they should be conserved in a manner appropriate to their significance (paragraph 184). It goes on to advise that any harm or loss requires clear and convincing justification (paragraph 194) and that any harm that is less than substantial must be weighed against the public benefit of the proposal (paragraph 196). The wider Conservation Area is characterised by linear terraces of small dwellings in both modern and traditional designs set back from the road with short front gardens, although the focus of the Conservation Area is Ashton Road and Medlock Road a short way to the south of the appeal site.
9. The proposed scheme as a whole would include a single storey wrap-around front, side and rear extension running across almost the full width of the plot, to create an expanded and remodelled kitchen/dining/living room where the previous garage stood. There would also be an infill at the south west corner to create a remodelled porch and a new small garage/store room. Most of the roof of the ground floor extension would be flat, and it would overhang the rear garden at an angle. The north side extension and the front and side porch/garage would have pitched roofs. The proposal also includes the aforementioned loft conversion, to create an additional bedroom with ensuite bathroom.
10. The development would result in a substantial increase in the property's built footprint and mass. At the rear, the ground floor extensions would be of such a size that the original house would be overwhelmed and, when seen from neighbouring properties it would appear lost in a sea of flat roof. From the front, the various heights and projections of the pitched roofs would give the property an ungainly and discordant appearance. The appellant describes the scheme as an attempt to 'slightly modernise' the house by adding some modern touches. I disagree with that assessment. The proposed extensions and alterations would dominate the original building, and would result in the dwelling appearing over-large for its modestly sized plot.

11. The loft conversion, which has in any event already been implemented under the alternative permission, is in keeping both with the scale, design and appearance of the host property and the wider area, and I consider that this part of the development would be acceptable. However, a lack of harm in this regard does not outweigh the other harm I have identified in considering the entirety of the proposal.
12. The alternative permission represents a fallback position for the appellant, and as the loft conversion element has already been built and preparatory work carried out for other parts of the scheme, there is clearly a very real prospect of it being built in full. However, the alternative permission is smaller at both front and rear than the scheme now before me, with a smaller area of flat roof at the rear, and a less prominent projecting pitched roof at the front south west corner. As a result, the development allowed by the alternative permission would be less substantial and less discordant, and so less harmful, than the proposal now before me. I therefore ascribe limited weight to this fallback position.
13. The appellant has referred to the presence of a house across the road from the appeal site which was approved and built three or more years ago and which he considers is not in keeping with the area. However, as further identifying details have not been provided and there are several large modern houses nearby, I cannot be entirely sure as to which property he is referring. In any case, I do not have information about how other developments in the area came to be approved, and I have of course reached my decision on the basis of the evidence before me.
14. Overall, the development would be detrimental to the character and appearance of the area, and therefore would not preserve or enhance the character and appearance of the Conservation Area. In the Framework's terms, the harm to the Conservation Area's significance as a designated heritage asset would be less than substantial, in view of the appeal site's location on the edge of the Conservation Area. However, there are no identified public benefits arising from the proposal which would outweigh this harm.
15. I conclude that the proposal would be harmful to the character and appearance of the area. It would therefore conflict with Policies 9 and 24 of the 2011 Oldham Local Plan, which seek to ensure that development proposals do not have an adverse impact on the local townscape, and that heritage assets are protected, conserved and enhanced. For the same reasons, the proposal fails to accord with the provisions of the Framework which seek to protect and conserve heritage assets.

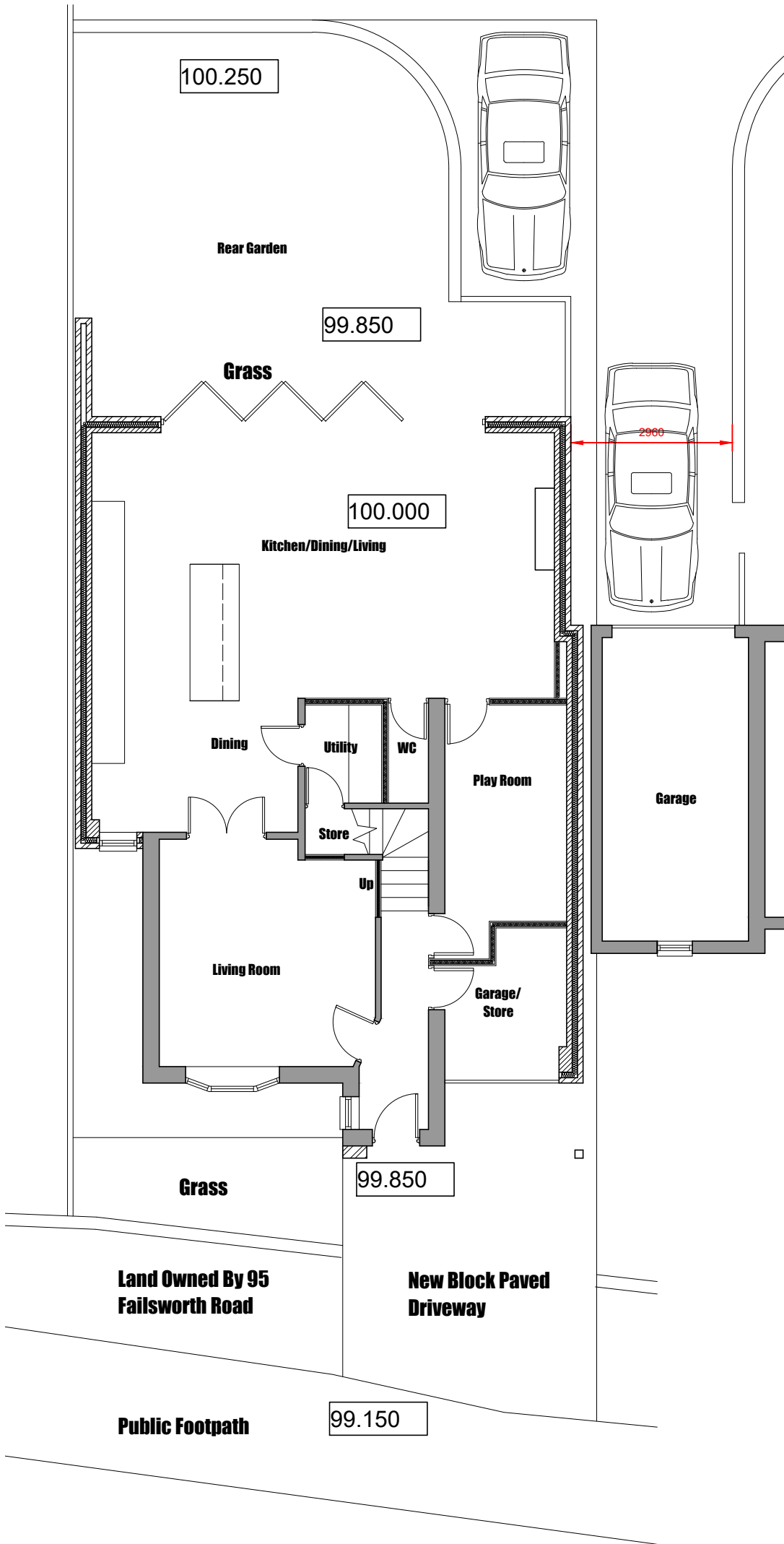
Conclusion

16. For the reasons given above the appeal is dismissed.

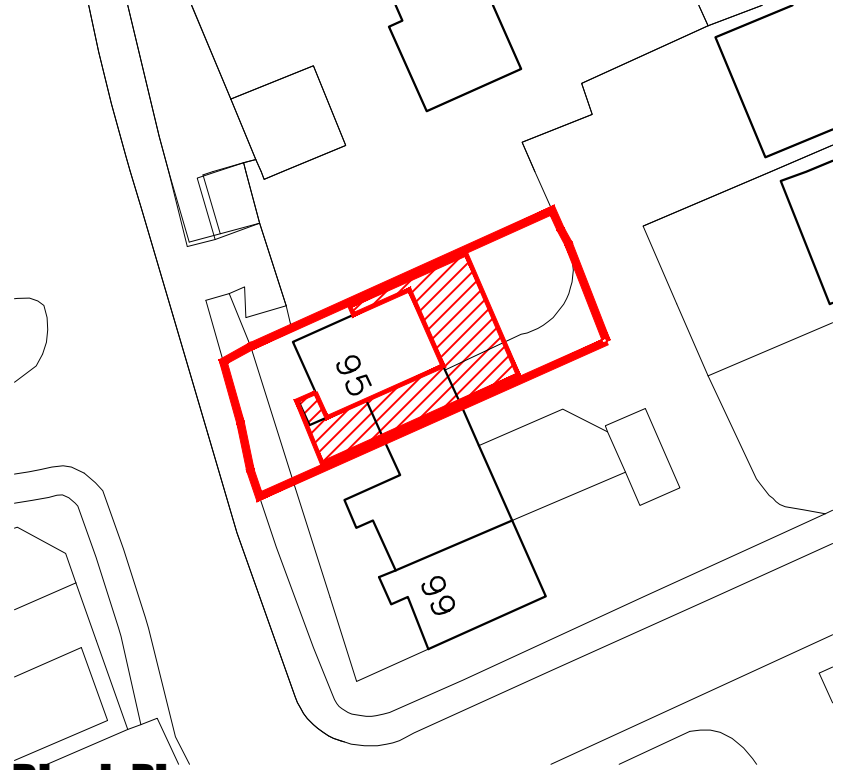
M Cryan

Inspector

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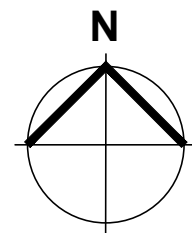
**Site Plan
Scale 1:100**



**Block Plan
Scale 1:500**



**Location Plan
Scale 1:1250**



**Conway
Architectural
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Alkrington
Middleton
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JOB TITLE : Extension And Loft Conversion
ADDRESS : 95 Failsworth Road, Woodhouses
DRAWING TITLE : Proposed Site, Block And Location Plan
SCALE : As Noted @ A3
DRAWN : xxx DATE : 16.11.19

JOB NO./
DWG NO.

245-07B



Appeal Decision

Site visit made on 9 June 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/W4223/X/19/3240762

Land at Harrop Green Lane, Diggle, Oldham

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Alan Broadbent against the decision of Oldham Metropolitan Borough Council.
 - The application Ref CL/335657/14, dated 23 June 2014, was refused by notice dated 4 September 2014.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is railway land.
-

Decision

1. The appeal is dismissed.

Procedural matter

2. The red outlined plan marked amended plans and dated 21 July 2014 accompanies the LDC application and on this basis the appeal is considered. The plan submitted 1e CL 335657 original does not delineate the application site and is not considered.

Main Issue

3. The main issue in this case is whether the decision to refuse the certificate was well founded.

Reasons

4. The appeal site comprises a grass and shrub embankment slope to the north-west of Harrop Green Lane and adjoining the gardens of dwellings on Clydesdale Rise and Fatherford Close.
5. In brief the appellant's case is that the land comprises operational land in relation to a statutory undertaker having been held in ownership by the railway undertaker historically and by virtue of carrying out operations and erecting buildings on the appeal land. The appeal land was purchased from the railway undertaker in 1997. A statutory declaration and plan identifying the appeal site has been provided from Francis James Gradwell from the Regional Sales Surveyor of Rail Property Limited.

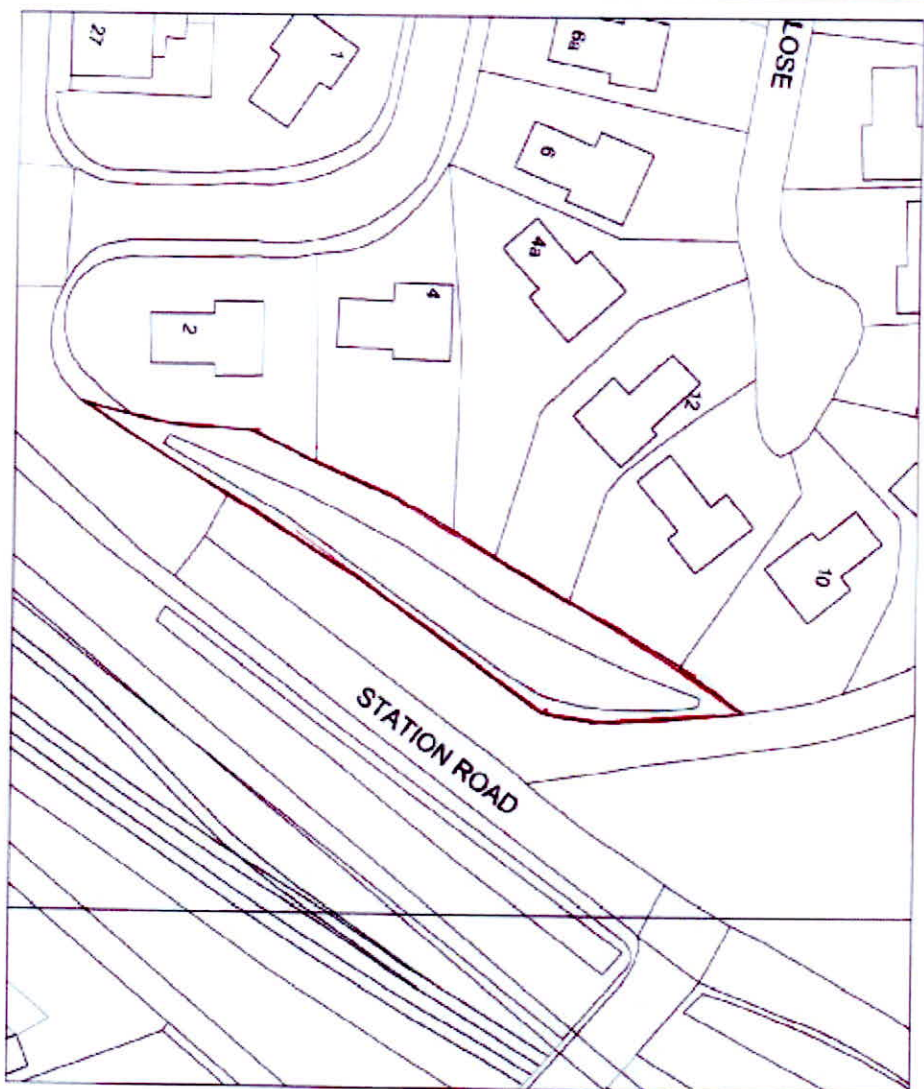
6. Section 263 of the Act as amended defines the meaning of operation land. Section 264 of the Act as amended sets out cases in which land is to be treated as not being operational land. Section 264 narrows the categories of operational land defined by Section 263, by excluding land acquired by a statutory undertaker since 6 December 1968, unless it has planning permission for operational development. Land acquired prior to 1968 by a statutory undertaker became operational land by virtue of its acquisition, or if land is used for the purpose of carrying on their undertaking.
7. Mr Gradwell's evidence is that he worked in the office responsible for the administration of land on behalf of British Railways Board. The declaration indicates that the appeal land as identified by the plan was part of the property of British Railways Board. However, he cannot offer an explanation as to why the Board have no conveyance in relation to the appeal land. He believes that the appeal land was within the railway boundary fence but does not specify the date as the declaration leaves this information blank. The declaration also specifies that 30 years before the declaration the Board or their predecessors have in their possession receipt of rent and profits from the land. Other than the agreement of the sale of the land, which is undated, Mr Gradwell knows no other agreement/contract or mortgage/lease that has a claim on the appeal land and is not aware of any question of doubt affecting the Board's previous ownership of the land.
8. However, the statutory declaration is not signed or dated or witnessed by an appropriate authority as set out in the 1835 Act. The declaration does not follow the form of words in the Schedule to the 1835 Act. Due to these omissions the document does not carry the weight of a statutory declaration. I therefore afford it limited weight in the consideration of this appeal. No evidence has been submitted on rent and profits as declared in the document and no date is specified as to when the appeal land was within the railway undertaker's ownership, the declaration leaves a space for a date to be inserted but it is left blank.
9. Based on the available evidence and on the balance of probabilities it has not been demonstrated that the appeal land was in effect part of the railway undertaker's ownership prior to 1968 for the purposes of establishing its operational land status under Section 263 of the Act as amended.
10. Turning to the issue of operations and buildings claimed to have been used for the purpose of carrying out the statutory undertaking, the appellant refers to two buildings and the modification of two boundary lines. Building A is identified on historical maps 1906, 1932 and 1949, but was removed by 1965. This building is claimed to have been within the red line site of the LDC application. However, this cannot be conclusively presumed from the scale of the maps/plan submitted that this is the case. Furthermore, there is no indication in the available evidence to what purpose this building was used for, even if it were within the LDC appeal site. Building B which is No. 2 is a separate dwelling and is clearly outside the LDC application site.
11. In relation to operations, it is claimed that a section of the site was used as the approach road for the new station and that the boundary line on the north-west boundary had been altered. As with the issue of the buildings these modifications/alterations do not form part of the red line LDC application and

are outside the scope of the certificate which must specify the land to which the LDC relates as set out in Section 191(5) of the Act as amended.

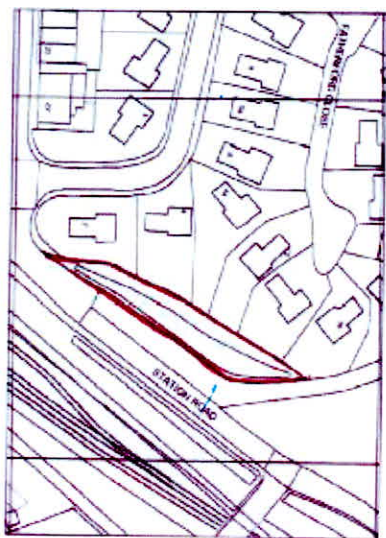
12. As indicated under Section 264 of the Act as amended acquisition of land for statutory undertakers after 1968 could not be conferred the status of operational land unless planning permission has been granted for operational development. I have no evidence to indicate that operational development has been granted on the appeal site. The permitted development rights referred to by the appellant flow from the operational land status of the appeal site and on the balance of probability this has not been established.
13. For the reasons given above, I conclude that the Council's decision to refuse the certificate was well founded. The appeal is therefore dismissed.

Iwan Lloyd

INSPECTOR



SITE PLAN scale 1: 500



LOCATION PLAN scale 1: 1250



335657

21 JUL 2014

AMENDED PLANS

