

## Appeal Decisions

### RECOMMENDATION

1. Committee is asked to note the decisions on appeals taken in the last month.

### SUPPORTING INFORMATION

- 2.1 The attached appendix 2 gives details of decisions taken.
- 2.2 The intention is that a report will be taken to a Committee meeting each month.

|                                      |                                                          |
|--------------------------------------|----------------------------------------------------------|
| <b>For more information contact:</b> | Paul Clarke 01332 255942 e-mail paul.clarke@derby.gov.uk |
| <b>Background papers:</b>            | See application files                                    |
| <b>List of appendices:</b>           | Response to appeal decision                              |

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| <b>IMPLICATIONS</b> |
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**Financial**

1. None.

**Legal**

2. None.

**Personnel**

3. None.

**Corporate objectives and priorities for change**

4. None.

### **APPEAL DECISIONS**

#### Appeal against refusal of Planning Permission

| Code No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Proposal                     | Location                  | Decision  |
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| DER/08/09/01003                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Extensions to dwelling house | 6 Lampeter Close, Oakwood | Dismissed |
| <p>Comments: This application sought permission for an extension at first floor level, over the existing garage, at the side of this detached property. The application was refused due to the lack of a set back on the front elevation. It was considered that this would result in a detrimental impact on the dwelling house and the street scene, creating a terracing effect. It would also set an undesirable precedent for similar proposals which if implemented would change the character and appearance of the vicinity to the detriment of the general residential amenity. The proposal was therefore considered to be contrary to policies E23 and H16 of the City of Derby Local Plan Review.</p> <p>The Inspector noted that the properties in the cul-de-sac had only modest space between them, but the perception of space was enhanced by the gaps created between them at first floor level above the single storey garages. He agreed with the City Council that the loss of this space above No. 6 would result in a terraced appearance to the buildings and this would compromise the character of Lampeter Close, particularly as this proposal would be visible from most vantage points including the junction with Tredegar drive.</p> <p>This coupled with the lack of a set back at first floor would have an adverse impact on the street scene and in the Inspectors opinion be contrary to policies E23 and H16 of the CDLPR.</p> <p>The appellant had raised points concerning design and siting, including some properties on Tredegar Drive. The Inspector did not agree with that assessment and felt that these points did not outweigh the harm which would be caused by allowing this proposal. Accordingly the appeal was dismissed.</p> <p>This was the first decision of the City Council to be tested using the new 'fast-track' householder appeal procedure. This allows for no further statements to be submitted during the appeal process and the Inspector's decision is based solely on the same information the original case officer had before them. It is heartening to have confirmed the soundness of my Planning Team's approach under delegated powers and have its views upheld.</p> |                              |                           |           |

**RECOMMENDATION:** To note the report.

## **APPEAL DECISIONS**

### Appeal against refusal of Planning Permission

| Code No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Proposal                    | Location         | Decision              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|------------------|-----------------------|
| DER/03/09/00264                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Extension to dwelling house | 15 Loudon Street | Allowed conditionally |
| <p>Comments: This application sought permission for a first floor extension on the rear of this terraced property. This was proposed on top of an existing single storey extension. The application was refused by the due to the impact on the neighbouring property, No.16, the intrusive structure at first floor level causing loss of light to a main habitable room.</p> <p>The Inspector also considered that the main issue of the appeal was the impact on the rear bedroom window at No. 16 Loudon Street but he did not agree with our assessment. He noted that there would be some loss of light but did not think this was sufficient to be contrary to policies H16 and GD5 in the City of Derby Local Plan Review. In the Inspector's opinion as this was a bedroom, used mostly at night, the loss of light was less important.</p> <p>He noted that the extension would result in a restriction of views but considered that allowing an additional bedroom to make this a more usable family home outweighed this.</p> <p>The Inspector commented that this was a finely balanced appeal but ultimately found in favour of the appellant and allowed the appeal with conditions.</p> |                             |                  |                       |

**RECOMMENDATION:** To note the report.

## **APPEAL DECISIONS**

### Appeal against refusal of Planning Permission

| Code No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Proposal                    | Location                                 | Decision   |
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| DER/04/09/00368                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Erection of a double garage | Land at 10 and 17 New Road, Darley Abbey | Dismissed. |
| <p>Comments: This application sought planning permission to erect a double garage on an area of open land in the historic heart of Darley Abbey. The application was refused under delegated powers as it was considered that the proposal would erode the open character of the site, an historic allotment, and may set a undesirable precedent which could result in the piecemeal encroachment of open land which would be detrimental to the area. The proposal was therefore considered to be contrary to policies E18 and E29 in the City of Derby Local Plan Review.</p> <p>The Inspector considered that the main issue of the appeal was whether or not the proposal would preserve or enhance the character of the Darley Abbey Conservation Area and Derwent Valley Mills World Heritage Site.</p> <p>He commented first upon the policy framework for the decision, noting the advice of PPG15 and the status of the World Heritage Site. He considered the policies E18 and E29 of the CDLPR embodied this advice and also attached some weight to the Draft Darley Abbey Conservation Area Appraisal.</p> <p>Commenting on the pattern of development in the area the Inspector concluded that the site did contribute to the original character and appearance of the area, forming a significant gap along New Road. The presence of trees and bushes on the site and its current use for parking did not, in his opinion, erode the value of this break in development. However the size of the proposed garage at 5m x 5m with a ridge height of 4m would result in the garage being a prominent feature in the street scene and adversely affect the character and appearance of the area.</p> <p>The presence of garages in the locality built before the area's designation as a Conservation Area were no justification for further eroding the original character of the area.</p> <p>The Inspector noted that the Conservation Area Advisory Panel had not objected to the proposal but stressed that their role was to provide informal advice and that advice was not binding on the decision makers.</p> <p>For the reasons given above the Inspector agreed with the decision of the City Council and concluded that the proposal would fail to preserve the character and appearance of the Conservation Area and World Heritage Site and would therefore be contrary to PPG15 and policies E19 and E29 in the CDLPR and the appeal was dismissed.</p> |                             |                                          |            |

**RECOMMENDATION:** To note the report.

## **APPEAL DECISIONS**

### Appeal against an Enforcement Notice

| Code No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Proposal                                       | Location                                   | Decision                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|--------------------------------------------|-----------------------------------------------|
| SWT/15988                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Unauthorised use of premises for cleaning cars | Sunnyhill Service Station, Blagreaves Lane | The Enforcement Notice is upheld, but varied. |
| <p>Comments: Members may recall the long history of applications and problems with the site which the City Council have not been able to resolve. This resulted in an Enforcement Notice being served on 2 October 2009 requiring the occupiers of the site to 'cease using the premises for the washing, cleaning, valeting, waxing, and polishing of any vehicle'. The period of compliance was one month. Subsequently the operator of the site appealed this Notice on three grounds.</p> <p>The Inspector considered that the main issue was the effect upon the living conditions of the occupiers of 235 Blagreaves Lane, noting that policy GD5 of the City of Derby Local Plan Review states that planning permission will only be granted where it provides a satisfactory level of amenity and does not cause unacceptable harm to nearby areas.</p> <p>The Inspector noted the other activities on the site, which do have planning permission and the busy road however he was concerned about the noisy activities which take place close to the garden of 235 Blagreaves Lane.</p> <p>The appellant had submitted a noise survey and from the results of this the Inspector concluded that the noise levels indicated on the site were likely to generate complaints. This combined with the other activities on the site increased the level of disturbance and significantly altered the character of the site in what is already a noisy neighbourhood. This is compounded by the operating hours, 09:00 – 18:00 week days and 10:00 – 16:00 weekend and Bank Holidays, which the appellant argued are necessary for the viability of the business.</p> <p>The City Council Environmental Health Officer had suggested the building of a substantial sound barrier. However this proposal could not be conditioned on the appeal decision as it would require separate planning application.</p> <p>The Inspector concluded that the development had a materially detrimental effect upon the living conditions of the occupiers of 235 Blagreaves Lane. Therefore Ground (a), that planning permission should be granted, failed.</p> <p>Ground (f), that the steps required in the Enforcement Notice were excessive, also failed as the appeal would not achieve the main purpose of the Notice which was for the activities to cease. The Inspector also did not find the requirements of the notice to be excessive.</p> |                                                |                                            |                                               |

## **APPEAL DECISIONS**

Ground (g), that the time period to comply with the notice is too short, succeeded in part, allowing the operator a greater period of time for compliance with the Notice, three months instead of one. This was to allow the operator a longer and more reasonable period of time to find other suitable premises. The appeal succeeded to this limited extent only. The period to comply with the notice therefore expires on **8 May 2010**

The Inspector noted the number of letters of support for the business, but concluded that in combination with the other uses on the site the use was detrimental to the living conditions of the occupiers of 235 Blagreaves Lane and therefore was contrary to policy GD5 of the CDLPR.

**RECOMMENDATION:** To note the report.







# Appeal Decision

Site visit made on 4 February 2010

**by Martin Andrews MA (Planning)**  
**BSc(Econ) DipTP & DipTP(Dist) MRTPI**  
an Inspector appointed by the Secretary of State  
for Communities and Local Government

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**Decision date:**  
**12 February 2010**

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## **Appeal Ref: APP/C1055/D/09/2118021** **6 Lampeter Close, Oakwood, Derby DE21 2RB**

- 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 L Manley against the decision of Derby City Council.
- The application, Ref. DER/08/09/01003/PRI, dated 13 August 2009, was refused by notice dated 14 October 2009.
- The development proposed is a first floor extension to the side of the property to extend the front bedroom and form a new bedroom.

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### **Decision**

1. For the reasons given below I dismiss the appeal.

### **Reasons**

2. The appeal property is one of three dwellings on a similar building line facing the cul-de-sac head. The footprints of these buildings are such that there are only modest gaps between them. However the perception of space at the end of the road is considerably enhanced by the fact that the western flanks of Nos. 6 and 4 are occupied by single storey garages, thereby considerably increasing the gaps between the three houses at first floor and roof levels.
  3. In my view the proposed extension, by occupying much of the gap between Nos. 6 and 4 above ground level, would effectively result in a terrace of building between the eastern end of the appeal dwelling and the western end of No. 4. This would significantly compromise the spacious character of Lampeter Close, particularly because the extension would be seen from most vantage points in the cul-de-sac, including at the junction with Tredegar Drive.
  4. I consider that this would have an adverse impact on the street scene and be in harmful conflict with Policies E23 and H16 of the City of Derby Local Plan Review. In particular, proviso 'd' of the latter policy requires the first floor of a two-storey side extension to be set back to 'avoid a terraced or cramped effect in the streetscene'.
  5. I have taken into account the design and siting points raised by the appellant but in my view these are insufficient to overcome the adverse effects of the proposal that I have identified.
  6. The close siting of Nos. 3 & 5 Tredegar Drive is also referred to, but there is a different street scene context here with somewhat less space between the dwellings balanced by a road with a more open aspect than a cul-de-sac. And the design ethos of a matching pair of dwellings with their large Tudor style
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gables to draw the eye also helps to ensure that these properties do not form a precedent for the current proposal.

7. I shall therefore dismiss the appeal.

*Martin Andrews*

Inspector



# Appeal Decision

Site visit made on 4 February 2010

by **Martin Andrews MA (Planning)**  
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Decision date:  
23 February 2010

**Appeal Ref: APP/C1055/A/09/2108439**  
**15 Loudon Street, Derby DE23 8ES**

- 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 M Azahar against the decision of Derby City Council.
- The application, Ref. DER/03/09/00264/PRI, dated 9 March 2009, was refused by notice dated 21 April 2009.
- The development proposed is a first floor rear extension.

## Decision

1. For the reasons given below I allow the appeal, and grant planning permission for a first floor rear extension at 15 Loudon Street, Derby in accordance with the terms of the application, Ref. DER/03/09/00264/PRI, dated 9 March 2009 subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: O.S. Sitemap at scale 1:1250; Drawing No. SG/09/07/03.

## Reasons

2. The outlook from, and daylight to, the ground and first floor windows in the original dwelling at No. 16 would not be affected by the proposal because the existing extensions at that property occupy the intervening space and would therefore be in the way. This leaves the main effect being on the first floor bedroom window in the end gable of the two storey extension at No. 16.
3. However whilst the proposed first floor addition above the existing ground floor kitchen would have some effect on that bedroom in terms of a loss of daylight and outlook, I am not persuaded that any adverse impact would be significant and in unacceptably harmful conflict with Policies H16 & GD5 of the City of Derby Local Plan Review.
4. Daylight to, and outlook from, a bedroom are arguably less important than for a living room because of its more restricted use and then normally at night-time. And in this context I note that the objection to the proposal from the occupier of No. 16 did not relate to these issues.
5. Moreover in this case the northern orientation of both the proposal and the affected bedroom would mean that there would be little of any loss of daylight and particularly sunlight for No. 16, whilst in respect of outlook the affected

bedroom window in that property is already set back about 1.5 metres behind the existing first floor extension at No. 15.

6. I acknowledge that the already restricted view to the west from that window would be further reduced by the proposed extension but conversely the view to the north and east would remain essentially unaltered. And whilst there are some adverse consequential effects on No. 16 arising from these matters I must also take into account that a third bedroom in the appeal property would facilitate its occupation as a family home.
7. The appeal is finely balanced between the Council's arguments and the appellant's case, but as I have decided that any adverse effect from the proposal would not be unacceptable I shall allow the appeal. In so doing I shall impose a condition requiring the scheme to proceed in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning.

*Martin Andrews*

Inspector



# Appeal Decision

Site visit made on 25 January 2010

by **Ian Radcliffe** BSC (Hons) MCIEH DMS

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Decision date:  
15 February 2010

**Appeal Ref: APP/C1055/A/09/2114674**

**Land adjoining Nos 10 and 17 New Road, Darley Abbey, Derby DE22 1DR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Edward Parkin against the decision of Derby City Council.
- The application Ref DER/04/09/00368/PRI, dated 3 April 2009, was refused by notice dated 29 September 2009.
- The development proposed is the erection of a double garage.

## Decision

1. I dismiss the appeal.

## Main issue

2. Whether the development would preserve or enhance the character or appearance of the Darley Abbey Conservation Area and Derwent Valley Mills World Heritage Site.

## Reasons

3. Planning Policy Guidance Note 15: '*Planning and the Historic Environment*' (PPG15) advises that the purpose of conservation areas is to value and protect for their own sake, high quality historic built environments. Designation as a World Heritage Site does not introduce any additional statutory controls, but in confirming the status of a site as being of outstanding international importance great weight is placed on its protection for the benefit of current and future generations. Policies E18 and E29 of the City of Derby Local Plan Review embodies this advice and requires that development is of a high standard of design that preserves or enhances the special character of such areas. The draft Darley Abbey Conservation Area Appraisal has not yet been formally adopted by the Council, but has been revised following public consultation. I therefore attach some weight to it in my consideration of this appeal.
4. Development within the Conservation Area is focussed on the River Derwent with terraces close to the river and more sporadic development further away. The appeal site forms part of the first significant gap in development along New Road heading away from the river, and indicates the start of the transition from the village core to its edge. As such, it forms part of the original character of the Conservation Area and World Heritage Site and contributes to its appearance.
5. Although the appeal site is currently used for the parking of 2 cars, and in the gap some mature trees and bushes are present, this does not significantly

erode the value of this break in development. The proposed double garage at over 5m in width and 5m in length, with a height to the ridge of approximately 4m, would be a large structure. Whilst it would be subservient in scale to the terrace, and its position close to the rear of the site would reduce its apparent bulk, it would still be a prominent feature within the street scene. In reducing the gap separating the 2 clusters of housing it would adversely affect the character and appearance of the area. I note that in shape and materials the double garage would complement the adjacent housing at Nos 10-17. However, this would not overcome the adverse effects that I have described.

6. The two other, far smaller garages that occupy part of the gap appear to have been constructed before the designation of the Conservation Area in 1970. Their presence therefore is no justification for further eroding the original character of the area by allowing a noticeable portion of the gap to be infilled with a double garage.
7. The gap is in comparison to other parts of the Conservation Area a relatively small area of open land and so it is not surprising that it has not been separately identified as originally having a specific land use. Whether or not it was an allotment it has for the reasons I have given value in relation to the pattern of development within the Conservation Area. Whilst the Conservation Area Advisory Committee raised no objection to the proposal its role is to provide informal advice and such advice is not binding on decision makers.
8. The appeal site is in an area of listed buildings. However, it is sufficiently far away for the proposal not to affect their setting. For all of these reasons, I therefore conclude that the proposal would fail to preserve the character and appearance of the Conservation Area and World Heritage Site. The proposal would therefore be contrary to PPG15 and policies E18 and E29 of the Local Plan Review.

*Ian Radcliffe*

Inspector



# Appeal Decision

Site visit made on 21 January 2010

by **Ahsan U Ghafoor** BSc (Hons), MA  
MRTPI

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for Communities and Local Government

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Decision date:  
8 February 2010

**Appeal Ref: APP/C1055/C/09/2115713**

**Land known as the Sunnyhill Service Station, Blagreaves Lane, Derby  
DE23 7PT**

- 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 Mr Sadaqat Hussain against an enforcement notice issued by Derby City Council.
- The Council's reference is SWT/15988.
- The notice was issued on 2 October 2009.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the premises adding to the existing sui generis uses which comprise of a garage use for vehicle repairs, car sales and vehicle testing and a dry cleaning facility, the unauthorised use of washing, cleaning, valeting, waxing and polishing of cars and other vehicles.
- The requirements of the notice are stated as "you must cease using the premises for washing, cleaning, valeting, waxing, polishing of any vehicle".
- The period for compliance with the requirements is one month after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.**

## Procedural Matters

1. I have taken the site's address from the Notice and the post code from the appeal form.

## The appeal under Ground (a) and the deemed planning application (DPA)

2. The main issue is the effect of the development on the living conditions of the occupiers of no. 235 Blagreaves Lane, with particular regard to noise disturbance. Policy GD5 of the adopted City of Derby Local Plan Review 2006 (LP) indicates that planning permission will only be granted for development where it provides a satisfactory level of amenity, and provided it would not cause unacceptable harm to nearby areas.
3. The appeal site is a former petrol filling station and it is partly used as a vehicle repair workshop; MOT testing centre; car sales and drycleaners. It is situated at the end of a local neighbourhood centre which comprise of various commercial activities. The wider area, however, has a suburban residential character because of its layout. The dwellings to the rear of the site are set some distance away and the garage buildings act as a buffer to noise. Similarly, the properties opposite are separated by a busy road. However, I am concerned about the effect of noisy activities on the occupiers of no. 235, due to the site's proximity to its side elevation and rear garden.

4. I have considered all of the representations by both Parties about the submitted noise assessment, which was prepared in accordance with BS4142<sup>1</sup>. The findings indicate that the existing minimum surrounding noise level is about 44 decibels (dB)  $L_{A90(1hr)}$  but the combined noise level is about 48dB  $L_{Aeq(1hr)}$ . With the added 5dB tonal penalty, the rating level increases to 53dB, and with the vehicle washing and cleaning activities the calculated rating is around 9dB above background levels. The report suggests that the noise caused by the cleaning and washing of vehicles is likely to generate complaints. The site also adjoins a public footpath and there are various other commercial properties in the locality, but that does not necessarily mean that this site is suitable for the development because of its immediate residential setting and the level of operations.
5. The drying and polishing of vehicles takes place near the site's boundary with no. 235, and compressors have been enclosed in an acoustic box. I note that portable equipment is not in use, but the Appellant recognises that the principal noise generating activities are the operation of the water jet lance and vacuum. This appears to be consistent with what I saw on the site. These activities are located under the forecourt's canopy, which do not appear to conflict with other uses on the site. Nevertheless, the level of sound emitted from the development is clearly perceptible because of the use of the jet lance; pressure washer and vacuum cleaner. Furthermore, the noise report suggests that the vacuum cleaner should only be used in designated areas, and placed into a sound proof enclosure, but it would be on wheels which could be moved around the site.
6. Whilst I acknowledge that there is a timber fence located along the boundary with no. 235, noise generated by the activities would be audible because of high pressure water hitting vehicles; the opening and slamming of doors and the manoeuvring of vehicles. Against this background, I consider that in combination with other mixed-uses of the site, the addition of the washing and cleaning facility significantly alters the site's character. The material change of use of the land increases the level of disturbance in an already noisy neighbourhood because of the cumulative effect of the activities.
7. Additionally, the Appellant indicates that operating on weekends is important, due to the viability of the business. The facility would operate between 09:00 to 18:00 Monday to Fridays, and 10:00 to 16:00 on weekends and Bank Holidays. The vehicle repair centre has no hours of operation, but I consider that the mixed-use of the site would be a source of continued annoyance because of the addition of the car wash. Due to the amount of comings and goings associated with the development, the activities would have a harmful effect on occupier's living conditions at times of the day when people expect to enjoy the comfort of their own home.
8. The Council's Environmental Health section indicates that the building of a substantial noise barrier, which would extend along the centre line of the forecourt's canopy, would reduce noise by about 12dB. I have very carefully taken into account all of the points raised by the Appellant about the noise report's recommendations, but I agree with the Council that these mitigation measures would require a separate planning application and so imposing planning conditions would be inappropriate. In any event, the DPA is directly derived from the allegation.
9. Taking all of the above points together, I conclude that the development has a materially detrimental effect on the living conditions of the occupiers of no. 235 Blagreaves Lane because of the unacceptable degree of noise disturbance generated by the car wash, and so the scheme breaches LP policy GD5. The ground (a) appeal and the DPA fail.

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<sup>1</sup> British Standard 4142:1997 *Method for rating noise affecting mixed residential and industrial areas*.



### **The appeal under Ground (f)**

10. The Notice requires the complete cessation of the unauthorised use. The reasons for issuing the Notice suggest that the material change of use has an injurious effect on nearby residents. It appears to me that the purpose of the Notice is to remedy the breach of planning control by discontinuing the use of the land for vehicle washing and cleaning, which is derived from s173(4)(a) of the Act. I have considered all of the points raised by the Appellant about varying the steps to include the installation of noise mitigation measures and the use of fixed jet lances, but I have considered these arguments under the ground (a) appeal. In any event, such a requirement would undermine the Notice's purpose and introduce an unacceptable level of uncertainty. The requirements of the Notice are no more than what is necessary to remedy the breach of planning control and so are not excessive. The ground (f) appeal fails.

### **The appeal under Ground (g)**

11. I have noted all of the points about negotiations, but the Council is concerned that the vehicle washing and cleaning service operates seven days a week, and the physical measures required to comply with the Notice are not that extensive. The Appellant argues that the enterprise is locally popular and that an alternative site needs to be identified. Taking into account advice contained in Planning Policy Guidance Note 18: *Enforcing Planning Control*, I will vary the period because three months from the date of this decision would be a reasonable period for the business to comply with the Notice. The appeal under ground (g) succeeds to this limited extent only.

### **Other matters and overall conclusions**

12. I have considered all other matters raised including letters of support; that the development generates employment; it contributes to the local economy and the site's planning history. However, in combination with other uses of the site, I find that the current operation of vehicle washing and cleaning is harmful to the living conditions of no. 235 Blagreaves Lane and the scheme conflicts with LP policy GD5.
13. Having regard to all other matters raised including the possibility of imposing conditions, I conclude that the ground (a) appeal and the DPA should not succeed. The requirements of the Notice are not excessive and so the ground (f) appeal fails. I will vary the compliance period to three months and so the appeal succeeds under ground (g) to that extent only.

### **FORMAL DECISION**

14. 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.
15. I direct that the enforcement notice be varied by deleting in paragraph 5 Time for compliance 'one' month and inserting 'three' months.
16. Subject to the variation, I uphold the enforcement notice.

*Ahsan U Ghafoor*

INSPECTOR