# Appeal Decision

Site visit made on 12 March 2007

**by Fiona M Ellwood** BA (Hons) BTP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date: 18 April 2007

**Appeal Ref: APP/P4415/A/06/2031824**
**Land at Brooklands House, Manor Road, Wales, Rotherham, S26.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by W. Redmiles and Sons Ltd against the decision of Rotherham Metropolitan Borough Council.
- The application Ref: RB/2006/0988 (VC), dated 22 May 2006, was refused by notice dated 17 August 2006.
- The application sought planning permission for demolition of existing dwelling and erection of 17 no. two and three storey dwelling houses without complying with a condition attached to planning permission Ref; RB/2006/003 (FUL), dated 14 March 2006.
- The Condition in dispute is No 10 which states that: The development hereby approved shall be constructed in coursed natural stone and clay pantiles, the details of which shall be submitted to and approved by the local planning authority prior to the commencement of development, along with samples of all other materials to be used in the construction of the external surfaces of the development hereby permitted.
- The reason given for the Condition is: In the interests of the character of the Conservation Area in accordance with Policies ENV2.11: Development in Conservation Areas and ENV3.1: Development and the Environment of the Unitary Development Plan.

**Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.**

## Procedural Matters

1. The appellant intends to construct the dwellings which front Manor Road in stone in accordance with Condition 10. The variation in Condition 10 is sought to allow the construction of Plots 5 to 12 at the rear of the site in brick.

2. The boundary of the Conservation Area shown on the plans provided by the Council does not cover the whole appeal site. It appears that the most westerly section of the site which includes part of plots 6, 7, 8 and 9 is outside the Conservation Area.

## Main Issue

3. The effect of the use of brick facing materials on Plots 5 to 12 on the character or appearance of the Wales Conservation Area.

## Planning Policy

4. The development plan includes the Rotherham Unitary Development Plan 1999 (UDP). Policy ENV3.1 requires development proposals to make a positive contribution to the

environment through appropriate standards of design having regard to, amongst other things, the locality and the quality of its materials. Policy ENV2.11 includes a requirement for development to be compatible with the materials in Conservation Areas.

**Reasons**

5. The Wales Conservation Area is centred on the church of St John the Baptist and the nearby stone buildings. The older parts of Church Street and Manor Road at its southern end have buildings grouped close to the street front, with stone boundary walls a characteristic feature. The northern part of Manor Road changes in character to an area of modern dwellings of mixed design. I note it is the Council's intention, following a recent review, to remove this area including the appeal site from within the Conservation Area boundary.

6. The Council consider the construction of houses in brick would add an additional material further damaging the appearance of the area. I agree that stone would be a high quality material and its use would reflect the appearance of older buildings in the Conservation Area. However, the houses immediately surrounding the appeal site contain a mixture of designs and materials including, stone coloured brick, red brick and render. I consider the use of brick on the rear housing plots of the proposed development would be consistent with the predominant characteristics of the surrounding developments and materials. In this context the use of stone just on the front houses of the development would preserve the character and appearance of this part of the road.

7. I note the concerns that the motivation for the brick is due to the cost savings but this is not a matter I can take into consideration and I have assessed the appeal on its planning merits only. It is clear to me the proposal would have no material effect on the Conservation Area and therefore its character and appearance would be preserved.

**Conclusions**

8. Overall I conclude the use of brick on Plots 5 to 12 would not harm the character or appearance of the Wales Conservation Area and I find no conflict with Policies ENV2.11 and ENV3.1 of the UDP. In reaching my decision I have taken into account all other matters raised, but none is sufficient to outweigh the considerations that have led me to my conclusion.

**Formal Decision**

9. I allow the appeal and grant planning permission for the demolition of the existing dwelling and the erection of 17 no. two and three storey dwelling houses on Land at Brooklands House, Manor Road, Wales, Rotherham, S26 in accordance with the application Ref: RB/2006/0988 (VC) dated 22 May 2006, without compliance with Condition number 10 previously imposed on planning permission Ref: RB/2006/003 (FUL) dated 14 March 2006 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition:

   1) Prior to the commencement of the development, samples of the external facing, roofing and surfacing materials to be used in the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The details shall provide for the facing materials of Plots 1 to 4 and 13 to 17 inclusive to be constructed in coursed natural stone with the facing materials of the remaining dwellings to be

constructed in brick. Development shall be carried out in accordance with the approved details.

*Fiona M Ellwood*

INSPECTOR

# The Planning Inspectorate

Room: 3/04
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Direct Line: 0117-372-8377
Switchboard: 0117-372-8000
Fax No: 0117-372-8443
GTN: 1374-8377

http://www.planning-inspectorate.gov.uk


Head of Planning and
Transportation
Rotherham Metropolitan Borough
Council
Bailey House
Rawmarsh Road
Rotherham
S Yorkshire
S60 1QT

Your Ref: RB2006/0988(VC)

Our Ref: APP/P4415/A/06/2031824/NWF

Date: 18 April 2007

Dear Head of Planning and Transportation

**Town and Country Planning Act 1990**
**Appeal by Walt Selby**
**Site at Plots 5-12, Land At Brooklands House, Manor Road, Wales, Rotherham, S26**

I enclose a copy of our Inspector's decision on the above appeal.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:


Quality Assurance Unit
The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone No. 0117 372 8252

Fax No. 0117 372 8139

E-mail: complaints@pins.gsi.gov.uk


Yours sincerely

Amanda Baker

COVERDL1

INVESTOR IN PEOPLE

POSITIVE ABOUT DISABLED PEOPLE

*You can now use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -*
*http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp*
*You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button*

# The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

## Challenging the Decision in the High Court

***Challenging the decision***

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

***Grounds for challenging the decision***

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

***Different appeal types***

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

***Challenges to planning appeal decisions***

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions and advertisement appeals.). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

***Challenges to enforcement appeal decisions***

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

***Important Note*** - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

***Frequently asked questions***

*"Who can make a challenge?"* – In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land -other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this – see Further Information).

*"How much is it likely to cost me?"* - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

*"How long will it take?"* - This can vary considerably. Although many challenges are decided within six months, some can take longer.

*"Do I need to get legal advice?"* - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

*"Will a successful challenge reverse the decision?"* - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

*"What can I do if my challenge fails?"* - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

***Contacting us***

High Court Section
The Planning Inspectorate
4/07 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8962

**Website**
www.planning-inspectorate.gov.uk

**General Enquiries**
Phone: 0117 372 6372
E-mail: enquiries@pins.gsi.gov.uk

**Complaints**
Phone: 0117 372 8252
E-mail: complaints@pins.gsi.gov.uk

**Cardiff Office**
The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ
Phone: 0292 082 3866
E-mail: wales@pins.gsi.gov.uk

**The Parliamentary Ombudsman**
Office of the Parliamentary
Commissioner for Administration
Millbank Tower, Millbank
London, SW1P 4QP

Helpline: 0845 0154033
Website: www.ombudsman.org.uk
E-mail:
phso.enquiries@ombudsman.org.uk

***Inspection of appeal documents***

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

***Further information***

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: www.courtservice.gov.uk

***Council on tribunals***

If you have any comments on appeal procedures you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: http://www.council-on-tribunals.gov.uk/. However, it cannot become involved with the merits of individual appeals or change an appeal decision.

# The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

## Our Complaints Procedures

### *Complaints*

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

### *How we investigate complaints*

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly held.

We therefore do our best to ensure that all complaints are investigated quickly, thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

When investigating a complaint we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

### *What we will do if we have made a mistake*

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future. Minor slips and errors may be corrected under the terms of the Planning & Compulsory Purchase Act 2004 but we cannot amend or change in any way the substance of an Inspector's decision.

### *Who checks our work?*

The Government has said that 99% of our decisions should be free from error and has set up an independent body called the Advisory Panel on Standards (APOS) to report on our performance. APOS regularly examines the way we deal with complaints and we must satisfy it that our procedures are fair, thorough and prompt.

### *Taking it further*

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

### *Frequently asked questions*

*"Can the decision be reviewed if a mistake has happened?"* – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

*"If you cannot change a decision, what is the point of complaining?"* – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

*"Why did an appeal succeed when local residents were all against it?"* – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds whether these views justify refusing planning permission.

*"How can Inspectors know about local feeling or issues if they don't live in the area?"* – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

*"I wrote to you with my views, why didn't the Inspector mention this?"* – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

*"Why did my appeal fail when similar appeals nearby succeeded?"* – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

*"I've just lost my appeal, is there anything else I can do to get my permission?"* – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

*"What can I do if someone is ignoring a planning condition?"* – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. It can investigate and has discretionary powers to take action if a condition is being ignored.

### *Further information*

Every year we publish a Business and Corporate Plan which sets out our plans for the following years, how much work we expect to deal with and how we plan to meet the targets which Ministers set for us. At the end of each financial year we publish our Annual Report and Accounts, which reports on our performance against these targets and how we have spent the funds the Government gives us for our work. You can view these and obtain further information by visiting our website (see 'Contacting us'). You can also get booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or on the ODPM website - www.odpm.gov.uk/

### *Contacting us*

Quality Assurance Unit
The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

**Website**
www.planning-inspectorate.gov.uk

**Enquiries**
Phone: 0117 372 6372
E-mail: enquiries@pins.gsi.gov.uk

**Complaints**
Phone: 0117 372 8252
E-mail: complaints@pins.gsi.gov.uk

**Cardiff Office**
The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ
Phone: 0292 082 3866
E-mail: wales@pins.gsi.gov.uk

**The Parliamentary Ombudsman**
Office of the Parliamentary Commissioner for Administration
Millbank Tower, Millbank
London, SW1P 4QP

Helpline: 0845 0154033
Website: www.ombudsman.org.uk
E-mail: phso.enquiries@ombudsman.org.uk