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## Appeal Decision

Site visit made on 28 June 2017

by **A Jordan BA Hons MRTPI**

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

Decision date: 3 July 2017

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**Appeal Ref: APP/T2350/Y/16/3161655**

**Dove Syke, Eaves Hall Lane, West Bradford, Clitheroe, Lancashire, BB7 3JG**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Miss Emma Whittingham of McDermott Windows against the decision of Ribble Valley Borough Council.
  - The application Ref 3/2016/0279, dated 3 March 2016, was refused by notice dated 27 May 2016.
  - The works proposed are described as "to replace existing windows and porch door with a suitable timber alternative. Proposed materials: Residence 9 Flush casement window system and Residence 9 Solidor composite door".
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The listing refers to the dwelling as Dove Sike, whereas all other documentation refers to the property as Dove Syke. I am satisfied that the listing relates to the same property.

### Main Issue

3. The main issue is the impact of the proposal on the special architectural and historic interest of the Grade II listed building known as both Dove Sike and Dove Syke.

### Reasons

4. S16(2) and S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. There is no statutory requirement to have regard to the provisions of the development plan for decisions on applications for listed building consent and the Council have not referred explicitly in its decision notice to any relevant local plan policies. Nevertheless, the supporting reports refer to policies EN5 and DME4 of the *Ribble Valley Core Strategy (Core Strategy)*, which both seek to ensure that listed buildings will be conserved and enhanced in a manner appropriate to their significance. Policy DMG1 of the Core Strategy also seeks development which is sympathetic in terms of appearance, including the use of appropriate building materials. These broadly reflect the statutory duties defined in the Act.

5. Dove Syke is a Grade II listed building. The listing describes it as dating from 1827 with earlier remains. It is constructed in sandstone with deep sandstone window surrounds and the original structure has a broadly symmetrical appearance, which to rear is now distorted by the addition of a large conservatory. The regular shape and spacing of the window openings to the front and rear contributes much to the attractive appearance of the original building. The significance of the building as a heritage asset is in part derived from the antiquity of parts of its fabric and in its appearance as an attractive example of vernacular architecture from its period.
6. The windows on the property are timber. The listing describes the building as having modern imitation sash windows. However I noted on site that the front windows were side opening casements with a horizontal emphasis, and those on the rear were top opening casements with a 6 x 2 arrangement. The windows on the rear appear more obvious as modern replacements due to the top opening, which along with the modern conservatory has a negative effect on pleasing symmetry of the simple rear elevation.
7. The proposal comprises the removal of the existing timber double glazed windows on the property and its replacement with a upvc double glazing system. A sample of the proposed "Residence 9" windows was available for inspection on site. This provided a reasonable approximation of a painted timber window when closed and viewed from a distance. The profile was well defined and the surface of the material was similar to painted timber. Nevertheless, when open the plastic interior would be evident and on close inspection the texture of the material would not have the same patina as painted wood. Neither would it be likely to weather or bed down in the same way as timber, and so over time the synthetic nature of the material would become more apparent and would appear more incongruous. This effect would also be evident in relation to the finish of the proposed door.
8. I take into account that the existing windows already represent a departure from the form of windows which would originally have been on the building. However, I have not been provided with details of the exact form of the proposed windows, and so in the absence of any other information must assume that the proposed replacements seek to replicate the formation of those on the building at present. In this regard I cannot take account of any potential beneficial effect a more sympathetic configuration might have on the appearance of the building. It follows that the replacement of the timber windows with a plastic alternative, even those of the quality proposed, would have a small but nonetheless harmfully erosive effect on the appearance and historic character of the heritage asset.
9. The proposal would affect only part of the building and so the harm caused to its significance as a heritage asset would thus be less than substantial. The *National Planning Policy Framework* (the Framework) directs that when considering the impact of a proposed development on the significance of a heritage asset, great weight should be given to the asset's conservation. I therefore attribute considerable importance and weight to this harm, which the Framework also indicates should be weighed against the public benefits of the scheme.
10. The appellant considers that the proposed windows would be more thermally efficient than the existing units, that they would be low maintenance, and

would be more secure. I have been provided with no information of the thermal efficiency of the existing double glazed units with which to compare the new windows, or any evidence that timber windows would be less secure, or would require unreasonable amounts of maintenance. I therefore have no convincing basis for concluding that the proposal would be beneficial to the wider housing stock and attribute no weight to these matters as public benefits. As such it cannot outweigh the harm the proposal causes to the special interest of the listed building and to its significance as a heritage asset. It follows that the proposal fails to comply with national policy outlined in the Framework. It also fails to comply with the policies EN5 and DME4 of the Local Plan outlined above.

11. Therefore, for the reasons outlined above, and having regard to all other matters raised, I conclude that the appeal be dismissed,

*A Jordan*

INSPECTOR



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# Appeal Decision

Site visit made on 13 June 2017

**by Thomas Hatfield BA (Hons) MA MRTPI**

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

**Decision date: 6<sup>th</sup> July 2017**

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**Appeal Ref: APP/T2350/W/17/3171187**

**Westholme, Longsight Road, Copster Green, Lancashire, BB1 9EU**

- 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 David Alston against the decision of Ribble Valley Borough Council.
  - The application Ref 3/2016/1067, dated 9 November 2016, was refused by notice dated 23 December 2016.
  - The development proposed is described as "demolition of existing dwelling and garage. Provide new detached dwelling with linked annex and garage".
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## Decision

1. The appeal is dismissed.

## Main Issue

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

## Reasons

3. The appeal site comprises a detached bungalow on the eastern side of Longsight Road that is set within a generous plot. It sits on sloping ground and is surrounded by detached properties. Along this section of Longsight Road, the majority of dwellings consist of larger bungalows.
4. The development proposes to replace the existing bungalow with a substantial detached dwelling that would be mainly 2 stories in height. This would be in a relatively prominent, elevated position fronting Longsight Road, which is a major through route. The appeal dwelling would be significantly larger than both the existing bungalow and other properties along this part of the road. In this regard, it would be over 30 metres wide and would occupy almost the full width of the plot. It would also have a considerable built footprint. The ridge height of the proposed dwelling would be significantly higher than the properties on either side and this would contribute to a disproportionate relationship with Holme Lee in particular. Whilst there are other 2 storey properties further along Longsight Road, these are significantly smaller than the proposed dwelling. In this regard, it would appear out of scale with the surrounding properties and would represent an overdevelopment of the plot.
5. In addition to its size and scale, the design of the property would also be out of keeping with the area. The front elevation would contain an excessive amount

- of glazing, particularly on the left wing. The proposed front balcony would also be an unsympathetic feature. Whilst the National Planning Policy Framework ('the Framework') states that planning decisions should not attempt to impose architectural styles or stifle innovation, in this case, the design and scale of the property would be incongruous in the surrounding area. Whilst the building would be split into 3 sections to break up its mass, this measure would not significantly mitigate the impact of the development in my view.
6. The existing bungalow is unremarkable in appearance. However it is of a scale and design that is in keeping with the character of the area. In this regard, the development would not represent an improvement to the site's appearance.
  7. Views of the appeal site from the north are restricted by hedges and boundary planting around the perimeter of Blue Trees. However, the proposed dwelling would still be clearly visible in the surrounding area, including in longer views from the south. It would have only a limited set back and would be in an elevated position relative to the road. It would therefore be prominent in the surrounding area in my view.
  8. The area does not benefit from Conservation Area status, or any local character designation. However, that is not unusual and it does mean that the character of the area does not merit protection. Whilst nearby properties exhibit a degree of variation in style and design that does not justify a development with the shortcomings I have identified above.
  9. My attention has been drawn to a recent appeal decision on a nearby site that also fronts Longsight Road (ref APP/T2350/A/14/2226295). However, the full details of that case, including the Council's objections to it, are not before me. In any case, that scheme proposed significantly smaller dwellings with a different relationship to Holme Lee. I have therefore come to my own view on the current appeal proposal.
  10. The appellant has also highlighted recent approvals for an extension to Oaksmead (ref 3/2015/0771), and a replacement dwelling at Sunny View (ref 3/2013/0845). However, both of these developments are smaller than the appeal proposal, and are in less prominent locations. They also sit within a different context along Manor Road. They are therefore not directly comparable to the appeal development.
  11. For the above reasons, I conclude that the development would significantly harm the character and appearance of the area. It would therefore be contrary to Policy DMG1 of the Ribble Valley Core Strategy (2014). This policy seeks to ensure, amongst other things, that new development is sympathetic to its context in terms of size, scale, and design. It would also be at odds with the Framework which requires good design.

### **Other Matters**

12. The proposed dwelling would be significantly closer to the boundary with Blue Trees than the existing property. However, Blue Trees is located on higher ground than the appeal site, and the part of the dwelling that would be closest to the boundary would be only single storey in height. The first floor windows in Blue Trees that would face the development serve rooms that also contain other large windows. These rooms would therefore not experience a harmful loss of light or outlook. In addition, the ground floor windows in Blue Trees'

southern elevation currently face a high conifer hedge, and any effect on these windows would therefore be limited.

13. The properties fronting Manor Road that back onto the appeal site would be some distance away from the rear of the new dwelling. A separation distance of at least 35 metres would be retained (according to the Planning Officer's Report), which would be sufficient to maintain the privacy of those properties. The distance from the rear of the new dwelling to the shared boundary would also be sufficient to protect the privacy of the garden areas. In addition, the properties fronting Manor Road are in an elevated position and there are a number of trees along the shared boundary. These factors would also serve to mitigate any impact associated with the development.
14. Any concerns regarding due process during the processing of the planning application fall outside of the remit of this decision.
15. The issue of impact on property values has also been raised. It is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property.

### **Conclusion**

16. For the reasons given above I conclude that the appeal should be dismissed.

*Thomas Hatfield*

INSPECTOR



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Robert Major  
Principal Planning Officer  
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Clitheroe  
Lancashire  
BB7 2RA

Your Ref: 3/2016/0765

Our Ref: APP/T2350/W/17/3167288

Date: 4 July 2017

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Dear Sir

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)  
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 322  
LAND AT 68-70 WHALLEY NEW ROAD, WILPSHIRE, BLACKBURN  
APPEAL BY MR BRIAN MORAN: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Planning Inspectorate's letter dated 21 March 2017 confirming the withdrawal of the appeal by Mr Brian Moran. It was against Ribble Valley Borough Council's refusal of planning permission (outline), dated 7 October 2016, for two detached dwellings, including vehicular access onto Whalley New Road, concerning land described above.

2. This letter deals with the Council's application (as updated) for a full award of costs against the appellant as made in written correspondence dated 10 & 25 April 2017. The appellant replied on 24 April 2017. The parties' costs submissions, which have been cross-copied, have been carefully considered.

**Summary of the decision**

3. The formal decision and costs order are set out in paragraphs 18 and 19 below. The costs application succeeds and a full award of costs is being made.

**Basis for determining the costs application**

4. In planning appeals the parties are normally expected to meet their own expenses irrespective of the outcome of the appeal. Costs are awarded only on the grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense.

5. Section 322 of the Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any party in proceedings which do not give rise to a local inquiry where it is found that one of the parties to the appeal has behaved unreasonably and the expense incurred by any of the other parties is wasted as a result.

6. The application for costs has been considered in the light of current Government guidance on awards of appeal costs (as published on the Gov.uk website under

"Appeals"), the appeal papers, the written costs correspondence and all the relevant circumstances.

## **Reasons for decision**

7. All the available evidence has been carefully considered. Particular regard has been paid to paragraphs 052 to 054 of the costs policy guidance. The Council have alleged that the appellant acted in an unreasonable manner in the application, and appeal process, causing them to incur wasted expense in the appeal proceedings. The sequence of events leading to the submission of the appeal and its subsequent withdrawal has therefore been carefully examined.

8. Following the submission of the planning application the Council's case officer sent an e-mail, dated 13 September 2016, pointing out to the appellant that while the planning application was in outline (with all matters reserved except for access) the Council could request additional information in respect of the reserved matters if required. It was further stated:

*"Having visiting the site it is clear that that there are a number of constraints, including the change in levels across the site, the windows in the south facing elevation of the existing house at 68-70 Whalley New Road and the existing trees, and therefore without a layout plan I am not convinced that two dwellings could be acceptably located within the site. As such I would request that the application be amended to include layout and scale as matters for which consent is sought at this stage – plans would therefore need to be submitted showing the location of the proposed houses and there (sic) size/scale."*

It was explained to the appellant that it would be unreasonable for the Council to consider approving an outline application, with layout and scale as reserved matters, without being sure that an acceptable scheme could come forward in the future. Without the inclusion of layout and scale (and the provision of relevant information) the application was likely to be refused. In response to the Council's request the appellant stated that he would instruct his architect to draw up the required plans.

9. A meeting was subsequently held on 20 September 2016, at which the appellant submitted two plans, but it appears that (as referred to in the costs application) the appellant indicated that they were indicative only and were not to form part of the planning application. The costs application also records that the appellant verbally informed the Council that he would not be applying for any additional reserved matters. The Council proceeded to determine (refuse) the planning application on the information submitted.

10. The appeal followed. The Inspectorate's procedural ("start date") letter of 14 February 2017 explained to the parties that the appeal would be decided via an exchange of written representations and that arrangements would be put in hand for a site inspection by a Planning Inspector. A timetable was set for the submission of appeal documentation. The Council were required to submit a completed appeal questionnaire and statement of case. The parties' attention was drawn to the Government's published guidance on awards of costs. The letter to the appellant's agent also drew attention to the risk of an award of costs in the event of the withdrawal of the appeal, at any stage of the proceedings, without good reason.

11. The appeal proceeded, with both parties submitting costs applications (but the appellant's application was subsequently withdrawn). In response to the submission of the Council's costs application on 14 March 2017 the appellant's agent informed the Inspectorate that *"it would be sensible for the appellant to retract their costs application and submit a revised appeal statement removing all reference to unreasonableness by*



*the planning authority*". The agent indicated that the appeal could be withdrawn with a view to resubmitting *"within the 6 month period of determination"*. In reply the Inspectorate informed the agent that there was no provision for any further statement or amendment (to that originally submitted) by the appellant and that, once withdrawn, an appeal could not be re-activated. The only option would be to submit a new planning application to the Council. The Inspectorate also pointed out, by reference to e-mail correspondence, that the Council's costs application was not retracted. The appeal was then withdrawn, without further explanation, on 20 March 2017.

12. It is noted from the appellant's response to the costs application that there seems to be a difference of opinion (with the Council) as to the relevance of the submission of the additional plans. The appellant stated that these were provided by his architect who fully understood the Planning Officer's request and concerns; and, with reference to the meeting:

*"I passed these plans to Mr Major not saying anything about being indicative as it's not a term I would use or know. At the meeting he glanced at the drawings and we agreed if there were any further information required in order for him to make his decision he would be in touch."*

The appellant expressed surprise that the Council had argued that he had failed to co-operate and felt that he should not be liable for an award of costs.

## Conclusions

13. The right of appeal is a statutory right but it is to be expected that it will be exercised (as a last resort) in a reasonable manner. Once made an appeal should be pursued to a formal determination barring any material change in circumstances.

14. While the reasonableness of the appellant's case on appeal cannot be assessed via a formal determination of the appeal the Secretary of State notes the circumstances (as described above) in which the appeal was withdrawn. Although the appellant has not expressly stated why it was withdrawn the view is taken, having considered the available evidence, that it was withdrawn in the light of the Council's costs application and the possibility of submitting a further planning application. For their part the Council had clearly warned the appellant that, on the basis of the information submitted at application stage, the planning application was likely to fail; and the Council were prepared to substantiate, on appeal, their reasons for refusing the application.

15. While there appears to be some disagreement between the parties regarding what was said regarding the plans submitted at the meeting the Council's position in the matter had been clearly set out. The application was likely to be refused unless amended to include scale and layout (and appropriate plans submitted). But it does not appear that the application was amended and only indicative plans were submitted. The appeal, as submitted by the appellant's professional agent, was on the basis of the information submitted to the Council. And while the appellant still had the option of pursuing the submitted appeal to a formal determination he decided to withdraw it. However there is no evidence to show that the withdrawal resulted in a material change in circumstances, relevant to the planning issues arising on the appeal, following the submission of the appeal.

16. The conclusion drawn is that, following the submission of the appeal, the appellant re-considered his position in terms of the prospect of success for the appeal, and decided to withdraw. In the particular circumstances, and with reference to the costs policy guidance, the decision to withdraw is considered to amount to unreasonable behaviour and tantamount to an admission that the appeal should not have been pursued at the outset. The unreasonable behaviour has caused the Council to incur wasted expense in

connection with the abortive appeal proceedings. A full award of costs is considered justified.

17. For the avoidance of doubt, the Secretary of State does not decide the amount of costs payable. This is for the parties' agreement or via an application for a detailed assessment in the Senior Courts Costs Office.

### **FORMAL DECISION**

18. For these reasons, it is concluded that a full award of costs against the appellant, on grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense, is justified in the particular circumstances.

### **COSTS ORDER**

19. Accordingly, the Secretary of State for Communities and Local Government in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 78 and 322 of the Town and Country Planning Act 1990, and all other powers enabling him in that behalf, **HEREBY ORDERS** that Mr Brian Moran shall pay to Ribble Valley Borough Council their costs of the appeal proceedings before the Secretary of State; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in paragraph 1 above.

20. You are now invited to submit to the appellant details of those costs with a view to reaching agreement on the amount. A copy of this decision letter has been sent to him.

Yours faithfully

*John Gardner*

JOHN GARDNER  
Authorised by the Secretary of State  
to sign in that behalf