

**TITLE OF REPORT:** Planning Appeals

**REPORT OF:** Paul Dowling, Strategic Director, Communities and Environment

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### **Purpose of the Report**

1. To advise the Committee of new appeals received and to report the decisions of the Secretary of State received during the report period.

### **New Appeals**

2. There has been **one** new appeal lodged since the last committee:

DC/17/01142/ADV - Land At Abbotsford Road, Felling  
Proposed siting of internally illuminated digital hoarding display.  
This application was a delegated decision refused on 26 January 2018.

### **Appeal Decisions**

3. There have been **two** new appeal decisions received since the last Committee:

DC/17/00899/COU - Da Vincis, 10 Harraton Terrace, Durham Road, Birtley, Chester Le Street, DH3 2QG  
Change of use from A3 (food and drink) to A3/A5 to allow for home delivery (amended 05/09/17).  
This application was a committee decision refused on 15 November 2017.  
Appeal dismissed 23 May 2018.

DC/17/01109/HHA - 24 Wilsons Lane, Low Fell, Gateshead, NE9 5EQ  
Proposed external rear roof terrace with bi-fold doors.  
This application was a committee decision refused on 3 January 2018.  
Appeal dismissed 18 May 2018.

Details of the decisions can be found in **Appendix 2**

### **Appeal Costs**

4. There have been **no** appeal cost decisions.

### **Outstanding Appeals**

5. Details of outstanding appeals can be found in **Appendix 3**.

### **Recommendation**

6. It is recommended that the Committee note the report

**Contact: Emma Lucas Ext: 3747**

**FINANCIAL IMPLICATIONS**

Nil

**RISK MANAGEMENT IMPLICATIONS**

Nil

**HUMAN RESOURCES IMPLICATIONS**

Nil

**EQUALITY AND DIVERSITY IMPLICATIONS**

Nil

**CRIME AND DISORDER IMPLICATIONS**

Nil

**SUSTAINABILITY IMPLICATIONS**

Nil

**HUMAN RIGHTS IMPLICATIONS**

The subject matter of the report touches upon two human rights issues:

The right of an individual to a fair trial; and  
The right to peaceful enjoyment of property

As far as the first issue is concerned the planning appeal regime is outside of the Council's control being administered by the First Secretary of State. The Committee will have addressed the second issue as part of the development control process.

**WARD IMPLICATIONS**

Various wards have decisions affecting them in Appendix 3

**BACKGROUND INFORMATION**

Start letters and decision letters from the Planning Inspectorate



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## Appeal Decisions

Site visit made on 15 May 2018

by Roy Merrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2018

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### Appeal A: APP/H4505/C/18/3193759

Da Vincis, 10 Harraton Terrace, Durham Road, Birtley, Chester-le-Street  
DH3 2QG

- 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 Afshin Pouresmaileh against an enforcement notice issued by Gateshead Council.
- The enforcement notice was issued on 22 December 2017.
- The breach of planning control as alleged in the notice is without planning permission the change of use from a cafe (A3) to a mixed use, including cafe, hot food take away and hot food delivery.
- The requirements of the notice are: (i) Stop using the Land for the purposes of a hot food take away and delivery and (ii) Remove from the Land all external and internal signage, visible from the outside of the premises, seeking to advertise use as a hot food take away and delivery.
- The period for compliance with the requirements is two calendar months.
- The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.**

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### Appeal B: APP/H4505/W/18/3193758

10 Harraton Terrace, Durham Road, Birtley, DH3 2QG

- 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 Afshin Pouresmaileh against the decision of Gateshead Council.
- The application Ref DC/17/00899/COU, dated 4 August 2017, was refused by notice dated 15 November 2017.
- The development proposed is change of use from A3 to A3 / A5 to allow for home delivery.

**Summary of Decision: The appeal is dismissed.**

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### Preliminary Matter

1. With regard to Appeal B, it was agreed by the parties that the address of the appeal site is 10 Harraton Terrace as specified above, and not 10a Harraton Terrace as specified on the application form.

## **Appeal A on ground (a) and Appeal B**

### *Main Issue*

2. The main issue is the effect of the development on the health of the local community in terms of the availability of unhealthy food.

### *Reasons*

3. The National Planning Policy Framework (the Framework) supports strong, vibrant and healthy communities and states that local planning authorities should work with public health leads and health organisations to understand and take account of the health status and needs of the local population. Policy CS14 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle Upon Tyne 2015 (CSUCP) is concerned with wellbeing and health. It seeks amongst other things to control the location of and access to unhealthy eating outlets. Saved Policy RCL6 of the Gateshead Unitary Development Plan 2007 (UDP) states that planning permission will be granted for hot food takeaways within an existing centre or locality provided they would not lead to an over-concentration of such uses in any one location.
4. Furthermore the Council has published the Hot Food Takeaway Supplementary Planning Document 2015 (SPD). This identifies that the Borough currently has a high level of obesity. It is undisputed by the main parties that levels of child obesity (measured in relation to year 6 pupils) are higher in the Borough (23%) and in Birtley ward (25%) compared to the national average (19%) and that a survey of takeaway food in Gateshead generally revealed a very high calorie and fat content in certain foods. The Council's point that the number of hot food takeaways per 1000 population in the Birtley ward (1.68) is nearly twice the national average (0.86) is also unchallenged. It therefore seems to me that there is strong justification for the Council objective, referred to in the SPD, of transforming health in Gateshead by supporting and encouraging people to take opportunities to improve their health and lifestyle.
5. The aims of the SPD include resisting new A5 use class development, where the primary use is the sale of hot food for consumption off the premises, within 400 metres of locations where children and young people congregate; in wards where more than 10% of the year 6 pupils are classified as obese and where the number of A5 units equals or exceeds the national average per 1000 population. If it is accepted that the proposal would introduce a new A5 use, then there is no dispute that it would be in conflict with these criteria. Furthermore the SPD also seeks to cap the number of A5 uses within commercial centres to 5% of the total commercial uses there. The relevant figure for the Birtley District Centre, where the appeal site is located, is undisputed to be 11.6%.
6. It was apparent from my visit that a range of fast food types can be purchased on the appeal site premises including pizzas, burgers and kebabs, with seating available to allow up to 20 customers to dine there. Signage promoting the availability of the delivery service, through the Just Eat website is also displayed outside. Whilst a takeaway service to passing trade is not promoted from the site, there is no obvious means of precluding this.
7. There is disagreement between the Council and appellant regarding the proportion of business generated through the A5 element, (the online delivery

- service in particular). The Council state that the delivery service accounts for 80% of the business, with the appellant saying it is two thirds. Either way, there is no dispute that a clear majority of the business falls within the A5 use class.
8. Even if passing trade continues to account for a small proportion of the overall business, from the information provided I am in no doubt that the online delivery service results in fast food being made increasingly accessible and more convenient to obtain, compared to the premises remaining as a cafe for the consumption of food on the premises. The appellant does not seek to make the case that the fast food choices available would not constitute unhealthy products and I have not been provided with any evidence to suggest that the business has a significant customer base outside the Gateshead area. Notwithstanding the opportunity to purchase some healthier items such as salad and fruit, the A5 element of the business would translate into an increased availability of a generally unhealthy diet for local residents, obviously including but not limited to children.
  9. Whilst the business would have a relatively limited impact in the context of the many similar services already available, it would nevertheless contribute to counteracting comprehensive and unambiguous policy objectives aimed at tackling and improving poor health within the Borough. Therefore the argument that the use, in itself, would have limited impact and would therefore be acceptable for this reason, would not be compelling in principle, as it could be repeated too often to the overall detriment of public health. This similarly applies to the argument that fast food could still be purchased and consumed on the premises due to the existing A3 Use Class relating to the Land. Whilst this is so, the limitation of the use serves to restrict the availability and convenience of access to unhealthy food, a limitation which the A5 element of the business would serve to undermine.
  10. Whilst the SPD states that it is aimed at the control of hot food takeaways (A5 uses only), for the above reasons the argument that this should not encompass A5 uses that are part of a proposed mixed use and where a significant amount of the business derives from online ordering, is not persuasive.
  11. I therefore conclude that the development would result in increased access to unhealthy food and would add to an over-concentration of such uses within the Borough, which would be detrimental to the health of the local community. Accordingly there would be conflict with the Framework; with Policy CS14 of the CSUCP; with Saved Policy RCL6 of the UDP and with the SPD insofar as they seek to promote healthy communities; control access to unhealthy eating outlets and avoid an over-concentration of such uses in any one location.

*Other Matters*

12. The appellant has raised a number of further matters in support of the development. These include that considerable wasted investment would have been made in the business which would struggle without the support of the A5 use, risking closure, job losses and another vacant commercial unit and that the business has a valuable social role in providing a meeting place for shoppers.
13. I acknowledge these benefits and potential impacts, and any wasted investment would be regrettable. However I have not been presented with any

compelling evidence that closure of the A3 element of the business with the consequent loss of a meeting place for shoppers and 'dead' frontage during the daytime, would inevitably follow. Whilst I afford these considerations moderate weight, in my view they do not justify setting aside the policy presumption against the development in this case, which is designed to protect and improve the health of the local population in the longer term and to which I therefore give significant weight.

14. The points raised that there is adequate parking for delivery vans to the rear of the site and that because the takeaway element of the business is focussed on delivery it would serve to mitigate potential littering and anti-social behaviour outside the premises are matters of harm avoidance rather than positive impact and therefore attract neutral weight in the planning balance. In terms of the possibility of the delivery service being able to operate from a different site in Birtley, this would only be true if an appropriate planning permission was in place.

*Conclusion*

15. For the reasons given above I conclude that Appeals A and B should not succeed.

**Formal Decisions**

*Appeal A*

16. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Appeal B*

17. The appeal is dismissed.

*Roy Merrett*

INSPECTOR



## Appeal Decision

Site visit made on 24 April 2018

by **Graeme Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 18 May 2018**

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**Appeal Ref: APP/H4505/W/18/3194170**

**24 Wilsons Lane, Low Fell, Gateshead NE9 5EQ**

- 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 Michael Langdon against the decision of Gateshead Council.
  - The application Ref DC/17/01109/HHA, dated 6 October 2017, was refused by notice dated 3 January 2018.
  - The development proposed is proposed external roof terrace with bi-fold doors.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - Whether the proposed development would preserve or enhance the character or appearance of the Low Fell Conservation Area; and
  - The effect of the proposed development on the living conditions of occupiers of neighbouring properties, with particular regard to privacy.

### Reasons

#### *Character and appearance*

3. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in making decisions on planning applications and appeals within a Conservation Area, special attention is paid to the desirability of preserving or enhancing the character and appearance of the area. Paragraph 132 of the National Planning Policy Framework (the Framework) requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
4. The Low Fell Conservation Area (LFCA) covers a large area of varied uses and is of mixed character, from the commercial area of Durham Road to the predominantly residential areas on either side of it. The appeal site lies in an area of transition from the commercially-focused Durham Road to the residential streets of Kells Lane and the terraces beyond. Although residential properties lie opposite the site on Wilsons Lane, and to the rear on Rock Grove, the immediate area is dominated by the large and looming presence of Kells Lane Primary School on one side, and by the modern expanse of the former GPO sorting office, now occupied as offices, and surface car park on the other.



5. The building within which the appeal property lies is a relatively recent residential development, built with a traditional appearance to reflect the form and scale of the nearby terraces. The proposal relates to an upper floor apartment at first and second (roof) levels, where the bedrooms are arranged at first floor level, with a large open plan living area within the roof space. Rooflights front and rear provide light to, and outlook from, this area where the proposal to create a roof terrace within the rear facing roof elevation would make effective and efficient use of existing floor area which is largely unusable due to the internal fall of the roof slope.
6. However, the creation of the roof terrace would create a deep incursion into the otherwise plain roof form of the building. Further, the verticality of the terrace's balustrades would sit uncomfortably with the roof slope and the terrace's side walls would emphasise the extent of the incursion into the roof slope. Whilst the substantial but low-line roof structure of the modern office building at the rear of the building would screen this incursion from wider view from Lowrey's Lane, that is not to say that it would render the terrace hidden from view.
7. I acknowledge the suggested extent of visibility from Lowrey's Lane set out in the appellant's submissions<sup>1</sup>, but it would also be a prominent roof-level feature in closer views on Rock Grove. Here, the conflicting angles and lines of the existing roof slope and the terrace's balustrade would be clearly seen, whilst the side walls of the roof terrace would make the depth of incursion harmfully recognisable and at odds with the building's otherwise simple roof form. So too, from the far side of the car park to the south of Lowrey's Lane and the terraces beyond it, where the interruption in the roofscape would also be clearly visible above the modern office building that lies in the appeal property's foreground. Here, the open expanse of the car park offers clear views through 360° of the surrounding roofscape. With one or two exceptions, that roofscape is very much typical of the terraced streets that typify the area, with simple and unadorned roofs. Where rear elevations are broken, it is in the form of two storey flat roofed off-shoot extensions, not at roof level.
8. The proposed roof terrace, with its deep incursion into the roof slope, side walls, metal balustrades, glazing and domestic paraphernalia associated with an outdoor space, would when taken together, introduce features alien to a simple and relatively plain roofscape. In doing so, it would also alter the viewer's perception of the building, adding a perceived sense of enlarged scale at odds with the rest of the terraced block. These factors would combine to create an obtrusive and incongruous incursion into an otherwise simple and plain roof form, and would do so in a manner at odds with the traditional roof form and roofscape associated with the terraces that typify much of the surrounding area.
9. I acknowledge that the modern built form and materials of the former GPO sorting office, and now office building, are a significant factor in views along Lowrey's Lane and towards the appeal property from the car park accessed from Lowrey's Lane. However, it appears to me that the building within which the appeal site lies represents a reasonably successful attempt at incorporating new development into the LFCA. The proposal would, in my judgement, compromise that and would, for the reasons I have set out, be an incongruous

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<sup>1</sup> Referred to as 'an annotated satellite view' at paragraph 2.44 of the appellant's Grounds of Appeal and appended to that document

addition to the building resulting in harm to its character and appearance. In so doing, it would also fail to preserve or enhance the character or appearance of the LFCA, thereby causing harm to the heritage asset.

10. Whilst I have identified harm, that harm would be less than substantial. Paragraph 134 of the Framework states that in such circumstances harm should be weighed against the public benefits of the proposal. From my observations of the appeal property's internal layout, the proposal would facilitate a more efficient use of the second floor floorspace than is currently possible due to falling ceiling levels and restricted headroom. That, however, is a private, not public, benefit and I give that, and the matter of the site being previously developed land, little weight in the paragraph 134 balance.
11. My attention has been drawn to a recent appeal<sup>2</sup> which, it is suggested, demonstrated an 'exaggerated approach' by the Council to the impact of roof-level extensions. I do not however have the full details of that proposal before me and I can only give it limited weight. I have also been referred to a balcony alteration at a property in Frome Gardens. Once again, I do not have the full details of that proposal before me, but I saw that that property is very different in character, appearance and location to the appeal property. As such, it does not appear to me to provide a direct comparison to the appeal property or appeal proposal and so I also give it limited weight.
12. Thus, for the reasons set out, the proposal would be contrary to saved policies ENV3 and ENV7 of the Unitary Development Plan (UDP) and would fail to preserve or enhance the character or appearance of the LFCA. Whilst there would be private benefits arising from the proposal, there are no public benefits to weigh against the less than substantial harm that I have identified.

*Living conditions*

13. Rock Grove is a compact L-shaped terrace that lies to the rear of the appeal property. The Council's concern with regard to privacy is expressed in terms of Nos. 1 to 4, those being properties within the section of Rock Grove facing towards, but offset from, the appeal property. During my visit to the site I was able to observe the relationship between the respective properties from the existing rooflights. I also viewed the appeal property from directly in front of properties on Rock Grove.
14. The appellant does not dispute the Council's assessment of the separation distance between the proposed roof terrace and windows at Nos. 1 to 4. However, whilst those distances might fall short of the guidance set out in the Household Alterations and Extensions Supplementary Planning Document (HAESPD), the HAESPD does recognise that no two sites are the same and that sites, proposals, levels and relationships between neighbours need to be considered on their own merits.
15. I saw that Rock Grove is offset from the rear of the appeal property; the further east along that terrace the greater the offset, and therefore the distance between the appeal property and others, becomes. The outlook from the existing rooflights is downwards and across the face of Rock Grove. From my observations of this relationship actual overlooking, in the sense of visual penetration through those windows and into those rooms is limited. Moreover,

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<sup>2</sup> APP/H4505/W/17/3171999

due to the nature of the rooflights and their position in both the roof slope and internally to No. 24, any overlooking is currently limited and incidental.

16. However, the proposal would extend the usable floorspace at second floor level. The roof terrace would, in the context of the existing roof slope, provide a large area in which occupants of the appeal property could sit out at an elevated level and in a conspicuous position. Whilst I consider it likely that the actual visual penetration into the windows and rooms of properties on Rock Grove from the terrace would be little different than that which currently exists, the perception may well be different.
17. Although I have no reason to believe that users of the proposed rooftop terrace would actively or deliberately choose to use this vantage point to consciously look into opposing properties, the incongruous nature and appearance of the proposal would be a strong visual reminder of its presence. This, together with the limited separation distances between No. 24 and Rock Grove leads me to conclude, despite the somewhat limited degree of visual penetration into the opposing windows, that the proposal would cause harm to the living conditions of occupiers of those properties closest to the rear of No. 24 with particular regard to privacy and overlooking. The proposal would be contrary to saved UDP policy DC2 and fail to secure the good standard of amenity for existing and future occupiers of land and buildings that the Framework seeks as one of its core planning principles.

#### **Other Matters**

18. The appellant refers to the redevelopment of a site elsewhere in Low Fell, upon which it is apparently proposed that apartments with balconies would be built. However, I am not familiar with the site referred to, nor have I been provided with any details of what is proposed in that instance. I give that matter limited weight.

#### **Conclusion**

19. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

*Graeme Robbie*

INSPECTOR

**APPENDIX 3**

**OUTSTANDING APPEALS**

<b>Planning Application No</b>	<b>Appeal Site (Ward)</b>	<b>Subject</b>	<b>Appeal Type</b>	<b>Appeal Status</b>
DC/17/00473/HHA	17 Limetrees Gardens Low Fell Gateshead NE9 5BE	First floor extensions to side and rear	Written	Appeal in Progress
DC/17/00654/HHA	257 Coatsworth Road Bensham Gateshead NE8 4LJ	Rear Extension	Written	Appeal in Progress
<b>DC/17/00899/COU</b>	<b>Da Vincis 10 Harraton Terrace Durham Road Birtley</b>	<b>Change of use from A3 (food and drink) to A3/A5 to allow for home delivery (amended 05/09/17).</b>	<b>Written</b>	<b>Appeal Dismissed</b>
DC/17/01109/HHA	<b>24 Wilsons Lane Low Fell Gateshead NE9 5EQ</b>	<b>Proposed external rear roof terrace with bi-fold doors.</b>	<b>Written</b>	<b>Appeal Dismissed</b>
DC/17/01110/COU	321 And 323 Rectory Road Bensham Gateshead NE8 4RS	Change of use from dwelling (use class C3) to an eight-bedroom house in multiple occupation (HMO) (sui generis use)	Written	Appeal in Progress
<b>DC/17/01142/ADV</b>	<b>Land At Abbotsford Road Felling</b>	<b>Proposed siting of internally illuminated digital hoarding display.</b>	<b>Written</b>	<b>Appeal in Progress</b>
DC/18/00081/HHA	16 Cowen Gardens Allerdene Gateshead NE9 7TY	Two storey side and front extension, rear ballustrade to first floor rear window and new boundary fencing and gates (revised application)	Written	Appeal in Progress