

## Wolverhampton City Council

**OPEN INFORMATION ITEM**

Committee / Panel	<b><u>PLANNING COMMITTEE</u></b>	Date <b>26th June 2012</b>
Originating Service Group(s)	<b>EDUCATION AND ENTERPRISE</b>	
Contact Officer(s)/	<b>STEPHEN ALEXANDER (Head of Planning)</b>	
Telephone Number(s)	<b>(01902) 555610</b>	
Title/Subject Matter	<b>PLANNING APPEALS</b>	

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**1.0 Purpose of Report**

- 1.1 To provide the Committee with an analysis of planning appeals in respect of decisions of the Council to either refuse planning or advertisement consent or commence enforcement proceedings.

**2.0 Planning Appeals Analysis**

- 2.1 The Appendix to this report sets out the details of new planning appeals, ongoing appeals and those which have been determined by the Planning Inspectorate in respect of the decisions of the Council to either refuse planning or advertisement consent or commence enforcement proceedings.
- 2.2 In relation to the most recent appeal decisions of the Planning Inspectorate i.e. those received since last meeting of the Committee, a copy of the Planning Inspector's decision letter, which fully explains the reasoning behind the decision, is attached to this report. If necessary, Officers will comment further on particular appeals and appeal decisions at the meeting of the Committee.

**3.0 Financial Implications**

- 3.1 Generally, in respect of planning appeals, this report has no specific financial implications for the Council. However, in certain instances, some appeals may involve the Council in special expenditure; this could relate to expenditure involving the appointment of consultants or Counsel to represent or appear on behalf of the Council at Public Inquiries or, exceptionally, if costs are awarded against the Council arising from an allowed planning/enforcement appeal. Such costs will be drawn to the attention of the Committee at the appropriate time.

**4.0 Equal Opportunities/  
Environmental Implications**

- 4.1 None.

**NEW APPEALS**

No new appeals

## **ONGOING APPEALS**

	<b><u>Appeal Site / Ward</u></b>	<b><u>Appellant</u></b>
1.	Midland Snacks Bridge Street Heath Town  <b>Bushbury South And Low Hill</b>	Midlands Snacks Ltd
2.	53 Mount Road Tettenhall Wood Wolverhampton  <b>Tettenhall Wightwick</b>	Mr P Stafford
3.	Unit 4 Springhill Lane Wolverhampton  <b>Penn</b>	Seven Counties Construction Ltd
4.	Land Fronting The Firs PH Windmill Lane Wolverhampton  <b>Tettenhall Wightwick</b>	Vodafone Ltd & Telefonica O2 UK Ltd
5.	30 Church Hill Wolverhampton  <b>Penn</b>	Mr Richard Poole
6.	7 Foley Avenue Wolverhampton  <b>Tettenhall Wightwick</b>	Mr Graham Sharkey

**APPEALS DETERMINED SINCE LAST MEETING**

Appeal Site / Ward / Appellant	Application No / Proposal	Type of Appeal / Date Submitted	Reasons for Refusal / Requirements of Enforcement Notice	Decision and Date of Decision
<p>1 Carisbrooke Gardens, Wolverhampton</p> <p>Bushbury North</p> <p>Mr M Evanson</p>	<p>11/00384/CPL</p> <p>Outbuilding.</p>	<p>Planning</p> <p>Written representation</p> <p>21.11.2011</p>	<p>It is considered that the proposed out building is not permitted development. Therefore, a planning application for the erection of the outbuilding is required. This is because the outbuilding is located in front of the principal elevation of the house.</p> <p>The Technical Guidance for Permitted Development for Householders states that in most cases, the principal elevation will be that part of the house which fronts ( directly or at an angle) the main highway serving the house. The main highway will be the one that sets the postcode for the house.</p> <p>Carisbrooke Gardens is the main highway serving the property for the three reasons listed below:</p> <p>1) The principal elevation is the part of the house that fronts</p>	<p>Appeal Allowed</p> <p>30.05.2012</p>

Appeal Site / Ward / Appellant	Application No / Proposal	Type of Appeal / Date Submitted	Reasons for Refusal / Requirements of Enforcement Notice	Decision and Date of Decision
			<p>(directly or at an angle) the major highway serving the house.</p> <p>2) The main highway is the one that sets the postcode for the house.</p> <p>3) The larger part of the site fronts Carisbrooke Gardens and the main access to the property is gained via Carisbrooke Gardens.</p>	
<p>42 Lower Prestwood Road, Wolverhampton,  Wednesfield North  Mrs Jane Hammond Bood</p>	<p>Appeal against Enforcement Notice</p>	<p>Enforcement  Written representation  05.12.2011</p>	<p>Detrimental to neighbour amenity by way of unpleasant odours, excessive faeces. Neighbours are prevented from using their back garden in a reasonable manner.</p> <p>The notice required that the number of cats kept at the property was reduced to 5.</p> <p>The appeal is made on ground that there has not been a breach of planning control. Ground floor. That the steps required to comply with the notice are excessive and Ground g. That the time allowed is too short.</p>	<p>Appeal Dismissed  30.05.2012</p>

Appeal Site / Ward / Appellant	Application No / Proposal	Type of Appeal / Date Submitted	Reasons for Refusal / Requirements of Enforcement Notice	Decision and Date of Decision
<p>Land Fronting 291, Tettenhall Road, Wolverhampton Park</p> <p>Vodafone (UK) Ltd And O2 (UK) Ltd</p>	<p>11/00915/TEL</p> <p>Telecommunications - Vodafone/O2 - installation of 15m high monopole with associated equipment</p>	<p>Planning</p> <p>Written representation</p> <p>19.01.2012</p>	<p>The telecommunications equipment would be appear obtrusive, forming an incongruous feature in a visually prominent location.</p> <p>Contrary to UDP policies EP20, D6 and D9 and BCCS policies ENV3 and CSP4</p>	<p>Appeal Allowed</p> <p>23.05.2012</p>
<p>Ladbroke's Racing Limited, 2 North Street, Wolverhampton</p> <p>St Peters</p> <p>Wilf Gilbert (Staffs) Ltd</p>	<p>Appeal against</p>	<p>Enforcement</p> <p>Written representation</p> <p>14.02.2012</p>	<p>The external security shutter is of a poor design appearing as a bulky, unnecessary feature of the shop front. When closed the shutter produces a deadening visual effect with a harsh and forbidding appearance likely to contribute to the fear of crime in this locality. The external security shutter fails to preserve and enhance the character and the appearance of the building and the wider street scene at this important crossroads in the City Centre Conservation Area. Therefore these elements have an adverse effect on the vitality</p>	<p>Appeal Dismissed</p> <p>29.05.2012</p>

Appeal Site / Ward / Appellant	Application No / Proposal	Type of Appeal / Date Submitted	Reasons for Refusal / Requirements of Enforcement Notice	Decision and Date of Decision
			and viability of the City Centre and are contrary to national and local planning policy.	
59 Tynninghame Avenue, Wolverhampton  Tettenhall Regis  Mr M Rock	11/01190/FUL  Two storey side extension	Planning  23.04.2012	The proposed two storey side extension would, by reason of its prominent corner location, not respond positively to the established building line and spatial character of which 59 Tynninghame Avenue forms a part of. The two storey side extension would extend the property towards the highway which would significantly detract from the open and spacious character of the neighbourhood.  Contrary to UDP policies D4, D8 and BCCS policy ENV3.	Appeal Dismissed  31.05.2012



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# Appeal Decision

Site visit made on 2 May 2012

**by Claire Sherratt DipURP MRTPI**

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

**Decision date: 30 May 2012**

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**Appeal Ref: APP/D4635/X/11/2164879**

**1 Carisbrooke Gardens, Wolverhampton, WV10 8AD**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr M Evanson against the decision of Wolverhampton City Council.
  - The application Ref 11/00384, dated 12 April 2011, was refused by notice dated 28 September 2011.
  - The application was made under section 192(1) (b) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is the construction of an outbuilding.
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## Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

## Main Issue

2. The main issue is whether the proposed outbuilding would be permitted development under the provisions of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(Amendment) (No.2) (England) Order 2008 (GPDO).

## Reasons

3. Class E allows the provision within the curtilage of the dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse as such. Development is not permitted by Class E if, amongst other limitations, any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.
4. Both parties refer to the Communities and Local Government document 'Permitted Development for Householders - Technical guidance'. It states that 'in most cases, the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.



5. Whilst the appellant considers the principal elevation to be the westerly elevation the Council are of the opinion that the principal elevation is that fronting Carisbrooke Gardens.
6. The appeal property is a semi detached property occupying a corner plot. It 'faces' towards the corner point of the junction between the two roads. From what I saw on site, I take the view that the principal elevation is that described as the front elevation on the submitted plans (the western elevation). It contains the primary entrance into the hall of the property and principal windows to the main habitable rooms. The elevation described as the side elevation on the plans that has a greater relationship with Carisbrooke Gardens contains an entrance directly into the kitchen which is less prominent than that to the front and small windows serving the hall and landing.
7. Notwithstanding the address of the property and point of vehicular access, I consider anything forward of the 'front' western elevation could be considered as land 'forward of a wall forming the principal elevation of the original dwellinghouse'. Although the proposed outbuilding would be closer to the highway (Carisbrooke Gardens) than the original property, it would nevertheless be sited so as to be slightly back from the principal elevation and thus permitted under the provisions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (GPDO).
8. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of an outbuilding was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*Claire Sherratt*  
INSPECTOR



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# Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2010: ARTICLE 35

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**IT IS HEREBY CERTIFIED** that on 12 April 2011 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed outbuilding would be permitted development under the provisions of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (GPDO).

Signed

*Claire Sherratt*

Inspector

Date: 30 May 2012

Reference: APP/D4635/X/11/2164879

## ***First Schedule***

The construction of an outbuilding, as shown on drawing entitled 'PROPOSED OUTBUILDING' dated April 2011, File Ref. 11/126, Edition 1A.

## ***Second Schedule***

Land at 1 Carisbrooke Gardens, Wolverhampton, WV10 8AD.

## NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



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## Plan

This is the plan referred to in the Lawful Development Certificate dated: 30 May 2012

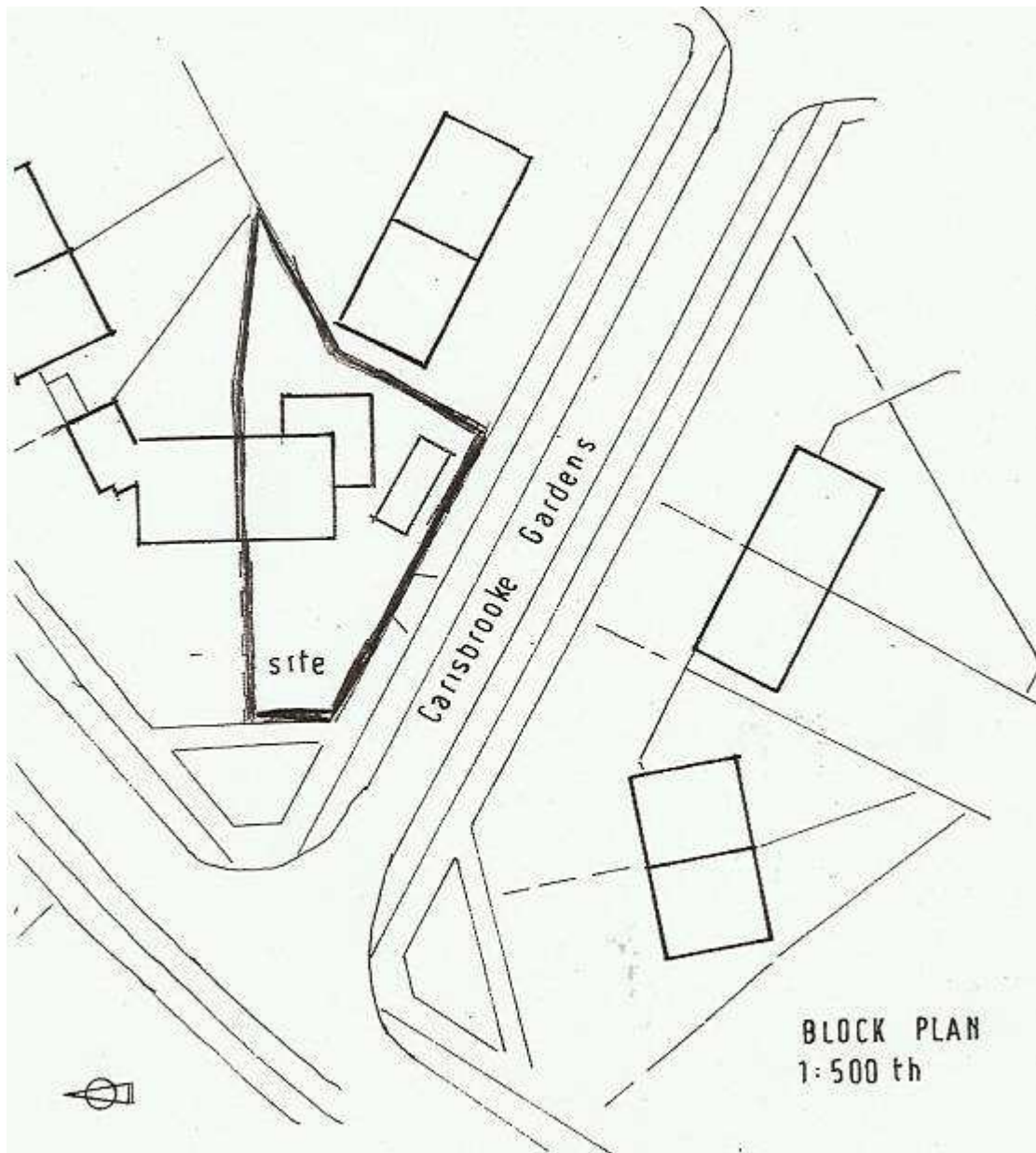
by C L Sherratt DipURP MRTPI

Land at: 1 Carisbrooke Gardens

Reference: APP/D4635/X/11/2164879

Scale: Not to scale

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# Appeal Decision

Site visit made on 2 May 2012

**by Claire Sherratt DipURP MRTPI**

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

**Decision date: 30 May 2012**

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**Appeal Ref: APP/D4635/C/11/2166391**

**42 Lower Prestwood Road, Wolverhampton WV11 1JP**

- 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 Mrs Jane Bood against an enforcement notice issued by Wolverhampton City Council.
  - The Council's reference is CM/10/452/ENCOMP.
  - The notice was issued on 3 November 2011.
  - The breach of planning control as alleged in the notice is without planning permission change of use of the property from residential use to a mixed use for residential use and use for the keeping of cats.
  - The requirement of the notice is to '*Stop using the property for the keeping of any more than 5 cats*'.
  - The period for compliance with the requirements is two months.
  - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
  - Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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## Decision

1. The appeal is allowed on ground (g), and the enforcement notice is varied by the deletion of 2 months as the period for compliance and the substitution of 3 months.
2. Subject to these variations the enforcement notice is upheld.

## Reasons

Ground (c) – that there has not been a breach of planning control.

3. For the appeal to succeed under ground (c) it is necessary for the appellant to demonstrate that the keeping of cats, as alleged, does not constitute a breach of planning control.
4. The cats are kept as pets. Usually, the keeping of pets for purposes incidental to the enjoyment of the dwelling does not constitute a material change of use as the overall character of the dwelling does not change. In this case, it is necessary to consider if the number of cats being kept as pets is over and above what may be regarded as incidental to the enjoyment of the dwelling such that the residential character of the property has materially changed to that of a mixed use. In response to the Planning Contravention Notice dated 5 November 2011 the appellant confirmed she owned 27 cats. In response to

the appeal the appellant has indicated that some 18 cats are still kept at the property.

5. The concept of a material change of use is not defined in any statute or statutory instrument. It is a question of fact and degree in each case. For there to be a material change of use there needs to be some significant difference in the character of the activities from what has gone on previously. It is not a question of welfare; other legislation exists to ensure the welfare of the cats.
6. The keeping of so many cats at one property has made a noticeable difference to the amenities of occupiers of nearby properties as evidenced by complaints received by the Council and the representations made in response to the appeal. The rear garden of the appeal property appeared to be clear of cat faeces at the time of my visit. Even if the appellant could maintain the garden in this way, I have no doubt that the faeces associated with so many cats causes nuisance to the occupiers of neighbouring properties who can reasonably expect to enjoy their own gardens without the need to clear cat faeces on a frequent basis. I saw cat faeces in the front garden of number 46 when I visited the site and attempted to view from neighbouring properties. It would certainly not be a reasonable proposition for neighbours to allow the appellant access to their own properties so that she can clean the faeces; this would be an unacceptable intrusion. The necessity to carry out such an action would in itself indicate that the keeping of so many cats is a significant difference to the residential character of the property.
7. I appreciate that the appellant gets a lot of enjoyment from her cats. However, the keeping of so many cats is, as a matter of fact and degree, over and above what can reasonably be considered incidental to the enjoyment of the dwelling. It results in a significant difference in the residential character of the property that in turn, has a detrimental impact on the living conditions of others.
8. I conclude that a breach of planning control has occurred. The appeal under ground (c) fails.

Ground (f) – that the requirements of the notice are excessive.

9. The notice requires the number of cats kept at the property to be reduced to 5. In the judgement of the Council, this is the number of cats that could reasonably be regarded as being incidental to the enjoyment of the dwelling. I can only base my decision on a similar judgement of what number would be acceptable before a noticeable and material change in the residential character of the property occurs. The cats are clearly allowed free access outdoors via a cat flap and so the appellant has no control over where they might roam once outside.
10. It is suggested on behalf of the appellant that she should be permitted to keep all of her cats until such time as they die of natural causes and undertakes that the numbers will not increase. The requirements of a Notice must be clear and precise. The Council could not reasonably monitor which cats have died at any given time or ensure they are not replaced. So that there can be no uncertainty arising from the requirements of the Notice it would be necessary to indicate the precise number of cats that can be kept at the property.

11. To my mind, five cats is not an unreasonable number. I do not therefore find the requirements of the Notice excessive. The appeal under ground (f) fails.

Ground (g) – that the compliance period is too short.

12. The Notice requires a reduction in the number of cats kept at the property within 2 months. Although the appellant lodges an appeal under ground (g) she makes no suggestions of the compliance period she considers would be reasonable. I acknowledge the comments about the potential stress that would be caused to the elderly cats in particular should it be necessary to re-home them. However, this does conflict with the appellant's response to the Planning Contravention Notice that indicates that the majority of cats are less than 5 years old. As such, I give this point limited weight. I do however appreciate that the re-homing of the cats will be distressing for both the appellant and cats and I consider 2 months may not be sufficient time to find appropriate homes for the number of cats involved. As such, I consider it would be reasonable to extend the compliance period to 3 months. I note that the Council acknowledge it is within their powers to extend the compliance period further should they consider it appropriate. The appeal under ground (g) succeeds to this extent.

#### Conclusions

13. For the reasons given above I conclude that the requirements are excessive and a reasonable period for compliance overall would be 4 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to this extent.

*Claire Sherratt*

INSPECTOR



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# Appeal Decision

Site visit made on 27 March 2012

**by Mr J P Sargent BA(Hons) MA MRTPI**

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

**Decision date: 23 May 2012**

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**Appeal Ref: APP/D4635/A/12/2168406**

**Newbridge Crescent, Wolverhampton, West Midlands WV6 0LE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
  - The appeal is made by Vodafone (UK) Limited & Telefonica O2 (UK) Limited against the decision of Wolverhampton City Council.
  - The application Ref 11/00915/TEL, dated 20 September 2011, was refused by notice dated 31 October 2011.
  - The development proposed is a 15m high Jupiter 811E column in Grey 00 A 05; C/L of proposed O2 antennas at 14.25m above ground level (AGL); U/S Vodafone antennas at 13.6m AGL; proposed Vodafone/O2 Harrier equipment cabinet (1840mm x 44mm x 1403mm high) finished in Green (RAL 6009)(cabinet volume under 2.5m<sup>2</sup>) and proposed Vodafone/O2 meter pillar (378mm x 182mm x 872mm high) finished in Green (RAL 6009)(cabinet volume under 2.5m<sup>2</sup>).
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## Decision

1. The appeal is allowed and planning permission is granted for a 15m high Jupiter 811E column in Grey 00 A 05; C/L of proposed O2 antennas at 14.25m above ground level (AGL); U/S Vodafone antennas at 13.6m AGL; proposed Vodafone/O2 Harrier equipment cabinet (1840mm x 44mm x 1403mm high) finished in Green (RAL 6009)(cabinet volume under 2.5m<sup>2</sup>) and proposed Vodafone/O2 meter pillar (378mm x 182mm x 872mm high) finished in Green (RAL 6009)(cabinet volume under 2.5m<sup>2</sup>) at Newbridge Crescent, Wolverhampton, West Midlands WV6 0LE in accordance with the terms of the application, Ref 11/00915/TEL, dated 20 September 2011, subject to the following conditions:
  - 1) the development hereby permitted shall begin not later than 3 years from the date of this decision;
  - 2) unless modified under the condition below, the development hereby permitted shall be carried out in accordance with approved drawings 100 Issue A, 200 Issue A, 300 Issue A, 400 Issue A and 500 Issue A;
  - 3) notwithstanding any details in the submissions, the development hereby permitted shall not begin until the colours of the development have been submitted to and approved in writing by the local planning authority. The development shall then at all times be in the colours approved.

## Main Issue

2. The main issue with this proposal is its effect on the character and appearance of the area.



## Reasons

3. Tettenhall Road is a busy main road running to and from the city centre, and it has large commercial and residential properties of varying designs and styles to either side. Along its length is an extensive array of street furniture such as traffic signage, railings and traffic lights. Moreover, on the pavements are tall light columns, about 14m high, which are striking features in the streetscape because of their size, their strong vertical form and the manner in which they line the road. On either side of its junction with the quieter, more suburban Newbridge Crescent are shops, leisure uses and hot food outlets, with the units to the west being set back behind a forecourt. This gives this stretch of Tettenhall Road an open and commercial character. The mast would be on the pavement to the west of this junction, by the forecourt in front of 291 Tettenhall Road.
4. The proposed cabinets and bollards would not be unduly noticeable or dominant as they would relate well to the street furniture in the vicinity.
5. Turning to the mast itself, when viewed in the context of Tettenhall Road its width, scale and colour would broadly reflect the tall thin light columns that are currently along the road. Consequently, it would be integrated into the general nature of this streetscape and, given the openness created by the forecourt area, it would not appear as an isolated, dominant or discordant element. While the shroud would mean the width and the form of the top 3m or so would be slightly different, the shroud's height above the ground and the presence of the long column beneath would mean it would not undermine the way in which the mast respected the character and appearance of the road.
6. The proposal would be taller than the 8m light columns on Newbridge Crescent. However, from there it would not appear to be part of that road. Rather, as it would be at the front of the forecourt of No 291 it would be an element of the streetscape of the more major Tettenhall Road. It would also be seen against the backdrop of the large public house, thereby reducing its skyline impact. As a result, it would not unreasonably harm the street scene of Newbridge Crescent.
7. Accordingly I conclude that the proposal would not detract unacceptably from the character or the appearance of the area. Consequently, in this respect it would not conflict with Policies EP20, D6 or D9 in the *Wolverhampton Unitary Development Plan* (the UDP), Policies ENV3 or CSP4 in the *Black Country Core Strategy* or the *National Planning Policy Framework* (the Framework).

## Other matters

8. The Framework highlights the importance of advanced, high quality communications infrastructure. There is no basis to question that this apparatus is necessary to achieve the required standard of network coverage, or that this is the optimum siting in this cell when site availability, technical need and environmental considerations are balanced. The proposal would also allow mast sharing between 2 operators. To my mind these factors mean that, for these reasons, the scheme would not conflict with Policy EP20 in the UDP or with the Framework and they further weigh in its favour. It is accepted that there may well be other, sub-optimal sites where the mast could be placed, but given my findings on its visual impact that is not a basis to resist the proposal.

9. Given the site's relationship to housing, to routes used by school children and to commercial premises where staff were present for much of the day, fears and concerns have been raised based on health grounds and its resultant effect on living conditions and property values. It was also said that the presence of the mast would discourage customers from visiting the shops and outlets nearby with a consequent impact on their business. These are material considerations that have been taken into account in this decision. However, the Appellants have stated that emissions from the mast would meet the International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines for public exposure to radio waves. In such circumstances the Framework advises that it should not be necessary for the decision maker, when considering such proposals, to determine health safeguards. Given this, there is little objective evidence to support these fears or concerns, and so they are not a basis to dismiss the appeal.
10. It was also said that the development would impede vehicular access to the forecourt in front of the units facing Tettenhall Road to the west. The closest footpath crossing to the junction of Newbridge Crescent and Tettenhall Road is near the rear of No 219. The proposal would not constitute an obstruction for vehicles using that crossing to access the forecourt. It could well impede cars that were driven onto the forecourt from immediately by the junction, but there is no dropped crossing there and given the busy nature of both the pavements and the roads that is not a safe point of entry or exit. Therefore the effect on that point of access is not a reason to dismiss the proposal.

### **Conditions**

11. The only condition suggested has been in relation to the colour of the apparatus. Colours have been cited in the description of development but I am unaware as to their precise nature. Therefore, having regard to the effect on the character and appearance of the area, it would be appropriate for the colour scheme to be agreed, and this would have to allow the opportunity for alternative colours to be used if those identified were not appropriate. The works should also be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning.

### **Conclusions**

12. For the reasons given above I conclude that the appeal should be allowed.

*J P Sargent*

INSPECTOR



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# Appeal Decision

Site visit made on 8 May 2012

**by Mr J P Sargent BA(Hons) MA MRTPI**

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

**Decision date: 29 May 2012**

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**Appeal Ref: APP/D4635/C/12/2170519**  
**2 North Street, Wolverhampton WV1 1RE**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Wilf Gilbert (Staffs) Limited against an enforcement notice issued by Wolverhampton City Council.
  - The Council's reference is 11/00520/ENCOMP.
  - The notice was issued on 12 January 2012.
  - The breach of planning control as alleged in the notice is without planning permission the installation of an external solid security shutter, spindle box and guide rails across the front elevation at the entrance of the premises ('the Security Shutter').
  - The requirements of the notice are
    - i) Remove the external security shutter, spindle box and guide rail; and
    - ii) Make good the front elevation of the premises resulting from the installation and removal of the security shutters.
  - The period for compliance with the requirements is 1 month.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Act as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended is also to be considered.
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## Decision

1. The enforcement notice is varied by the deletion of 1 month and the substitution of 6 months as the period for compliance.
2. Subject to this variation the appeal is allowed on ground (g), the appeal is dismissed on ground (a) and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act as amended

## Ground (a) appeal and the Deemed Planning Application

### *Main issues*

3. There are 3 main issues in this case. The first is whether the development preserves the character or appearance of the City Centre Conservation Area in which it stands. The second issue is the effect of the security shutter on the fear of crime and the final issue is whether public benefits outweigh any identified harm.

### *Policy*

4. In assessing this appeal I have been referred to various policies in the *Black Country Core Strategy* (the Core Strategy) and the *Wolverhampton Unitary Development Plan* (the UDP), which, to my mind, do not conflict to any

material degree with national policy in the *National Planning Policy Framework* (the Framework). It was said that as local policy was adopted before last summer's riots it was now out-dated in relation to security. However, to my mind it still contained sufficient flexibility to provide a balanced context for the consideration of this matter.

*Effect on the conservation area*

5. The conservation area is a designated heritage asset of significance as it comprises a range of attractive buildings of various ages, which, with their associated street pattern, reflect the evolution of the city. The appeal site is at the junction of North Street, Victoria Street, Darlington Street and Queens Square. While the property is not listed it is of a pleasing appearance that respects the older premises around and, mindful of its location at an important crossroads, it makes a positive contribution to the area's historic character.
6. When I undertook my site visit between 2030h and 2100h this red security shutter was rolled 'down', concealing the opening behind. It could be seen from a significant length of Victoria Street as well as from Darlington Street.
7. I consider that, because of its prominence, its colour, its size and its apparent solid, featureless form, it was a striking, dominant and modern element that appeared incongruous and discordant on this property, relating poorly to its historic character. Moreover, these factors also meant it was not well integrated into the pattern of development in the vicinity. As a result it eroded the contribution the building made to the surroundings and it did not respect the historic context of this location. It therefore detracted unacceptably from the character and appearance of the conservation area and caused substantial harm to its significance as a heritage asset.
8. In coming to this view I noted that the majority of premises near the site had no external shutters or grilles across their windows or doors when I made my inspection. Where they were present they tended to be not as large as the security shutter before me and often they were extensively perforated. As a result, their impact was not so great, and they did not form a significant part of the character of the area. Moreover, I had little or no knowledge of their histories. Therefore these other security measures have not had a notable bearing on my reasoning. While large glass shop windows may often be dark or unlit to my mind they are not as dominant or as alien in this locality as the shutter before me.
9. It is also appreciated that this security shutter would generally only be 'down' after 2000h. However, there is still much activity in the city centre in the evening as people visit the public houses, clubs, restaurants and similar. Finally, while boarded properties are also unsightly that does not justify the security shutter before me.
10. Accordingly I conclude that the scheme fails to preserve the character and appearance of the City Centre Conservation Area and so causes substantial harm to the significance of that designated heritage asset.

*Effect on the fear of crime*

11. In my opinion the solid nature of this security shutter meant it appeared harsh and austere, and it created an intimidating environment for those passing on the pavement. Moreover, it implied in a striking manner that the owners

considered the risk of crime to be so great as to merit such precautions. To my mind it therefore contributed to the fear of crime on the street.

12. The Appellant contended that by preventing people loitering in the entrance it makes pedestrians feel safer. However, there are numerous recessed doorways round the city centre, and they are accepted as part of the streetscape. To my mind any benefit resulting from blocking this one does not outweigh the harm from the contribution the security shutter otherwise makes to the fear of crime.
13. It was also said that this feature reduces the fear of crime by preventing some criminal activity. However, that fear is rarely a result of a quantified or informed assessment of the amount of crime that has taken place. Rather, it arises from a judgement of the environment based on, among other things, what can be seen.
14. Accordingly I conclude that the development unacceptably exacerbates the fear of crime in the area.

*Whether the public benefits outweigh any identified harm*

15. The Framework says that where substantial harm is caused to the significance of a designated heritage asset, consent should be refused unless it can be shown that the substantial harm is necessary to achieve substantial public benefits that outweighed that harm. The Framework also encourages sustainable economic development.
16. The public benefits of the security shutter given by the Appellant mainly concerned its effect on crime, and it contended that it assisted in this respect in 3 ways.
17. The first was by preventing people loitering in this doorway. However, as stated above, recesses entrances of this type are common throughout the conservation area and are a part of the historic environment. I am not satisfied that closing this one has any material impact in this regard.
18. Secondly, it was said it would protect the property in the event of civil disturbance. Rioting on the scale experienced last summer is unusual, though I appreciate isolated acts of vandalism and crime could still occur. However, it is important to ensure that a balance is struck between security and protecting the look and character of the city centre. In particular, the overall street scene should be a welcoming environment for those visiting in the evening. To my mind while this shutter makes some contribution to protecting the building, this does not outweigh its adverse effect on the area. It was contended that the security shutter was a necessity but this was not demonstrated, particularly given how many businesses nearby had no comparable protection.
19. The final public benefit relating to security focussed on the safety of the Appellant's staff. Much of the information submitted though concerned the dangers when customers were inside the building, which this scheme does not address. It has not been shown that, once the business had closed for the night, staff could not be satisfactorily protected by measures that would cause less impact on the historic surroundings and the fear of crime. Furthermore, there is no substantive evidence to indicate that this shutter is an inevitable consequence of the requirement to keep crime out of the gambling industry.

20. The Appellant also said that investors in the city centre should be encouraged. While this may be so, it has to be suitably balanced against other legitimate planning objectives. The need to conserve heritage assets is a core planning principle in the Framework and I see no reason why, in this instance, the Appellant's desire to invest in the property in this way should outweigh the harm I have identified. While the recessed area may be a trap for litter that again is insufficient to overcome my concerns.
21. Therefore, I conclude that these factors, even if taken together, do not amount to public benefits sufficient to outweigh the harm to the conservation area. Moreover, on balance such benefits do not outweigh the detrimental effect on the fear of crime.

*Conclusions on the ground (a) appeal*

22. Accordingly I conclude that the scheme exacerbates the fear of crime to an unacceptable degree. Moreover, it fails to preserve the character and appearance of the City Centre Conservation Area and causes substantial harm to its significance as a heritage asset, and there are no public benefits that outweigh that harm. The development is therefore contrary to Policies ENV3 and CSP4 in the Core Strategy, Policies D9, D10 and HE5 in the UDP and national policy in the Framework. Accordingly the appeal under ground (a) should fail and planning permission should not be granted for the deemed planning application.

**Ground (g) appeal**

23. As the Appellant is of the view that security measures are necessary, I accept that it would need to assess alternatives when this shutter was removed, and then secure companies to undertake the work. Given this 1 month and 3 months are too short for compliance, and instead I consider 6 months to be reasonable.
24. Accordingly I conclude that the appeal under ground (g) should succeed.

**Conclusion**

25. Although the appeal under ground (g) succeeds, the appeal under ground (a) fails. Therefore I conclude that the notice should be upheld.

*J P Sargent*

INSPECTOR



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# Appeal Decision

Site visit made on 16 May 2012

**by W Fieldhouse BA (Hons) MA MRTPI**

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

**Decision date: 31 May 2012**

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**Appeal Ref: APP/D4635/D/12/2173215**

**59 Tynninghame Avenue, Tettenhall, Wolverhampton, West Midlands  
WV6 9PP**

- 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 Mick Rock against the decision of Wolverhampton City Council.
  - The application Ref 11/01190/FUL was refused by notice dated 1 March 2012.
  - The development proposed is a two-storey extension.
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## Decision

1. The appeal is dismissed.

## Main Issue

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

## Reasons

3. The appeal site comprises a detached house on a corner plot near the end of a cul-de-sac. It is within a suburban residential area made up of mostly detached houses and bungalows which are typically set back from the road with low walls to their front gardens. The back and side garden on the appeal site has a screen fence along the road frontage giving it an enclosed appearance which is uncharacteristic of the area.
4. The two-storey extension would be clearly visible from Tynninghame Avenue, nearby public open space, and surrounding dwellings. Whilst its design and materials would match the existing building, it would have the effect of moving the side of the house around 3.7 metres closer to the road. The building line along this part of Tynninghame Avenue is not uniform, but it is characterised by buildings being set some distance back from the road meaning that the existing layout appears spacious and cohesive.
5. The two-storey side elevation would be considerably closer to the road than the nearby bungalows. The proposal would therefore disrupt the pattern of development, reduce the sense of spaciousness, and introduce an incongruous feature into the street scene.
6. The appellant advises that the extension would utilise part of the garden that is currently little used. The proposal would introduce a habitable room window in the side elevation which would lead to a small improvement to the surveillance

of the street, and add some interest to the appearance of the proposed side elevation. The removal of part of the screen fence on the side boundary of the appeal site would also open up what would remain of the side garden to the road. However, none of these factors outweigh, or compensate for, the adverse impact of the extension on the character and appearance of the area.

7. There may be some buildings in the surrounding area closer to the road than the proposed extension would be, and planning permission may have recently been granted for a two-storey side extension to a nearby dwelling. However, I have considered the current proposal on its own merits in the context of the particular design and layout of its immediate surroundings and the wider area.
8. I conclude that the proposal would fail to respond positively to the established pattern of the street and building lines, and would cause significant harm to the open and spacious character and appearance of the area. It would conflict with the aims of policy ENV3 of the Core Strategy<sup>1</sup> and policies D4 and D8 of the Unitary Development Plan<sup>2</sup> which collectively seek to ensure a high standard of design and that development respects those elements that contribute to the quality of the surrounding environment.

### **Conclusion**

9. There are no other matters that outweigh my findings on the main issue and therefore, for the reasons given above, I conclude that the appeal should be dismissed.

*William Fieldhouse*

INSPECTOR

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<sup>1</sup> Black Country Core Strategy 2011.

<sup>2</sup> Wolverhampton Unitary Development Plan 2006.