



# The Planning Inspectorate

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*Matt Lomb*

~~Mr~~ Mrs B Hodgson (Planning Administration  
Manager)  
Oldham Met Borough Council  
Po Box 30  
Civic Centre  
West Street  
Oldham  
OL1 1UQ

Your Ref:

Our Ref: APP/W4223/C/04/1158233  
APP/W4223/C/04/1158227

Date: 24 December 2004

Dear Madam

**TOWN & COUNTRY PLANNING ACT 1990  
APPEALS BY MR J BUCKLEY  
SITE AT LAND AT AND TO THE REAR OF 68 AND 70 OLDHAM ROAD, DENSHAW, OLDHAM**

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

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

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

Quality Assurance Unit  
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Temple Quay House  
2 The Square, Temple Quay  
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Phone No. 0117 372 8252

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E-mail: [Complaints@pins.gsi.gov.uk](mailto:Complaints@pins.gsi.gov.uk)

Yours faithfully

PP Mrs Emma Daniells

EDLI(BPR)

ENVIRONMENT AND TRANSPORTATION CIVIC CENTRE		
RECEIVED	30 DEC 2004	
REFERRED TO		
REDIRECT TO		
COMMENTS		
REPLY DATE	INITIALS	



# Appeal Decision

Inquiry and site visit held on 15th December 2004

by **Clive Whitehouse** BA(Hons) MCD MRTPI

an Inspector appointed by the First Secretary of State

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Date

**24 DEC 2004**

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## Appeal A: APP/W4223/C/04/1158233

### Land to the rear of 68 and 70 Oldham Road, Denshaw, Oldham OL3 5SP

- 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 John Buckley against an enforcement notice issued by Oldham Metropolitan Borough Council.
- The Council's reference is 1158233.
- The notice was issued on 30<sup>th</sup> June 2004.
- The breach of planning control as alleged in the notice is: without planning permission, change of use of the land to use for domestic garden purposes.
- The requirements of the notice are to cease the use of the land for domestic garden purposes and remove all ornamental shrubs and plants from the land and rotovate and grass seed the land to restore the land to its condition before the unauthorised development took place.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed on ground (a) subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.**

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## Appeal B: APP/W4223/C/04/1158227

### Land to the rear of 68 and 70 Oldham Road, Denshaw, Oldham OL3 5SP

- 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 John Buckley against an enforcement notice issued by Oldham Metropolitan Borough Council.
- The Council's reference is 1158227.
- The notice was issued on 30<sup>th</sup> June 2004.
- The breach of planning control as alleged in the notice is: without planning permission the erection of a greenhouse in the approximate position marked with a cross on the attached plan.
- The requirements of the notice are to remove the greenhouse and all building materials and rubble arising therefrom from the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) 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.

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

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## **Background**

1. The appeal site lies to the rear of a property that includes a detached house and a light engineering workshop. The site is mostly in the form of a steep bank between a paved yard and a long-established conifer hedge, although there is a small, relatively level area at one end, where the greenhouse has been erected. At the time of the inquiry, the steeply sloping part consisted of a rockery planted with shrubs. Beyond the hedge is a small field owned by the appellant and used for keeping chickens, ducks and geese, but that area is not subject to the enforcement notice.

## **Appeal A on Ground (d)**

2. The relevant period is between June 1994 and June 2004, when the notice was issued.
3. The appellant bought the property in 1997 and in 1998 constructed steps up the bank and removed some of the conifers. In 1999 the appeal site was cleared of weeds and young trees before being planted with shrubs. The greenhouse (appeal B) was added in December 2000.
4. Mr I Wood, the son of the previous owner of the property, gave evidence at the inquiry in support of the appellant concerning the use and former condition of the site. It was clarified that he had lived at No.70 until about 1979 but had continued working at the industrial premises (No.68) until the property was sold. He states that before the mid 1970s the business had been a petrol sales and vehicle repair garage, but the site was bypassed by the M62 motorway, and the emphasis of the business then changed to vehicle recovery and repairs. He recalls that in about 1974 a hardstanding was created at the back of the house to accommodate recovered vehicles and tow trucks. This largely occupied what had previously been the back garden of the house and also involved excavating into the hillside to extend the area. The bank created by those engineering works is the subject of the appeal. At about the same time a double row of Leyland cypresses was planted at the top of the bank to screen the site, and most of those are still present.
5. Mr Wood says that his mother planted shrubs and flowers on the embankment to smarten it up and that she maintained it as garden land. However, after his father became ill in about 1986/87, his mother spent less time maintaining the area and it became overgrown. The trees and shrubs were from time to time pruned back to prevent them overhanging the workshop and yard.
6. The ground maintenance contractor who helped the appellant clear the site in 1999 says that the bank was then smothered with invasive weeds such as Japanese knotweed and Himalayan balsam. He says that as those were cleared away, the dead stumps of some of the original shrubs were revealed, which he thinks had been privet, buddleia and forsythia.
7. The appellant contends that Mrs Wood established a garden on the appeal site in about 1974 and that, although it may later have become neglected, it was not abandoned and was resurrected by the appellant in 1999.
8. The Council relies on the evidence of a neighbour, who has lived in a nearby cottage for over 60 years. She says that the area in question was never used as garden ground during the Woods' ownership and just remained as a grass banking. The Council also submits aerial photographs from 1995 and 1997, which show the appeal site to be heavily vegetated.

9. It appeared to me that Mr Wood's recollection of his mother's activities in planting and tending shrubs on the bank was understandably vague, since it was about 30 years ago, and it was not a matter in which he had any interest as a young man. However, it is evident on site that there is considerable surface water run-off from the hillside above, and I can imagine that there would have been an immediate need to stabilise the exposed bank of clay and rock when it was first excavated. I consider on the balance of probability that the site was planted with shrubs at that time.
10. The original back garden of No.70 was largely given up to form the vehicle hardstanding, so that the land in question had to be accessed by crossing the yard. There is no indication that steps had at that time been formed up the bank, and in my view these would have been necessary in order to make use of the site as a domestic garden. I consider that anyone other than a keen gardener would not have found the bank useful, convenient or rewarding as garden land. The later neglect of the embankment and its invasion by Japanese knotweed suggests that the Wood family were not keen gardeners.
11. The neighbour upon whose evidence the Council relies can not see the site from her house because of the conifers and the angle of the bank, but claims to have viewed it during the Woods' ownership from a right of way passing to the north east of the workshop building, as well as through the gates to Oldham Road and from the top deck of passing busses. The right of way is impassable now and there was dispute at the inquiry about the extent to which it could have been used after the workshop was extended in the 1970s. Without needing to reach any conclusion on the extent to which the neighbour could have seen the site from the disputed right of way, I am satisfied that anyone passing the site regularly on Oldham Road on foot or by bus would have been able to gain an impression of the appearance of the bank. I find the neighbour's description of the site as a "grass bank" to be inconsistent with other convincing evidence and the aerial photographs. Nevertheless, I consider that the neighbour's evidence casts doubt on the appellant's claim that the site was established and maintained as a domestic garden in the late 1970s and early 1980s.
12. I consider on the balance of probability that the appeal site was planted with shrubs during the mid 1970s in order to stabilise and smarten up the then recently excavated embankment behind the vehicle yard, but I am not convinced as a matter of fact and degree that it was used as domestic garden land. In that case there is no basis for the contention that the use has existed throughout the relevant 10-year period.
13. Even if I were wrong on that point, the evidence indicates that from about 1986 the land in question was left to go wild, apart from occasional tree pruning. I therefore consider that any active use of the site as garden land that there might have been, must have ceased well before 1992, when the relevant provisions of the 1990 Act came into force. This means that any earlier garden use could not have become lawful and could not have entered a period of dormancy before being resurrected by the Buckleys in 1999.
14. On the evidence before me, I consider that the change of use to garden land took place in 1999. Since that date Mrs Buckley, who is a keen gardener, has transformed the area from an overgrown bank into a steep rockery planted with a variety of shrubs.
15. I conclude on the balance of probability that the change of use of the land to use for garden purposes took place less than 10 years before the enforcement notice was issued, and is therefore not immune from enforcement action. The appeal on ground (d) fails.

**Appeals A and B on Ground (c)**

16. These appeals are on the basis that the land in question is an established part of the curtilage of the dwellinghouse, and that its use as a garden (appeal A) and the erection of the greenhouse (appeal B) are either not development, or are permitted development.
17. My conclusion, above, that the use of the site as domestic garden land has not been lawfully established over the necessary period of time in my view greatly weakens the appellant's case under ground (c).
18. The Council considers that the embankment lies outside any recognisable residential curtilage and outside the curtilage of the planning unit. The Council refers to documents contained in a planning application for the extension of the workshop in 1974 that indicate a smaller curtilage. However the hardstanding is clearly bigger than was then indicated and I think it likely that it was extended in an unauthorised manner at about that time. In my opinion the engineering works carried out in the 1970s and the planting of the conifer hedge along the top of the embankment effectively extended the curtilage of the buildings.
19. Since the 1970s the house has been surrounded by hardstandings shared with the workshop. The paved yard is used for commercial parking as well as for domestic purposes, such as drying washing and domestic parking. There is an office for the business within the front basement level of the house. In my opinion the house and the engineering workshop share a single mixed use planning unit and I conclude as a matter of fact and degree that the appeal site is part of that curtilage. However, that in my view does not amount to the site being part of the curtilage of a dwellinghouse. Therefore its use as a garden constitutes development under section 55 of the Act. None of the permitted development rights that apply to the curtilages of dwellinghouses under the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) therefore applied to the land when the greenhouse was erected. I conclude that planning permission is required for the use of the land as a garden and for the erection of the greenhouse. The appeals on ground (c) under appeals A and B fail.

**Appeal A on Ground (a)**

20. The development plan for the area includes the Oldham Unitary Development Plan, adopted in 1996 (UDP). The whole of the property is within the Greater Manchester Green Belt. Policy LR2.1 states that development will only be permitted in the Green Belt where it maintains the open character of the area and does not conflict with the primary purposes of the Green Belt. Those purposes are set out in policy LR2 and the parties agree that the issue of safeguarding the countryside from encroachment is most relevant to the circumstances of the case. These policies are consistent with national guidance in Planning Policy Guidance: Green Belts (PPG2). Paragraph 3.12 states that the making of a material change in the use of land is inappropriate development unless it maintains openness and does not conflict with the purposes of including land in the Green Belt.
21. The UDP is under review and objections to the revised deposit draft are to be considered at an inquiry in 2005. The main proposed change that has a bearing on the case is draft policy OE1.5, which states that extensions to residential curtilages will be considered inappropriate in the Green Belt. The justification for the policy notes that curtilage extensions can have a significant impact on the openness and visual amenity of the Green Belt by the introduction of urban elements, such as hard landscaping, garden structures or car parking. No

- objections have been made to the draft policy and I can therefore accord it significant weight, although it does not have development plan status.
22. I consider the main issue to be whether the change of use to garden land amounts to inappropriate development in the Green Belt.
  23. I consider first whether the change of use has encroached into the countryside. An aerial photograph taken before the mid 1970s shows No.70 with a back garden lining through with those of the adjoining semi-detached houses and that a low hedge defined the garden boundary. The appeal site was then clearly part of an open field that sloped gradually towards the house. Comparison with the aerial photographs taken in the 1990s illustrates graphically the effect of the engineering operations carried out in the mid 1970s. It can be seen that the formation of the vehicle hardstanding cut deep into hillside beyond the original garden boundary, leaving the appeal site as a steep bank. The later aerial photographs show that the leylandii hedge had grown to massive proportions and that thick vegetation and small trees covered the appeal site. If, as seems likely, the engineering works were unauthorised, they would have long since become lawful under the four-year rule. I have concluded, above, that the appeal site became part of the curtilage of the buildings on the mixed use site during the 1970s. In my opinion the encroachment into the countryside occurred at the same time and it was at that stage that the site lost its open and rural character. The recent change from an overgrown embankment adjoining a vehicle hardstanding to garden land has not in my view caused any greater encroachment or loss of rural character.
  24. The recent change from an overgrown bank to a shrub planted garden has not in my view reduced the openness of the Green Belt. Its steepness in my view limits the scope for visually intrusive garden paraphernalia such as children's play equipment and the like to be introduced.
  25. I have considered in the light of the discussion at the inquiry whether the appeal site would become part of the residential curtilage of the dwellinghouse, with permitted development rights for garden buildings under Class E of Part 1 of Schedule 2 of the GPDO, if planning permission were granted. The alternative is that the site would remain part of the curtilage of the mixed use planning unit (residential/light industrial), without those permitted development rights. The distinction is to an extent academic, since it was confirmed on behalf of the appellant that a condition would be accepted withdrawing Class E permitted development rights for garden buildings if the site were held to be part of the curtilage of a dwellinghouse.
  26. The appeal site is separated from the house by the mixed use yard and I consider that the recent shrub planting serves to enhance the setting of the workshop as well as the house. For these reasons I conclude as a matter of fact and degree that the site remains part of the mixed use planning unit. The granting of planning permission for garden use would therefore would not bring into effect Class E permitted development rights for greenhouses, garden sheds and the like. In that case planning permission would be required for any buildings of that kind on the site. In order to reduce the potential for future misinterpretation on this issue, I propose to correct the allegation in the notice by deleting the word "domestic", so that the deemed planning application relates only to a change of use for garden purposes in the mixed use context. I am satisfied that no injustice would result.

27. I conclude that the change of use in this case has not resulted in encroachment into the countryside and that it has not, and is not likely to, reduce the openness of the Green Belt. I therefore consider that the change of use does not conflict with the relevant development plan policies, the guidance in PPG2 or draft policy OE1.5. I conclude on the main issue that the change of use of the land to garden land is not inappropriate development in the Green Belt.

**Conditions**

28. Since I have concluded that permitted development rights relevant to the curtilage of a dwellinghouse do not apply to the site, a condition withdrawing those rights is not necessary. I consider that there are no other conditions that are necessary.

**Conclusions**

29. **Appeal A.** For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

30. **Appeal B.** For the reasons given above and having regard to all other matters raised, I consider that the appeal should not succeed.

**Formal Decisions**

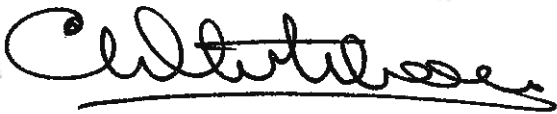
**Appeal A: APP/W4223/C/04/1158233**

31. I direct that the enforcement notice be corrected by deleting the word "domestic" in the allegation in paragraph 3

32. Subject to this correction, I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the change of use of the land to use for garden purposes to the rear of 68 and 70 Oldham Road, Denshaw referred to in the notice.

**Appeal B: APP/W4223/C/04/1158227**

33. I dismiss the appeal and uphold the enforcement notice.



INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon Mair BSc, FRICS  
He called

Chartered Surveyor and appellant's agent.  
Ian Wood, son of former owner.  
Andrew Winterburn, Grounds Maintenance Contractor.  
Diane Buckley, appellant's wife.

FOR THE LOCAL PLANNING AUTHORITY:

Gareth Owen  
He called

Solicitor, Oldham MBC  
Mathew Lamb, MTCP, BA(Hons), MRTPI, Planning  
Officer.  
Joyce Walsh, 1 Martin Cottages, Off Oldham Road,  
Denshaw.

DOCUMENTS

- Document 1 List of persons present at the inquiry.
- Document 2 Council's letter of notification of the inquiry and list of those notified.
- Document 3 Statement by Ian Wood.
- Document 4 Statement by Andrew Winterburn.
- Document 5 Statement by Diane Buckley.
- Document 6 Proof of evidence of Simon Mair.
- Document 7 Appendices to proof of evidence of Mathew Lamb (including aerial photographs)
- Document 8 Statement by Joyce Walsh
- Document 9 Plan showing the Council's opinion on the extent of the curtilage and the planning unit.