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## Appeal Decisions

Hearing held on 29 and 30 November 2016

Site visit made on 29 November 2016

by **G D Grindey MSc MRTPI Tech Cert Arb**

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

Decision date: 06 January 2017

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### **Appeal A Ref: APP/A4710/W/16/3150217**

#### **Lower Terrace, Scaitcliffe Hall, Scaitcliffe, Todmorden, OL14 7DQ.**

- 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 MAC-RK Engineering against the decision of Calderdale Metropolitan Borough Council.
  - The application Ref 14/01073/FUL, dated 5 September 2014, was refused by notice dated 13 November 2015.
  - The development proposed is the erection of 10 (later amended to 8) Passiv-Haus terraced houses within grounds of listed building, following demolition of unlisted building.
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### **Appeal B Ref: APP/A4710/W/16/3150196**

#### **Upper Terrace, Scaitcliffe Hall, Scaitcliffe, Todmorden, OL14 7DQ.**

- 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 MAC-RK Engineering against the decision of Calderdale Metropolitan Borough Council.
  - The application Ref 14/01071/FUL, dated 5 September 2014, was refused by notice dated 13 November 2015.
  - The development proposed is the erection of 10 Passiv-Haus terraced houses within grounds of listed building following demolition of unlisted building.
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### **Appeal C Ref: APP/A4710/Y/16/3150198**

#### **Scaitcliffe Hall, Scaitcliffe, Todmorden, OL14 7DQ.**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by MAC-RK Engineering against the decision of Calderdale Metropolitan Borough Council.
  - The application Ref 14/01072/LBC, dated 5 September 2014, was refused by notice dated 13 November 2015.
  - The works proposed are the erection of 10 Passiv-Haus terraced houses within the grounds of a listed building following demolition of unlisted building.
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## Decisions

1. The appeals are dismissed.

### **Application for costs**

2. At the Hearing an application for partial costs was made by the Borough against the appellant company. This application will be the subject of a separate decision.

### **The Plans for all 3 applications**

3. There are a number of issues with the plans as submitted. Firstly; a matter of dispute over ownership of the land edged red, as shown for appeal A in the northern corner of the site. Mr and Mrs Luddington showed me their Land Registry Ordnance Survey plan dating from the time of their purchase of the stable building at the Mill and the curved route of the access thereto. If this document is correct then part of that conveyed land would be within the garden area to the northern end unit of the terrace proposed (unit 1). Mr Xenakis, for the appellant company, confirmed that he had asked for the land ownership to be double checked and that the red-line showing the appellant's land ownership was correct.
4. All parties agreed that there was a mistake somewhere and that this would need to be resolved before the development could proceed. This ownership matter can play no part in my decision and, since all interested parties are aware of the situation, there can be no unfairness to any party if I proceed to determine the appeals.
5. Secondly, and concerning all 3 appeals, I found the plans to contain a number of troubling inaccuracies such as orientations being incorrect; sections through the schemes showing incorrect items such as the width of the storm-water pond; landscaping for the upper terrace refers to the lower terrace on the plan name. PL09-08UT does not agree with PL10-03UTx in the terms of the set back of the upper storey; PL09-08UT refers to 'playing fields' at the lower level when this cannot be right. PL10-03UTx contains a note on the render system which I was told does not apply.
6. There are 2 versions of PL09-04x in existence, with different information on (and extremely important information concerning a proposed increase in built-up-land height within flood zone 3), but bearing the same reference number. The version with the retaining wall on it still refers to "proposed terrace of 10No three storey dwelling" although the scheme is for 8No. Sections through the lower terrace shown on drawings PL09-07LT and PL09-08LT are inaccurate as to the ground levels of the playing fields when compared to the topographical survey presented.
7. I am by no means convinced that the details of the garden areas on the north-east side of the proposed terrace on the section PL09-07LT (permanent planters/green-oak fences/natural stone wall) agree with the landscape drawings (i) – (iv) or the layout on PL09-00LTX or the details on the flank elevations PL09-05LTX and PL09-06LTX.
8. Between an initial tree survey in 2014 and a later one in 2016 the trees on the whole site were, in part, renumbered, although no reference was made to this in the later report; all trees after T31 (which had been removed in the interim) were re-numbered which caused some confusion. It might have been more sensible to retain the mention of the missing tree ref 31 simply annotated as "now removed" and retain the former numbering than to re-number.

9. While I sought to consider the plans given formal consideration by the Borough (listed on their decision notices) I was told that some of the plans were duplicates, but at different scales, and were not necessary.
10. There is a worrying lack of detail concerning the important juxtaposition of the upper terrace against the grade II listed barn and the nearby grade II listed Hall. Mr Xenakis agreed, in answer to my question at the hearing, that there were no details of the technical solution proposed, on the submitted drawings, for how a proposed 30mm gap might be sealed. Indeed, from the plans submitted, it would be impossible to tell if it is proposed that the buildings touch or, if not, what gap is planned and there is no elevation drawing that depicts how the listed building and the new proposals would appear together. This is a short précis of some of the most troubling errors or confusions; Mr and Mrs Luddington's letters<sup>1</sup> set out others.
11. Overall I had to spend a considerable amount of hearing time clarifying which plans were relevant to the proposals, and what was actually being applied for.
12. I note the reference, in the Design and Accessibility Statement, to all the various applications (the 3 current appeals and other applications concerning the listed Barn, the listed Coach House and the listed Hall) as "related, mutually dependant schemes" moving towards a "unified approach" to the re-development of the site. It is perhaps not helpful, therefore, when it was stated at the hearing that no 'enabling' argument is raised and, in any event, all the application sites edged red are separate, not encompassing the whole of the site, so they all have to be judged independently.

### **Appeal A Main Issues**

13. Appeal A concerns the erection of 8 Passiv Haus in a terrace, located on the car-park to the former hotel; this has been referred to as the lower terrace. It seems to me that the main issues are (i) the effect of the proposal on the character & appearance of the locality, including whether the detailed design and materials would be appropriate and successful here; (ii) whether parking & turning areas would be adequate and safe, including access and turning facilities for service vehicles and emergency services; (iii) whether the proposed layout of the scheme would result in loss of trees protected by a Tree Preservation Order (TPO) and (iv) whether the proposal would increase the likelihood of flooding in the locality.

### **Reasons – Appeal A**

*Issue (i): the effect of the proposal on the character and appearance of the locality, including whether the detailed design and materials would be appropriate and successful here.*

14. In order to judge any effect on character and appearance it is necessary to first determine what that character and appearance currently is. I found a marked difference between the 2 sides of the River Calder valley here. The north-east side of the A646 is densely built with terraces and suburban style semi-detached dwellings. The south-west side is, in contrast, a stretch of lower land with scattered and loose-knit development such as the appeal site former hotel, the Mill House, a school and a sports ground/Park and open spaces set against a very steeply sloping wooded hillside. The Hall was a former Hotel

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<sup>1</sup> Sent during the processing of the original applications

which nestles into its well treed mature landscape and is largely undetectable from public viewpoints. It is this wooded hill-side that forms the character and appearance on this side of the road and a wooded setting to the limited built development.

15. Viewed from the public domain on the main road the application site edged red for appeal A is secluded within its wooded overall site. At the time of my site inspection, when the leaves were gone from the trees, only minor glimpses of any built development at the Hall could be seen. I do not think that there would be any sight of it at all in the summer months. Viewed from the footpath to the north-west there are no clear views into the appeal site and from the steep footpath to the west only glimpses of the roofs can be seen, not the former car park where the lower terrace would be located.
16. This would change radically. The scheme involves the felling of all the mature, protected trees along the north-east boundary of the site, the construction of a retaining wall and re-planting (although see my comment about the ambiguities of the plans in my paragraph 7 above). This wall would be an extremely long, tall built structure and, above it, would then be placed the 3-storey, flat-roof terrace, in glass, steel and off-white render and of uncompromising, stark design.
17. At the extreme northern corner, this terrace and retaining wall would be viewed, from public viewpoints opened up by the removal of all the intervening mature trees, located in close proximity to the much lower and entirely traditional and historic Mill House. The height of the new block would appear as an incongruous feature, at a far greater height, looming over its neighbour and at a higher ground level to start with. This is the first element of concern – the lack of coherence between the two contrasting architectural styles, located so close together, highlighting the disparity in scale.
18. While it is true that terraces do, indeed, form part of the typical street scene in the settlement, these are generally of a traditional, small scale, stone pitch-roof vernacular style. I find that the all-glass and steel elevation that would be in clear view until the re-placement planting grows up would be of startling prominence. I agree with the Council that the render material proposed is not a material typical of this stone-built settlement and would compound this effect. Even where it is suggested that natural stone might be used in the flank walls these would then be fenestrated by long slits of windows which would be unrelated to any local identity and would give an odd horizontal emphasis. Overall, the design would jar with the minor amount of established and distinctive built architecture on this largely undeveloped wooded hillside.
19. While the scheme would represent high-quality architecture in isolation, this matter cannot, in my assessment, outweigh the significant encroachment of a large, long, 3 storey built form introduced into what is at present a largely wooded hillside view. It would be a new built intrusion into an undeveloped, at present, largely natural area, that would draw the eye and would be obtrusive in the landscape.
20. Policies H2 and BE1 of the Calderdale Unitary Development Plan (UDP) seek to ensure that new residential development respects or enhances the established character and appearance of existing buildings and the surroundings, retain natural features and create or retain a sense of local identity. I find these in

accord with core planning principles expressed in the National Planning Policy Framework (The Framework) to always seek to secure high quality design.

21. Paragraph 58 of the Framework states that development should “respond to local character and history and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation”. I take the national guidance to seek a “response” or answer, or to demonstrate some reciprocal dialogue with those elements. I see no evidence of the proposed development “responding” in any meaningful way to local character, history, identity, local surroundings or materials as national policy requires.

*Issue (ii) whether parking & turning areas would be adequate and safe, including access and turning facilities for service vehicles and emergency services*

22. Vehicle tracking shown on the submitted layout plan demonstrates that cars would be able to enter and leave the access route on the south-west side of the terrace in forward gear in principle. However, I find there are a number of concerns with the scheme; firstly, the 8m or so manoeuvring width shown is compromised and reduced in places with planting areas and access ramps into dwellings.
23. Secondly, the scheme proposes only a small single garage per dwelling, and a small number of disabled and guest parking spaces. The proposed garages would be only 5.2m long and not particularly wide. Many modern cars are approaching 4.7 – 4.9 m in length and some of the 4x4 types can be nearly 2m wide too.
24. Manual for Streets (MfS) represents the government’s technical guidance. It states that, on many residential schemes, garages are not used for parking at all, but for domestic storage. On this particular proposal, given the lack of other ground floor storage area, it seems to me highly likely that the garage may well be used for bikes, freezers, pushchairs, childrens’ toys and the usual domestic paraphernalia. While the appellants argue that the scheme promotes an ethos of sustainability, I have no evidence that all occupiers would indeed have only one vehicle per household and would park always in the integral garage. In contrast, MfS finds that, in some instances, approaching half of households do not use their garage. MfS also finds that attempts to restrict parking to curb car ownership (which is what the appellant suggests the sustainable ethos would, in effect, do) are often unrealistic and have little or no impact on the numbers of household vehicles.
25. What would the consequence then be? It seems likely to me that the occupiers will be most likely to park as close to their individual dwellings as possible. With busy lives, shopping and small children to carry etc, I suspect some will seek to park along the access/manoeuvring road, reducing the 8m width further. Others may choose to park along the main access drive to the north, between the lower terrace and the A646. Overall I tend to the view that the access road and manoeuvring area could get congested, to the detriment of safety and convenience. With parked vehicles strewn around the site there is a danger that small children may dart out from behind a car and/or occupants or refuse vehicles (see below) will end up reversing - neither convenient or particularly safe.
26. The appellants refer to the former use and submit that major wedding functions at the Hall resulted, at times, in congestion and overspill from the

site. This may well be so, but wedding functions are, by definition, intermittent and at the hearing we heard from neighbours that this was not an everyday occurrence. I give this little weight; particularly as the Hall has not functioned as a hotel recently.

27. The Council's second highway point concerns the acute angled approach into the manoeuvring space to the south-west of the terrace, from the main access drive, and the lack of a turning area for a refuse vehicle within the application site edged-red. I agree. It is clear that a typical refuse vehicle would not be able to turn in the 8m wide area and would need to move further up the main driveway and then reverse into the space to get within 25m of any refuse collection points. While I understand that there would be space for service vehicles to turn on the *whole* site this rather illustrates the shortcomings of having separate application schemes and red-line areas and treating each submission as a stand-alone proposal.
28. On this issue, I conclude that, while UDP policy T18 sets car-parking standards, it does provide for exceptions (T18(4)) and considers significant congestion and other material considerations. I conclude that the parking and turning areas would not be adequate or safe and would not meet the objectives of T18. To my mind the arrangements would also fail to ensure that the scheme functions well, adds to the overall quality of the area and creates an attractive and comfortable place to live as the Framework requires<sup>2</sup>.

*Issue (iii) whether the proposed layout of the scheme would result in loss of trees protected by a TPO*

29. The lower terrace scheme lies between an area of various trees along the north-eastern edge of the site and another densely wooded area to the south-west of the proposed houses. Mature trees cover the slope between the lower terrace ground level and the higher ground level where the Hall is; steps link the two levels.
30. The scheme entails the certain loss of tree group 29, T30, T31, T32, T33, T34 and T36. At least 4 of these are judged as in good condition in the JCA report and are category B or C trees. This is the first concern with the scheme; I consider that the proposed felling of these trees would be harmful to the pleasant, leafy character and appearance of the locality. At present they form an entirely positive contribution to the general wooded hillside slopes of this side of the Calder valley. In addition, to my mind, to fell trees with no strong, overriding reason runs counter to the thrust of the TPO system of making 'provision for the preservation of trees' as Section 198 of the Act says. It is not being 'preserved' in the ordinary meaning of the word of keeping safe from harm or injury; to take care of, to guard.
31. Moving on to potential loss, we saw at my site inspection that T35 the Lime is off site and belongs to Mr and Mrs Luddington<sup>3</sup>. I asked for the 4 corners of the proposed terrace to be pegged out during my site inspection and it is clear that the proposed building would be partially beneath the canopy of this large category B tree. In all likelihood works would be required within the Root Protection Area (RPA) although no details were offered concerning this, other than all works should comply with BS5837:2012. Levels here vary sharply

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<sup>2</sup> Paragraph 58

<sup>3</sup> I bear in mind here that the boundary of the site, in this corner is disputed and unresolved – see my paragraph 3

- between Mr and Mrs Luddington's garden (lower) and the appeal site (higher); I simply do not have adequate information as to what would happen here.
32. The "Tree Protection Plan" at appendix 4 to Mr Cocking's Method Statement shows the RPA (coloured green) to exist only in Mr and Mrs Luddington's garden and to stop at the boundary of the site. Thus I do not necessarily agree with Mr Cocking's assurance in the appeal statement that "the actual construction ...is located entirely outside the RPA of retained trees"<sup>4</sup>. This is not adequate protection for this tree.
33. Furthermore, Limes are notorious for attracting sap-sucking insects which then excrete sticky substances which rain down onto anything below. I suspect that the occupiers of unit 1 will find it intolerable to live beneath the outer canopy of the Lime here (even assuming that it would survive the construction of the terrace). The flat roof of this unit has roof-lights, PV cells and solar hot water collector arrays. It is well known in the arboricultural industry that the sticky substance dropped quickly collects the dirt in the atmosphere and all these features are likely to be affected. These roof-lights are designed to allow light to penetrate to the centre of the properties, but in this location I predict they will require constant cleaning. In addition, unit 1 has a balcony, which is also likely to suffer from the exudations. A good proportion of the rear garden (although the exact site boundary here is not known<sup>5</sup>) would also be beneath the canopy of this Lime.
34. Mr Cocking considers that the properties would be purchased by people who like a verdant environment and would be averse to asking for trees to be removed. I do not agree. Experience tells me that many households move to a large tree and then find they do not like aspects of living close to it. The situation here would be compounded by the tree not being in the occupier's control. I think this fine tree would be at considerable risk should the scheme go ahead; this would be a further erosion of the character and appearance of the area.
35. Next, as I have said above, the site for the terrace would also have a steep tree-covered bank to the south-west, only 8m or so away. We saw at my site inspection how the very steep hill-side shades the appeal site from about noon onwards in the winter months. The sun disappears behind the hill, so although it might be a bright day, there is no further sunlight due to the topography. Nothing can be done to change the topography, but I think it likely that future occupiers might well wish to increase light levels into the houses and will make applications to reduce the tree cover, or the heights of the trees on their south-west side.
36. I am aware that passiv-haus designs take a fully integrated approach to energy consumption within the units. Solar orientation must matter to a certain extent, because solar-orientation will impact on solar gain. Thus, on such a constrained site (in sunlight terms, tucked at the foot of a very steep hill) I would have expected to see some technical assessment of overall shading caused by the hill and surrounding trees to ensure that the dwellings would operate effectively<sup>6</sup>. Clearly if less solar gain is possible this will have to be balanced out by greater insulation or alternative heat sources. Thus, while I

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<sup>4</sup> Paragraph 4.3

<sup>5</sup> See my paragraph 3 earlier

<sup>6</sup> For example, solar hot water collector arrays on the roofs

am sure it would be entirely possible to site them here I have not seen convincing evidence that the trees will not, in the future, be required to be removed to facilitate a modest amount of additional sunlight, for example, and thus for the houses to function better.

37. I found the site to be dark and gloomy, even on a bright day, because of the topography and the mature tree cover. I am aware that the dwellings would have roof-lights and full height windows. Even so, I consider that many householders would be likely to become frustrated at available daylight levels. Since they cannot alter the topography, I think it at least possible that they will seek to reduce tree cover to the south-west and also to keep the vegetation in the proposed replacement planting to the north-east at a low height too. Thus, the benefits of re-planting are highly likely to be limited and not true replacements of mature trees.
38. I conclude that the scheme will result in the certain loss of existing tree cover on the north-east edge of the site, the probable loss of the Lime in the adjacent landowners' garden and probable loss of tree cover in the future. UDP policy H2 is permissive of residential development provided there is no loss of amenity; the scheme would result in harm to environmental quality and a loss of amenity; thus the terms of H2 would not be met. I do not find that the loss of protected trees would be acceptable, and the development would not enhance the quality of the area, as policy H2 seeks to ensure.
39. The scheme would result in the loss of protected trees and thus would conflict with policy NE20. Policy NE21(v) specifically draws attention to the possibility of future occupiers seeking to fell trees due to shade cast and NE21(vi) refers to appropriate distances between development and existing trees (particularly the Lime). I consider these policy elements are breached too. A core planning principle in the Framework is conserving and enhancing the natural environment; the loss of tree cover would not achieve this objective.

*Issue (iv) whether the proposal would increase the likelihood of flooding in the locality.*

40. While this issue did not form one of the Council's reasons for refusal, the matter only really emerged as I asked questions at the beginning of the hearing to clarify the proposal. The particular plan which showed the retaining wall and increase in proposed land levels had the same reference number but 2 different sets of information; hence the proposals were unclear.
41. I am mindful that the government's policy, expressed in the Framework, is to direct development away from areas at highest risk, not increase flood risk elsewhere and to apply a sequential test. The Borough Council consulted the Environment Agency (EA) about this application, but with the early version of plan ref PL09-04x which did not show the retaining wall along the north-east boundary of the site. This would substantially build up the appeal site above the existing level of the playing fields. It became clear at the hearing that this later version of the plan was received by the Borough in July 2015 but the EA responded to the original consultation in June. I believe, therefore, that they may not be aware of this element of the proposals.
42. The Calder Valley was subject to serious flooding a year ago in December 2015. This part of the application site edged red falls within Flood zone 3, as is



clear from the maps I asked for at the hearing. This is an area where flood water is stored during extreme conditions.

43. Even with the earlier version of PL09-04x, the EA responded with the comment that "no building construction shall occur in flood zone 3". It is therefore very likely that the proposed substantial increase in additional volume of matter to build up the land levels here could be problematic. The additional built volume would occupy a volume that would, otherwise, be occupied by flood water. In turn this flood water would be displaced elsewhere and make conditions worse there.
44. While I asked Mr Xenakis his views on this I was not convinced by his response that it would be constructed so that 'water might percolate through it'. This does not provide the certainty that is required for a scheme such as this. The plans<sup>7</sup> show permanent planters (for replacement trees) and natural stone boundary retaining walls; these and the filling substance, would clearly be additional volume of materials that would displace flood-water elsewhere. While there may be technical solutions, there are none before me and I conclude that the scheme would displace flood water and, in the absence of evidence to the contrary, would be contrary to government policy as expressed in the Framework. In any event, and regardless of the flooding issue, the appeal fails for other reasons.

#### *The planning balance for Appeal A*

45. The Council accepts that it can demonstrate only 4.8 years of deliverable land for housing,<sup>8</sup> marginally short of the 5 years required in the Framework. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites. Paragraph 14 says that where relevant policies of the development plan are out of date then planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or specific policies in the Framework indicate development should be restricted. Examples of such policies include, in footnote 9, locations at risk of flooding. In addition, and as discussed above, the proposal is contrary to UDP policies H2, T18, NE20, NE21 and BE1.
46. The appellant company has put forward that the appeal scheme would provide a number of benefits and I weigh these in the balance, taking into account the three strands of sustainable development as set out in the Framework.
47. The proposed dwellings would provide energy efficient new Passiv Haus, adding more choice to the housing stock, although this benefit might be questionable, given the trees and shading issues I refer to above. Nonetheless, additional housing would be in line with the Framework's aim and government policy, of significantly boosting the supply of housing. Having regard to the undisputed (albeit minor) shortfall in housing land supply, I give this benefit some weight. The appellant company asserts that the location of the appeal sites falls within "previously developed land"<sup>9</sup>. However, I note that the glossary of the Framework defines this as "land which is or was occupied by a permanent

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<sup>7</sup> PL09-07LT for example, but see my comments on ambiguities in my paragraph 7

<sup>8</sup> Officer's report

<sup>9</sup> Statement, paragraph 6.1

structure, including the curtilage of the developed land, although it should not be assumed that the whole of the curtilage should be developed". Thus only the upper terrace scheme fits this definition and the argument does not get me further forward given the issues I have addressed in my considerations above. Thus I give this matter little weight.

48. The other matters raised, including but not limited to car parking provision, adequate turning areas, cycle-store provision, high levels of amenity and safety for future occupiers seem to me to be matters that would not go above and beyond what is required or expected of any modern residential development and attract no weight. Other points made I have dealt with directly in this decision.
49. Placing these factors and all of the relevant material considerations in the balance I find that the adverse effects on character and appearance, highway safety and the loss of protected trees of the proposed development would significantly and demonstrably outweigh the benefits. In the circumstances I conclude that the proposal would not represent a sustainable form of development.

### **Appeals B and C – main issue**

50. These 2 appeals concern the erection of a row of 10 dwellings on the 'upper terrace' and, broadly, on the footprint of some existing buildings to be demolished.
51. I bear in mind the duty set out in S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. This is largely reflected in the terms of UDP policy BE15. Thus the main issue for both these appeals is the effect of the proposals on the character and appearance of the locality, with this statutory duty in mind.
52. The listing describes the main Hall building as dating from circa 1666 with later additions and much re-building in 1833. It is constructed in stone with two strong roll moulded string courses. The mullioned windows with their Gothic glazing are a particular feature, as is the battlemented porch with corner turrets. The slate roof is behind a deep parapet. Immediately to the west of the main Hall is a Barn, listed in its own right. The Design and Access Statement is rather dismissive of this building and the Coach House, also listed in its own right, saying that they have "probably been accorded their listing by association". However, it is my experience that if this is so then a phrase like "listed for group value" or similar is used. These two are listed buildings and their clear, solid vernacular form demonstrates the utility buildings they represent.
53. To the south front of the Hall there is an area of semi-formal open space and landscaping which is very much a part of its setting which, overall, I consider extends to the entire grounds of the Hall. This front space has an obvious functional, visual and historic relationship with the Hall and the Barn to the flank side. To the immediate west lies the large listed Barn and attached to this are the modern extensions proposed for demolition. They extend along the south-west side of the open space, forming a partial enclosure to that side. While bland and uninspired, they have the value of being in stone and of

- unremarkable design. I imagine most viewers do not give them a second glance, since they do not compete with the grandeur of the main Hall. Despite their scale, they have the look of a service wing and are quite obviously subservient, in quality and function, to the main structure.
54. The west side of the existing extension to be demolished faces into the bank of the steeply sloping hillside, retained by a wall at yard level. It only really became apparent at the hearing that the scheme proposes excavating this yard area to a depth of another storey, so there would be much additional new built development in the form of retaining walls in this area.
55. The significance of the heritage asset is derived largely from it being a well preserved example of domestic architecture from the various periods, which includes its landscaped setting, and a small estate surrounding it. It has a long association with the Crossley family who, as significant members of the local gentry, held political and ceremonial positions. The Heritage Statement submits they were surprisingly wealthy with fulling and corn mills, and were farming sheep, producing and treating the wool for sale and acting as merchants.
56. The proposal includes the removal of the modern additions and the construction of a row of 10 passiv-haus dwellings. The appellant company's appeal statement describes the terrace as "a free standing modern and contemporary building"<sup>10</sup>. Despite this, it became apparent, only at the hearing as I sought to clarify the proposals, that the intention would be to attach the terrace to the southern gable end of the listed barn.
57. In terms of the size and scale of this extension to the listed building, I am aware that it would be largely on the footprint of the existing buildings to be demolished. The replacement of these innocuous buildings with a terrace of 10 glass and steel 3-storey dwellings, would result in a significant detrimental change to the listed barn and to the setting of the Hall and the Barn. The new terrace would run at right-angles to the main south frontage to the listed Hall, effectively forming one side of the semi-enclosed formal setting and the main battlemented porch entrance.
58. No drawings have been offered of this juxtaposition, but the details of this new element, in particular its overall height in relation to the main Hall and the Barn, would be overwhelming. At my site inspection we compared the height of the set-back third floor, approximately at the eaves height of the Barn, with the lower parapet of the Hall<sup>11</sup>. This over-dominant height, the proportions, detailing, materials, the design approach including a row of 10 integral garages, horizontal emphasis and colour would draw attention to this new wing. As such it could not help but compete, visually, with the listed buildings and would certainly dominate the existing listed structures, the contrast would be just too great. I could find no evidence at all of any response to local character and history here with these proposals.
59. Another concern is that the development would be a terrace of 10 dwellings with integral garages. The application site edged red shown on PL02-LOC 01.iix shows the route for vehicles to be behind the Hall bringing all of them immediately outside the listed Barn recently granted permission for conversion

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<sup>10</sup> Paragraph 5.26

<sup>11</sup> Partially hinted at on drawing PL10-03UTx, although the main Hall is not shown, only the flank extension

to residential use. I do not know if this is the planned route as SK02-02x shows a possible alternative route "new access driveway, permeable asphalt surface" around the east end of the Hall (presumably a re-surfacing of the existing tarmac). If the former is the case then this would seem an un-neighbourly route for the potential occupiers of the Barn, if the latter then all vehicles would be drawn directly across the front of the Hall, immediately outside the front porch entrance.

60. Whichever of the two possible routes, the proposed location would, therefore, draw all the vehicles associated with 10 households directly into the open space in front of the Hall. Vehicles would then manoeuvre in and out of the integral garages of the terrace, lying at a right angle to the Hall. As stated, this frontage area is a significant portion of the setting of the Hall and Barn; the development would diminish the main, south facing formal entrance elevation to this fine Hall to the character and appearance of the access road to a residential housing estate.
61. I understand that this area may have been utilised for vehicles when the building was in hotel use, but I suspect that this formal frontage was the "fair face" of the hotel and that parking was encouraged to be largely hidden around the western edges of the site on the hard-standing areas behind the building. But the introduction of 10 households, all of whom would have to drive into this main frontage area and the setting of the listed Hall and Barn, would be highly damaging.
62. I am also concerned about the new dwellings forming, effectively, an extension to the austere and dignified stone barn which I understand has now received planning permission to be converted to a dwelling. There was general agreement at the hearing that the modern stone extension was a product of its time and that such an extension would be unlikely to receive permission now. While we have to start from where we are, I do not see that a poor decision then, when policies and expectations were different, justifies attaching a terrace of 10 render, glass and steel dwellings to the gable end of a listed stone Barn now.
63. This was a building that, as the Heritage Statement submits, reflected the Crossley family's ties to the surrounding land and the production of corn and wool products. The Statement comments on its rather "industrial and mill-like façade" and to attach a structure, approaching 4 times the length of the "parent" Barn seems to me like the 'tail wagging the dog'. Its simple utility and essential subservience which I find to be its significance as a designated heritage asset, would be lost as it would, in reality, become an appendage to the new terrace. This represents substantial harm in my judgement, in terms of paragraph 132 of the Framework.
64. It only became clear at the hearing that the development also proposes the excavation of the depth of another storey along the western face of the terrace, immediately at the foot of the very steep slope of the hillside beyond, retained at present by a stone wall. This is only really evident from section drawing PL09-08UT (although I note that details on this plan do not agree with those on PL10-03UT as to the third storey). However there is virtually no information about how this substantial excavation, within the setting of these listed buildings, would respond and relate to the existing ground levels adjacent to the listed barn. Drawing PL09-00UTx simply abruptly stops at the

edge of the application site edged red and this does not even include the listed Barn to which the upper terrace would be attached.

65. The proposal would therefore be contrary to UDP policy BE15 and paragraph 132 of the *National Planning Policy Framework* (the Framework), which directs that great weight should be given to the conservation of designated heritage assets. The works would directly affect the Listed Barn, which would become an appendage to the new terrace, and the setting of both of the Barn and the Hall. The harm caused to the significance of these heritage assets would be substantial. As paragraph 132 of the Framework says, "significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification". Substantial harm to a grade II listed building should be exceptional. The finding of harm is a consideration to which I must attach considerable importance and weight, to reflect the duty to have special regard to the relationship with heritage assets. I deal with this balance below.
66. I conclude the proposal would fail to comply with national policy, the Framework and with local policy set out above.

#### *The planning balance*

67. The Council accepts that it can demonstrate only 4.8 years of deliverable land for housing,<sup>12</sup> marginally short of the 5 years required in the Framework. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites. Paragraph 14 says that where relevant policies of the development plan are out of date then planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits or specific policies in this Framework indicate development should be restricted. Examples of such policies include, in footnote 9, designated heritage assets. This is an extremely important material consideration, in the light of the statement in the Framework that these are irreplaceable. In addition, and as discussed above, the proposal is contrary to UDP policy BE15.
68. The appellant company has put forward that the appeal scheme would provide a number of benefits and I weigh these in the balance, taking into account the three strands of sustainable development as set out in the Framework.
69. The proposed dwellings would provide efficient new homes, adding more choice to the housing stock; this would be a public benefit. This would be in line with the Framework's aim and government policy, of significantly boosting the supply of housing. Having regard to the undisputed (albeit minor) shortfall in housing land supply, I give this benefit some weight as the contribution of a further 10 would not make a great difference. The appellant company argues that the location of the appeal sites falls within "previously developed land"<sup>13</sup> and I agree that the upper terrace would be constructed on land which is occupied by a permanent structure. But the argument does not get me further forward given the issues I have addressed in my considerations above. Thus I give this matter little weight.

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<sup>12</sup> Officer's report

<sup>13</sup> Statement, paragraph 6.1

70. The other matters raised, including but not limited to car parking provision, adequate turning areas, cycle-store provision, high levels of amenity and safety for future occupiers seem to me to be matters that would not go above and beyond what is required or expected of any modern residential development and attract no weight. Other points made I have dealt with directly in these decisions.
71. Paragraph 133 of the Framework requires that, where a proposal will lead to substantial harm to the significance of a designated heritage asset, consent should be refused unless it can be shown to be necessary to achieve substantial public benefits. Placing all these factors in the balance I find the public benefits to be minor and to be outweighed by the substantial harm to the significance of a designated heritage asset; the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits. In the circumstances I conclude that the proposal would not represent a sustainable form of development

### **Other matters**

72. A bat survey was produced in 2014, which stated that there was "moderate" potential for roosting bats and that a minimum of 2 emergence surveys "will be required" to determine the presence or otherwise of bats. Bats are a fully protected species. It was confirmed at the hearing that these emergence surveys had not been done. I am also concerned that the survey is now more than 2 years old and circumstances may well have changed on site. While a Bat Method Statement (dated January 2016) was handed to me at the hearing, this also requires 2 emergence surveys to be carried out. It states that "based on the features present on buildings 1-3 and the surrounding high value habitat it is considered likely that at least some level of roosting will be identified".
73. Thus, all that can be known at present is that there a reasonable likelihood of protected species being present on the site and, despite a condition suggested by the Council requiring the erection of bat boxes, there is a risk bats may be adversely affected by the proposal.
74. Circular 6/2005 indicates that any survey should be carried out before planning permission is granted where there is a reasonable likelihood of a protected species being present and affected. Consequently, it advises that surveys cannot be carried out after planning permission is granted, for example requiring such a survey by condition. Hence, although the Council suggested that a condition could be imposed, this is not an appropriate course of action. Had I been minded to allow the appeals, in the absence of this survey information, I would not have been able to.
75. I have taken account of all other matters raised but find nothing that alters the balance of my conclusions.

*Gyllian D Grindey*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Mr A Rollinson BSc DipTP MRTPI	Principal, Rollinson Planning Consultancy
Mr C Xenakis	Architect
Mr J Cocking FRES P Dip Arb (RFS) F Arbor A C Biol MBS FLS	Of JCA Ltd Arboriculturalist
Mr A Khosla	Representative of appellant company

### FOR THE LOCAL PLANNING AUTHORITY:

Ms G Boulton	Planning Officer Calderdale Metropolitan Borough Council (CMBC)
Ms K Peach	Conservation Officer, CMBC
Mr A Dmoch	Highway Engineer, CMBC
Mr R Rizvi	Of CMBC, (second day only)

### INTERESTED PERSONS:

Mr T Luddington	Near neighbour
Mr M Mitchell	Near neighbour

Document 1	Copy of Environment Agency response to applications & 2 x flood zone maps
Document 2	Bat Method Statement dated January 2016
Document 3	Executed Unilateral Undertaking
Document 4	Larger scale copy of Tree Preservation Order
Document 5	Bundle of UDP plans referred to in appellant's appeal statement (requested by Inspector)
Document 6	Extract from emerging Local Plan re housing figures
Document 7	Larger scale copy of heritage Statement (requested by Inspector)
Document 8	Copies of Planning Permission and Listed Building Consent for Barn at Scaitcliffe Hall dated 25 November 2016
Document 9	Suggested conditions list
Document 10	Appellant company's closing submissions
Document 11	CMBC's application for costs
Document 12	2 x large scale bound copies of plans