

Name of meeting: **PLANNING SUB-COMMITTEE (HUDDERSFIELD AREA)**  
 Date: 11 JUNE 2015

Title of report: **LOCAL PLANNING AUTHORITY APPEALS**

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Is it in the <a href="#">Council's Forward Plan</a> ?	No
Is it eligible for "call in" by <a href="#">Scrutiny</a> ?	No
Date signed off by <u>Director</u> & name	2 June 2015 Jacqui Gedman
Is it signed off by the Director of Resources?	No financial implications
Is it signed off by the Acting Assistant Director - Legal & Governance?	No legal implications
Cabinet member <a href="#">portfolio</a>	Cllr. P. McBride

Electoral [wards](#) affected: Holme Valley South; Colne Valley; Greenhead; Newsome;

Ward councillors consulted: No

Public or private: Public

1. **Purpose of report**  
For information
2. **Key points**
  - 2.1 2014/62/93455/W - Erection of first floor extension to side at Hammond Crest, Cartworth Road, Holmfirth, HD9 2RQ. (Officer) (Dismissed)
  - 2.2 2014/62/92044/W - Erection of detached dwelling with integral garage and formation of new access adj Nabb Royd, Cartworth Road, Holmfirth, HD9 2RQ. (Officer) (Dismissed)
  - 2.3 2014/62/91809/W & COMP/12/0323 - Erection of agricultural building for storage of tractor/trailer, agricultural equipment and animal feed (modified proposal) at Longfield Farm, Flathouse Lane, Linthwaite, Huddersfield, HD7 5PR. (Officer) (Appeals dismissed and enforcement notice upheld)

- 2.4 2014/62/92642/W - Demolition of existing building and erection of Sainsbury's Local food store (within a Conservation Area) at 134, Birkby Hall Road, Huddersfield, HD2 2UZ. (Officer) (Dismissed)
- 2.5 2013/62/93474/W - Demolition of existing garages and erection of one dwelling at Carrs Brook, Morton Street, Marsden, Huddersfield, HD7 6JH. (Sub-Committee contrary to officer recommendation) (Dismissed)
- 2.6 2014/62/92859/W - Erection of dormer and alterations to first floor to form self contained flat, installation of new window and door openings and internal alterations at Shax Pizza And Grill Bar, 44, Chapel Hill, Huddersfield, HD1 3EB. (Officer) (Dismissed)
- 2.7 2014/62/93152/W - Change of use from A1 to A5 and erection of ventilation fan to rear (within a Conservation Area) at 17, Blacker Road, Birkby, Huddersfield, HD1 5HU. (Officer) (Allowed)

**3. Implications for the Council**  
**Not applicable**

**4. Consultees and their opinions**  
**Not applicable**

**5. Next steps**  
**Not applicable**

**6. Officer recommendations and reasons**  
**To note**

**7. Cabinet portfolio holder recommendation**  
**Not applicable**

**8. Contact officer and relevant papers**  
**Simon Taylor – Head of Development Management**

**9. Director responsible**  
**Jacqui Gedman**

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# Appeal Decision

Site visit made on 25 February 2015

by **Matthew Birkinshaw BA(Hons) Msc MRTPI**

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

Decision date: 20<sup>th</sup> March 2015

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**Appeal Ref: APP/Z4718/D/15/3003237**

**Hammond Crest, Cartworth Road, Holmfirth, HD9 2RQ**

- 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 Steven Parr against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2014/62/93455/W, dated 27 October 2014, was refused by notice dated 12 December 2014.
  - The development proposed is a first floor extension.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are:
  - Whether or not the proposal is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework and development plan policy;
  - The effect of the proposal on the openness of the Green Belt; and
  - If the proposal is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

## Reasons

*Whether Inappropriate or Not*

3. Policy D11 of the *Kirklees Unitary Development Plan* (UDP) states that proposals to extend buildings in the Green Belt will be considered against their impact on openness, and, the size of the extension in relation to the existing building, which should remain the dominant element. It also directs that where extensions have already been carried out, a proposal should have regard to the scale and character of the original building.
4. This is broadly consistent with paragraph 89 of the National Planning Policy Framework ('the Framework'), which confirms that extensions are not inappropriate development in the Green Belt provided that they do not result in disproportionate additions to an original building.

5. In this case the semi-detached appeal property already contains a 2-storey side extension. Based on the evidence provided this represents an increase in the size of the original dwelling by roughly 50%. The Council also refers to an additional side extension and sun lounge which have been erected at the property. Thus, despite keeping the size of the extension to the absolute minimum required to meet the appellant's needs, combined with the previous alterations it would amount to a disproportionate addition to the original house.
6. For the purposes of the Framework the proposal is therefore inappropriate development, which, by definition is harmful to the Green Belt and should not be approved except in very special circumstances.

#### *Openness*

7. The Framework also states that the essential characteristics of Green Belts are their openness and their permanence. I note the appellant's comments that by erecting an extension over the garage the footprint of the dwelling would not be increased. However, by introducing more built development onto the site than exists at present, the openness of the Green Belt would be reduced. Although this harm would be limited, it would nonetheless still be material.

#### *Other Considerations*

8. I have also considered the effect of the proposal on the character and appearance of the host property, and recognise that a great deal of thought has gone into achieving a high standard of design. However, whilst the extension would reflect the existing property, this lack of harm is only a neutral factor in the overall planning balance. Based on the evidence provided I find no persuasive evidence to suggest that the provision of a side extension would 'significantly enhance' the appearance of the house or the surrounding area. Similarly, although it would provide more appropriate accommodation for the appellant, there is nothing to indicate that the extension is necessary to secure the future use of the property.
9. It has also been suggested that the appellant could erect a rear dormer without planning permission by utilising permitted development rights. Nevertheless, whilst this is not in dispute, situated at the rear and partially screened from public view on Cartworth Road a rear dormer would be materially different to the extension proposed. As a consequence, this only carries limited weight.

#### **Conclusions**

10. The proposal would be inappropriate development in the Green Belt for the purposes of national planning policy. The Framework clearly states that inappropriate development is harmful to the Green Belt, and that substantial weight should be attached to that harm. By resulting in the provision of a disproportionate addition to the original part of the building the scheme also conflicts with Kirklees UDP Policy D11.
11. On the other hand the design of the extension would be acceptable, and it would not cause any harm to the overall character and appearance of the host property or the surrounding area. Furthermore, compared to a rear dormer erected under permitted development rights it would also more appropriately meet the needs of the appellant, and I note that the local Parish Council supports the scheme.

12. However, these considerations do not clearly outweigh the substantial harm that I have identified as a result of inappropriateness and to the reduction in the openness of the Green Belt. As a result, the very special circumstances necessary to justify granting planning permission do not exist.

13. For this reason, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Matthew Birkinshaw*

INSPECTOR

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# Appeal Decision

Site visit carried out on 18 March 2015

**by Mrs J A Vyse DipTP DipPBM MRTPI**

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

**Decision date: 25 March 2015**

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**Appeal Ref: APP/Z4718/W/14/3000642**

**Nabbroyd, Cartworth Road, Holmfirth HD9 2RQ**

- 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 and Mrs Colin Parr against the decision of Kirklees Metropolitan Council.
  - The application No 2014/62/92044/W, dated 27 April 2014, was refused by a notice dated 2 September 2014.
  - The development proposed is the formation of a new site access and the construction of a two bedroom dwelling with integral garage.
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## Decision

1. For the reasons that follow, the appeal is dismissed.

## Main Issues

2. These are whether the development proposed comprises inappropriate development having regard to the Green Belt policies of the development plan and the National Planning Policy Framework and, if it does, whether any harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development proposed.

## Reasons

### *Whether Inappropriate Development*

3. Nabbroyd is a two storey semi-detached dwelling that lies on the eastern side of Cartworth Road, which road rises steeply heading southwards out of Holmfirth. The appeal site lies to the side of Nabbroyd, immediately to the south. The two bedroom dwelling proposed would comprise a two storey stone and slate element at its northern end, close to Nabbroyd, adjoined by a lower single story element extending southwards behind the existing stone wall along the highway boundary.
4. There is no dispute that the appeal site lies within the Green Belt, as defined by the Kirklees Unitary Development Plan (March 1999)(UDP). Paragraph 89 of the National Planning Policy Framework (the Framework) makes clear that, with certain exceptions, the erection of new buildings in the Green Belt is inappropriate. One of the specified exceptions relates to limited infilling in villages. Another relates to limited infilling or the partial or complete redevelopment of previously-developed land which would not have a greater impact on the openness of the Green Belt and the purposes of including land in it.

5. Policy D13 of the UDP is permissive of infill development within existing settlements in the Green Belt where, among other things, the site is small (not more than two dwellings) and is within an otherwise continuously built up frontage, or where the site is small and is largely surrounded by development. The settlement of Holmfirth is inset from the wider Green Belt: the appeal site lies opposite to but outwith the settlement boundary and is thus not *within* the existing settlement. The site comprises a largely open grassed paddock/field to the side of Nabbroyd and, other than two timber buildings on the land, appears undeveloped. It lies behind a low stone wall and runs parallel to the road, sloping down to the northeast, into the river valley, away from Cartworth Road. Surrounding land to the northeast, east and southeast comprises open fields. Whilst there is a ribbon of built development on the opposite side of the road, those properties lie within the settlement boundary. In that context, the site does not lie within an otherwise built up frontage and is not surrounded by development. Accordingly, although only one property is proposed, the appeal scheme cannot be considered as infill development.
6. The appellant is of the view that the appeal site comprises previously-developed land, maintaining that it has been used as a garden for more than 40 years, although it not in the same ownership throughout that period. However, an application for a Certificate of Lawfulness in relation to use of the land as garden and allotment to Nabbroyd was refused in 2009. I am not aware that that decision was appealed. Moreover, the Glossary to the Framework makes it clear that private residential gardens, and allotments, are excluded from the definition of previously-developed land. In any event, although reasonably moderate in scale, the dwelling proposed would mean that this part of the Green Belt would be less open than it is now, even taking into account the two timber buildings currently located at the rear of the site, which would be removed.
7. Consequently, I am in no doubt that the appeal scheme would be inappropriate development, as defined by UDP policy D13 and by the Framework. By definition therefore, it would be harmful to the Green Belt.

#### *Any Other Harm*

8. The appeal site sits lower than the road and the dwelling proposed would be built into the slope of the land here, which falls away steeply into the river valley. As a consequence, the two storey element would only be some 1.5 storeys in height when seen from the road. It would sit gable end on to the highway and, with only a small single opening within the apex, would have the appearance almost of a large outbuilding with a timber lean to at the side, the main two storey elevation facing east, out across the valley. The longer single storey element would be dug into the sloping land, behind the boundary walling. It would have a monopitch sedum roof with a glazed frontage, again looking out across the river valley. I recognise, in this regard, that the house would be largely hidden from public view. It would, however, still reduce the openness of the Green Belt, a concept that is not dependent on public visibility but which is an essential characteristic of such designated land.

#### *Other Considerations*

9. It is well established that inappropriate development is, by definition, harmful to the Green Belt and should not be approved other than in very special circumstances. Paragraph 88 of the Framework confirms that very special

circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

10. Framework paragraph 55 identifies special circumstances in which a new house in the countryside might be considered, including the exceptional quality or innovative nature of the design of the dwelling. To qualify, such a building should be truly outstanding or innovative, helping to raise standards of design more generally in rural areas, reflect the highest standards in architecture, significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.
11. The design of the dwelling proposed takes inspiration from local vernacular architecture, with the masonry element providing a visual link with Nabbroyd and other stone buildings in the locality. This contrasts with a more contemporary single storey glazed element that would be partially earth-sheltered and dug into the hillside, with a green roof. The design has also been informed by the constraints of the site, with the building set into the sloping ground. In terms of the choice of materials and design approach taken, I am satisfied that, in principle, the scheme could be considered as a high quality design that responds sensitively to its setting.
12. However, whilst there is development on the opposite side of the road, I saw it to be loose-knit, with the appeal site itself surrounded by open fields giving it a distinctly rural feel, removed from the more closely built-up development nearer the town. Whilst the scheme would include removal of the two timber buildings on the site, their appearance, whether or not they are lawful, is not so harmful or damaging to the landscape that their removal is justified by the dwelling proposed as a means of significantly enhancing its rural setting. Indeed, the proposal would detract from the open nature of the site and would extend built development along the eastern side of Cartworth Road, introducing residential development further into the countryside.
13. The house proposed would include a green roof and would incorporate measures to conserve water and energy. High levels of insulation and airtightness would also ensure that the building would be carbon neutral. I am not persuaded though, that the design takes the technologies employed in this regard beyond already well trodden paths. All in all, I cannot conclude that the proposed building is either innovative in nature, or of such exceptional design that it might justify the provision of a new dwelling in the countryside. On that basis, it does not represent the very special circumstances identified in Framework paragraph 55.
14. I understand that the appellant and his wife have lived in the area for many years and that the accommodation is intended to provide the appellant with independence as his health condition progresses, whilst allowing him to remain in the familiar countryside that he and his wife have loved throughout their lives. It is not clear, however, what the broad nature of his health challenges might be, or what the limitations of the existing accommodation are that might be addressed by the development proposed. That said, I recognise that the dwelling proposed would, in the main be single storey, and may provide more suitable accommodation for the appellant both now and in the future. However, whilst exceptionally, the personal circumstances of an occupier may be material to the consideration of a planning application, such arguments will



seldom outweigh more general planning considerations. In this case, the development proposed is of a permanent nature and would remain long after the personal circumstances of the appellant have ceased to be material. On balance, I afford those personal circumstances only limited weight.

### **Conclusion**

15. I have found that the appeal scheme would be inappropriate development in the Green Belt and would detract from its openness, one of its essential characteristics. In accordance with the provisions of the Framework, I therefore afford those harms substantial weight. For the appeal to succeed, the combined weight of other considerations must clearly outweigh the totality of the harm arising. Although the house may benefit the appellant, and has been designed in a way that minimises its intrusion into the landscape, those considerations do not clearly outweigh the harm that I have identified. As such the very special circumstances, as required by paragraph 88 of the Framework, necessary to justify the development proposed, do not exist. Accordingly, for the reasons given above, the appeal fails.

*Jennifer A Vyse*

INSPECTOR

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## Appeal Decisions

Site visit made on 3 March 2015

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Decision date: 16 April 2015**

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### **Appeal Ref: APP/Z4718/C/14/2227100**

#### **Longfield Farm, Flathouse Lane, Linthwaite, Huddersfield HD7 5PR**

- 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 Ms Daphne Barnforth against an enforcement notice issued by Kirklees Metropolitan Borough Council.
  - The notice was issued on 15 September 2014.
  - The breach of planning control as alleged in the notice is the erection of a building.
  - The requirements of the notice are completely demolish the building and restore the land to its previous condition.
  - The period for compliance with the requirements is two months.
  - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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### **Appeal Ref: APP/Z4718/A/14/2227030**

#### **Longfield Farm, Flathouse Lane, Linthwaite, Huddersfield HD7 5PR**

- 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 Ms Daphne Barnforth against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2014/62/91809/W, dated 5 June 2014, was refused by notice dated 19 August 2014.
  - The development proposed is an agricultural building for storage of tractor/trailer, agricultural equipment and animal feed (modified proposal).
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### **Decision**

1. The appeals are dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Reasons**

#### Background information

2. The Appellant owns agricultural land to the west and east of Flathouse Lane, which is, where it passes between the Appellant's fields, a track that is a public footpath. The Appellant's land is in the Green Belt and in the Linthwaite Conservation Area (LCA). The building that is the subject of the appeals has been erected in the east corner of a field on the east side of the lane. It is about 12 metres long, 9 metres wide, 3.6 metres high to the eaves and 5 metres high to the ridge. It is clad in colour coated steel and has a fibre cement roof.

3. The building was the subject of two unsuccessful planning applications refused by the Council in March 2013 and March 2014. A planning appeal was submitted against the second refusal but this was also unsuccessful. Subsequently the Council issued the enforcement notice that is the subject of the enforcement appeal. Prior to issue of the notice the Appellant submitted another planning application but this was also unsuccessful and is the subject of the planning appeal. The application, essentially, was for retention of the building that has been erected but reduced in height and clad in different materials.

The planning appeal

4. Paragraph 89 of the National Planning Policy Framework (NPPF) states that the construction of a new building in the Green Belt is inappropriate unless it is for, amongst other things, agriculture. The Inspector in the previous planning appeal, having considered the Council's evidence on the need for the building, concluded that the building is not inappropriate development in the Green Belt. There is no reason, in this case, to disagree with this conclusion.

5. The main issue is the effect of the building, after alteration as proposed, on the openness and visual amenity of the Green Belt and on the character of the LCA.

6. Paragraph 79 of the NPPF states that an essential characteristic of Green Belts is their openness. The building is remote from other buildings on the holding and is at a relatively high point in the steeply undulating landscape. It is clearly visible from the public footpath in views to the east and north-east and would be even if it was reduced in height as proposed by about 1.2 metres, to be about 2.4 metres high to the eaves and 3.7 metres high to the ridge. The altered building would undermine, and would be harmful to, the openness of the Green Belt.

7. The building would be reclad in timber and the roof would be covered with a dark material. Also, the steel doors would be replaced by timber doors and planting is proposed to the north and west of the building, to supplement a tree planting scheme to the east and south of the building that is the subject of a Forestry Commission grant. It is the building's remote position and prominence in the landscape that is harmful to the visual amenity of the Green Belt rather than its height and existing materials, which are not inappropriate for an agricultural building. Furthermore, planting would take many years to become established and would probably not provide adequate screening. The altered building would adversely affect, and would be harmful to, the visual amenity of the Green Belt.

8. The appraisal of the LCA carried out in 2004 regards the Appellant's holding to be part of open countryside that is important to the setting of Linthwaite. The building, even if it were to be altered as proposed, would intrude into the open countryside that is important to the setting of Linthwaite and would thus detract from, and would be harmful to, the character of the LCA.

9. The Appellant intends, if the appeal was to be successful, to remove "...some of the other unattractive buildings on the site..." and to improve the appearance of those that would be retained. This would not, however, mitigate the harm that would be caused by the altered appeal building. The building, as proposed to be altered, would have an adverse effect on, and would be harmful to, the openness and visual amenity of the Green Belt, and the character of the Linthwaite Conservation Area. The proposed development thus conflicts with saved policy BE5 of the Kirklees Unitary Development Plan. In these circumstances planning permission must be withheld and the planning appeal thus fails.

### The ground (f) enforcement appeal

10. The matters put forward by the Appellant in support of her ground (f) appeal are the same as those that have been considered in the planning appeal. They relate to the merits of retaining the building, altered as proposed, and are not relevant to a ground (f) appeal. The building is a breach of planning control and planning permission has been withheld. The only remedy to the breach of planning control is the removal of the building and the requirements of the notice are not therefore excessive. The ground (f) appeal thus fails.

*John Braithwaite*

Inspector



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## Appeal Decision

Site visit made on 5 May 2015

**by Alison Partington BA (Hons) MA MRTPI**

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

**Decision date: 27<sup>th</sup> May 2015**

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**Appeal Ref: APP/Z4718/W/15/3006137**

**134 Birkby Hall Road, Birkby, Huddersfield HD2 2UZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Sainsbury's Supermarkets Ltd against Kirklees Metropolitan Borough Council.
  - The application Ref 2014/92642, is dated 20 August 2014.
  - The development proposed is the demolition of the existing building and erection of Sainsbury's Local Food Store.
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### Decision

1. The appeal is dismissed and planning permission is refused for the demolition of the existing building and erection of Sainsbury's Local Food Store at 134 Birkby Hall Road, Birkby, Huddersfield HD2 2UZ.

### Main Issue

2. The main issue in the appeal is the effect of the proposed development on highway safety.

### Reasons

3. The appeal site is located on the corner of Birkby Hall Road and Storth Place. The latter is an unmade road in a poor state of repair which provides a link between Birkby Hall Road and Storth Road. The Council have indicated that the visibility at the junction of Storth Place and Birkby Hall Road is substandard, and this is not disputed by the appellant. The site has been occupied by a car sales business and 2 car repair workshops, although I noted at my site visit that one of the workshops has relocated to larger premises.
4. The site is in close proximity to the busy junction of Birkby Hall Road, Grimscar Avenue and Wheathouse Road which is controlled by a mini-roundabout. Although the appellant has suggested that Birkby Hall Road is lightly trafficked, I observed at my site visit that it carried a significant amount of traffic, and that queues regularly formed at the mini-roundabout junction. This observation accords with the Council's assessment of the data within the appellant's Transport Statement, and comments from local residents.
5. The width of Birkby Hall Road is such that cars parked on the road prevent the free flow of traffic along it. In the vicinity of the site there are parking restrictions on both sides of the road, but there are no restrictions on Storth Place. Given that many of the houses in close proximity to the site have no

off-street parking, there is significant demand from residents for on-street parking spaces that are available, particularly in front of the terrace of houses located between the site and the mini-roundabout. As a result of the cars parked here, traffic on Birkby Hall Road approaching the junction with Grimscar Avenue, can have to wait on the highway in front of the site, especially if traffic is coming in the other direction.

6. The proposed development would be provided with 9 parking spaces (including one disabled space). The Council have indicated that the standards set out in the *Kirklees Unitary Development Plan (adopted March 1999 and revised September 2007)* (UDP) would require 17 spaces to be provided for staff and customers. I note that this is based on the standard for town centre and neighbourhood shops of up to approximately 150sqm. Although the floor area of the proposed store area would be larger than this, given the nature of the store, and the type and length of visits it would attract, this standard would appear to be the most appropriate to use in this case.
7. The appellant has pointed out that these are maximum standards and that the UDP states that lower levels may be appropriate provided that the scheme can operate effectively, or there will be no significant adverse impacts for road safety or traffic management. In addition, they highlight that given the age of the UDP the standards do not take account of the advice in the paragraph 39 of the National Planning Policy Framework.
8. Whilst the store would mainly serve a local catchment, it is probable that many customers would still choose to drive, and the proposal would also attract passing trade. Nevertheless the appellant's evidence from a variety of sources including TRICS data, and surveys and information from other Sainsbury's Local stores, is that this level of provision would be adequate. However, it also shows that at certain times of the day the car parking would be operating at or close to capacity.
9. In addition, no dedicated staff parking is to be provided on the site. Although it is indicated that the site is well served by public transport, the service in the evenings and weekends, especially Sunday, is limited. Given the operating hours of the store, even if many of the staff are local, the likelihood is that many would travel by car and so would want to park in the immediate vicinity.
10. In contrast to the appellant's data, the Council's survey data from other similar convenience stores within the district indicates that the demand for parking at the busiest times of the day would exceed the capacity of the proposed car park. Although I note the concerns raised by the appellant with regard to this data.
11. The evidence on the demand for parking that could be generated is inconclusive. It is clear that many different factors can affect it and so forecasting demand with any certainty is problematical. However, given that no staff parking is proposed, that at certain times of the day the car park will be at or very close to capacity, and the fact that when lorries are manoeuvring into the delivery bay cars will be unable to enter the car park, I consider that it is highly probable that the proposal would generate demand for on-street parking in the immediate vicinity.
12. It has been suggested that even if it would create some demand for on-street parking, as the proposal would result in the loss of the existing businesses on

the site, overall the proposal would result in a reduction in on-street parking, or at least be no worse. Whilst there is no off-street parking associated with any of the current businesses, the hours and days of operation of these businesses are considerably less than for the proposed store. Moreover, although cars may be parked for longer periods of time, the volume of visitors they attract in a day is limited.

13. Notwithstanding the traffic restrictions in the immediate vicinity of the site, on-street parking is available on Birkby Hall Road. However, due to the width of the road, any such parking created by the proposal on this road would have an adverse impact on the free flow of traffic which, given the nature of the road, the volume of traffic it carries, and the proximity of the site to the junction, would be detrimental to highway safety.
14. At present parking associated with the repair workshop appears to be mainly on Storth Place and, despite its unmade nature, it is likely that it would also be utilised for parking in relation to the proposed store. Whilst cars related to the workshop are likely to remain parked for large parts of the day, the volume of traffic movements are likely to be limited. In contrast, the majority of cars parked in relation to the store would only remain for short periods of time, but there would be much higher level of movements as the turnover of customers is significantly more.
15. Notwithstanding the accident data for the junction of Storth Place and Birkby Hall Road, given that the visibility at the junction is substandard, any intensification of the use of this junction would increase the harm to highway safety. In addition, as Storth Place has no segregated footpath or street lighting, an increase in the number of traffic movements on the road would have the potential to harm pedestrian safety. As a result, in both these respects, I consider the appeal scheme would be detrimental to the safety of road users.
16. The proposed development would be provided with a delivery bay to the front of the store. This would utilise the same access as the car park and would require the use of two parking bays to enable the largest lorries to manoeuvre into the bay. It is indicated that up to 7 deliveries a day would take place, although these would generally be at times when it is predicted that the car park would be operating well below capacity. However, even if this is the case, whilst lorries were manoeuvring in the delivery bay, it would render the car park inaccessible to other vehicles, which has the potential to result in traffic waiting to enter the site blocking the highway or parking on the street.
17. Moreover, if two delivery vehicles were to be present at the same time, one would be required to wait on the highway. Whilst this would be detrimental to highway safety, through the use of ISOTRACK to monitor the delivery vehicles, and a condition requiring the submission of a Delivery Management Plan, I am satisfied that this could be prevented from occurring on a regular basis.
18. Notwithstanding this, overall I consider that the proposed development would have an unacceptable impact on highway safety. It would therefore be contrary to Policies T10, T19 and BE1 of the UDP which seek to ensure that developments do not have an adverse impact on highway safety, and are provided with adequate parking.

19. The National Planning Policy Framework (paragraph 32) indicates that development should only be refused on transport grounds where the cumulative impacts of the development are severe. However, the same paragraph also states development should ensure that safe and suitable access is achieved for all people, and paragraph 35 states that developments should minimise conflicts between traffic and cyclists or pedestrians. For the above reasons I do not consider that the proposed development would achieve these.
20. My attention has been drawn to another appeal for a similar type of store elsewhere in Kirklees which was allowed. However, although below the required standards, the level of parking at this store was greater than is proposed here and there was also a relevant "fall back" position. As such, the circumstances are not directly comparable to those which apply in this appeal. I have in any case determined the appeal on its own merits.

#### *Other Matters*

21. The appeal site is located within Birkby Conservation Area and as a result I have had special regard to the statutory duty to pay attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. I note the Council has no objection to either the demolition of the existing building or the new development. From the evidence before me, and what I observed on site, I see no reason to reach a different conclusion, and I am satisfied that the proposal would preserve the character and appearance of the conservation area.
22. The potential impact of noise from deliveries and plant on the living conditions of nearby residents is disputed by the parties and in the light of this, the appropriateness or otherwise of various suggested conditions to control these matters has been debated within the evidence. However, given my conclusion above regarding the impact of the proposal on highway safety, these are matters of secondary importance.

#### **Conclusion**

23. For the reasons set out above, I conclude that the appeal should be dismissed.

*Alison Partington*

INSPECTOR



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# Appeal Decision

Site visit made on 17 March 2015

**by Matthew Birkinshaw BA(Hons) Msc MRTPI**

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

**Decision date: 1<sup>st</sup> May 2015**

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**Appeal Ref: APP/Z4718/W/15/3002613**

**Carrs Brook, Morton Street, Marsden, Huddersfield, HD7 6JH**

- 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 C Lee against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2013/62/93474/W, dated 29 October 2013, was refused by notice dated 24 September 2014.
  - The development proposed is the demolition of existing garages and erection of single dwelling.
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## Decision

1. The appeal is dismissed.

## Main Issue

2. The main issue is the effect of the proposal on the living conditions of the occupants of 2 Carrs Street, having particular regard to outlook and privacy.

## Reasons

### *Outlook*

3. The appeal relates to a section of front garden belonging to 'Carrs Brook'. As part of the proposal the existing garages would be demolished to make way for a 2-storey detached dwelling. The new property would front onto an unadopted track, beyond which is the detached bungalow, no.2 Carrs Street.
4. Based on the evidence provided the design has clearly been influenced by its relationship with no.2, and I recognise that the appellant has gone to extensive lengths to overcome the issues raised. Nevertheless, at its closest point the proposal would be approximately 15.6m from the south-east facing elevation of no.2 which contains ground floor living, and bedroom windows. Critically, due to the topography of the area it would also be roughly 2.7m higher than the adjacent property, resulting in the principal elevation of a 2-storey dwelling extending over 10m above the ground floor level of the bungalow below.
5. Combined, I consider that the size, scale and elevated position of the scheme would give rise to an overbearing and dominating form of development. When also taking into account that the south-east facing elevation of the bungalow contains habitable room windows leading out onto the garden, the imposing nature of the scheme would cause material harm to the occupants' standard of living.

6. In reaching this view I appreciate that the two properties would be at an angle to one another, which would increase the degree of separation and minimise the visual impact of the proposal. The intervening track and existing boundary fence would also provide an additional buffer to no.2, which includes habitable room windows recessed behind a small veranda. Nonetheless, the first floor of the 2-storey scheme and its large pitched roof would still be clearly visible from the bungalow and parts of the rear garden, which would face towards the principal elevation of a new dwelling at a minimum distance of roughly 15.6m. Based on the evidence provided I am therefore not persuaded that these factors would be sufficient to mitigate the overbearing nature of the scheme, which, due to its size and elevated position would be harmful to the outlook from no.2.
7. Both parties have also referred to *Kirklees Unitary Development Plan* (UDP) Policy BE12 which sets out the minimum acceptable distances 'normally' required between new dwellings and adjacent properties. With over 12m from the habitable room windows of no.2 and the proposed first floor, non-habitable bathroom window the proposal accords with Policy BE12(ii). Nonetheless, this does not take into account the significant change in level. The policy also includes the caveat that such distances are only 'normally' acceptable. Thus, in this particular case exceeding the 12m minimum standard does not justify allowing the appeal given the harm that would be caused by its elevated position relative to the neighbouring bungalow.
8. The appellant's frustrations regarding the Council's process of determining the planning application are also noted, as is the fact that the scheme was initially recommended for approval by Officers. However, I am required to consider the proposal on its specific merits, having due regard to relevant planning policy and guidance and I have determined the appeal on this basis. Moreover, in terms of outlook the Planning Officer's report identified that there would be an impact on the occupants of no.2, and that this would be exacerbated by the change in level. Although this was considered acceptable 'on balance' by the Officer, it was not illogical for the Council to reach a different view, which has been substantiated through written representations at appeal.
9. I therefore conclude that by reason of its elevated siting the overall size, scale and height of the proposal would be harmful to the outlook from 2 Carrs Street, which in turn would prejudice the occupants' living conditions. Of the policies referred to by the Council Kirklees UDP Policy D2 is the most relevant, and by failing to ensure that the proposal does not prejudice residential amenity it directly conflicts with development plan policy. For the same reasons the proposal is also contrary to one of the Core Planning Principles of the National Planning Policy Framework ('the Framework') which seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings.

### *Privacy*

10. Following amendments to the design only rooflights and an obscure glazed bathroom window would be located on the front elevation of the appeal scheme above ground floor level. The retention of these features could also be secured through the use of appropriately worded planning conditions. As a result, the proposal would not give rise to any direct overlooking of the property below from first floor level, and would not cause a significant loss of privacy for the occupants of 2 Carrs Street.

11. At ground floor the proposed kitchen window would face the south-east elevation of the bungalow at a distance of less than 21m, contrary to the minimum acceptable distance normally required between habitable room windows in Kirklees UDP Policy BE12(i). However, the proposed 1.8m high wall at the front of the appeal scheme would restrict views of the bungalow below. Although some oblique glimpses past the wall would be possible, due to the change in level this would primarily be restricted to the eaves height and above. As a consequence, even if the fence along the south-east boundary of the bungalow was removed, the proposal would not give rise to any harmful overlooking of habitable room windows or parts of the rear garden.
12. Although objectors to the scheme have also raised concerns that the wall would make the kitchen dark with no outlook, it would form part of an open plan living/dining area with south-east and south-west facing windows, and double patio doors. The kitchen window would also be over 2m from the dry stone wall which would drop away in height to allow oblique views towards Morton Street. As a result, the standard of living accommodation for potential future occupants would be adequate, and the outlook from the kitchen window would not place undue pressure on the need to remove the screening in the future.
13. I therefore conclude that by reason of its design and the change in level the proposal would not give rise to any loss of privacy sufficient to cause material harm to the living conditions of the occupants of 2 Carrs Street. Consequently, there is no conflict with Kirklees UDP Policy BE12 which states that a distance less than 21m between habitable room windows will be acceptable if, by reason of permanent screening, changes in level, or innovative design no detriment would be caused to existing occupiers of adjacent premises. For the same reasons there is also no conflict with UDP Policy D2 which states that planning permission will be granted provided that development proposals do not prejudice residential amenity.

### **Other Matters**

14. In reaching my conclusions against the main issue I have taken into account evidence which suggests that there is currently less than a five-year supply of deliverable housing land available, and, also borne in mind paragraphs 47-49 of the Framework.
15. However, the single dwelling proposed would only make a limited contribution to addressing this undersupply. Based on the information provided I therefore consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. As a result, the scheme is not the sustainable development for which there is a presumption in favour.
16. Finally, it is also recognised that the Council has not raised any other concerns with the proposal, and I find no reasons to disagree. Nonetheless, this does not overcome the harm that has been identified to the living conditions of neighbouring residents.

**Conclusion**

17. Although the proposal would not result in a loss of privacy, it would be harmful to the outlook from no.2 Carrs Street.
18. For this reason, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*Matthew Birkinshaw*

INSPECTOR

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# Appeal Decision

Site visit made on 28 April 2015

by **Anne Jordan BA (Hons) MRTPI**

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

Decision date: 21 May 2015

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**Appeal Ref: APP/Z4718/W/15/3006992**  
**Shax, 44 Chapel Hill, Huddersfield, HD1 3EB**

- 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 Shakeel Mohammed against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2014/62/92859/W, dated 10 September 2014, was refused by notice dated 17 February 2015.
  - The development proposed is alterations to rear roof to form dormer and conversion of 1<sup>st</sup> floor to become self contained flat. Internal alterations to form staircases and new window and door openings.
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## Decision

1. The appeal is dismissed.

## Main Issue

2. The main issue is the effect of the proposal on the living conditions of future occupiers of the proposed dwelling, with regard to the impact of noise, odour and air quality.

## Reasons

3. Shax is a hot food takeaway on a busy main road in the centre of Huddersfield. The property lies in a predominantly commercial area, and is adjoined on both sides by hot food takeaways, with a public house and a number of other takeaways and commercial uses lie within a short distance of the site. Chapel Hill is a main route into the town centre with two lanes of traffic in both directions. I am advised by the Council that it is heavily trafficked and this was evident at the time of my visit, with stationary traffic from the lights at the top of the hill. A small number of properties appear to have upper floors in residential use.
4. The proposal seeks to bring the upper floor of the property into use as a self contained flat. The physical changes to facilitate the use, are not a matter of dispute between the parties. Instead the Council has concerns in relation to the standard of accommodation that the dwelling would provide. These in part relate to the effect that traffic on the main road may have on living conditions as a result of noise and air quality.
5. I note that the Environmental Health Officer has advised that subject to appropriate survey work, mitigation measures to ameliorate the impact of noise and poor air quality would be an acceptable solution. In this regard,

appropriately worded conditions could secure measures to mitigate the worst impacts of traffic noise and pollution in this case, and would also be appropriate to secure measures to reduce the internal transmission of noise from the use below.

6. However, during my visit I noted that a large flue on the adjoining Al-Faisal Indian Takeaway was positioned on the rear of the building, within a very short distance of the proposed box dormer, which would contain windows to the stairwell and bedroom. In its position above the eaves it would discharge directly into the windows of the adjoining property. Furthermore, another flue, relating to the ground floor takeaway to the appeal property, was also positioned within a short distance of the proposed dormer.
7. Whilst the appellant could in theory control the discharge from his own flue, this would not be the case with the system on the adjoining property. Even if the system was operated to a high standard, and the windows were non-opening and acoustically glazed, the very close proximity of the adjoining flue to the property's only bedroom would leave future occupiers at risk from an intrusive level of noise, odour and vibration, the effect of which would be worsened by the late hours in which the takeaway would operate.
8. These factors lead me to the view that mitigation measures could not be assured of sufficiently mitigating the intrusive effects of the adjoining use and acceptable living conditions within could not therefore be secured. While it is likely that future occupiers of the dwelling would be aware of the presence of the flue and its likely effect, this would not lessen the harmful effect of the proposal on living conditions. I also take into account that the use would bring the upper floor of the property into use and would provide an additional residential dwelling. However, it is not in the public interest to provide dwellings which provide poor standards of amenity and these matters do not therefore outweigh my concerns in relation to living conditions.
9. I therefore conclude that the proposal would fail to comply with the requirements of policies EP4 and D2 of the *Kirklees Unitary Development Plan* which seek to take into the account the effects of noise on new residential development and to ensure that it does not prejudice residential amenity. This is consistent with guidance within the *National Planning Policy Framework* which seeks to ensure a good standard of amenity for all future occupiers of land or buildings.
10. Therefore, having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Anne Jordan*

INSPECTOR

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## Appeal Decision

Site visit made on 27 April 2015

**by Jonathan Hockley BA(Hons) DipTP MRTPI**

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

**Decision date: 13 May 2015**

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**Appeal Ref: APP/Z4718/W/14/3001640**

**17 Blacker Road, Huddersfield HD1 5HU**

- 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 Sirwan Mustafa against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2014/62/93152/W, dated 30 September 2014, was refused by notice dated 20 November 2014.
  - The development proposed is the change of use from A1 to A5 and erection of ventilation fan to rear all in conservation area.
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use from A1 to A5 and erection of ventilation fan to rear all in conservation area at 17 Blacker Road, Huddersfield HD1 5HU in accordance with the terms of the application, Ref 2014/62/93152/W, dated 30 September 2014, subject to the following condition:
  - 1) Within 3 months of the date of this decision, a scheme for the installation of equipment to control the emission of fumes, smell, and noise from the premises shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include full details of any equipment already installed at the premises. The scheme as approved shall be implemented within 1 month of written approval. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions at all times.

### Main Issues

2. I consider the main issues in this case to be as follows:
  - The effect of the proposal on the vitality and viability of the Birkby Local Centre.
  - The effect of the proposal on the living conditions of nearby residents, with particular regard to noise and odours.

### Reasons

#### *Vitality and viability*

3. The Birkby local centre is based around the junction of Blacker Road and St Johns Road/Wheathouse Road. There is a particular concentration of retail uses located along the south side of Blacker Road to the north east of this

junction, where the appeal site is located. Blacker Road in this area is only open to vehicle traffic in one direction, and is a busy, bustling street. At the time of my site visit the proposal had been implemented and the A5 hot food takeaway (HFT) was in use.

4. Policy S14 of the Kirklees Unitary Development Plan, 2007 (the UDP), states that proposals for HFTs, if they are located within a local centre, will be considered having regard to their effect on the retail mix or balance of the centre. The Council state that 11, or 18.3% of the shops in the Birkby Local Centre are hot food takeaways, and that the unit would increase the number to 12, or 20%. The Council's Policy Officer states that this would increase the balance of service uses in the centre to a level which "may" be detrimental to the retail mix and balance.
5. At my site visit I noted that HFTs were concentrated in the area of Blacker Road which was only open to 1 way traffic; between the junction of Blacker Road and St Johns Road/Wheathouse Road and the split where northbound traffic is diverted to use Filbert Street I noted 9 shop units, none of which were in use as HFTs; after the introduction of one way traffic control there are 19 units, of which 6 were in use as HFTs (including the appeal site). Nevertheless, I noted that there was still a reasonable mix of uses within the street and the wider area. Whilst the level of HFTs in the direct area was fairly high, this section of the centre was noticeably more busy than the surrounding area, and it was clear from my visit that during the middle of the day that this area of the local centre was bustling. I do not consider therefore that the change of use has adversely affected the vitality and viability of the centre.
6. The Council note that Policy S11 of the UDP is a useful guide when considering retail mix and balance. This policy states that service uses will normally be permitted where, amongst other criteria, it would result in not more than 33% of the frontage being in non-shopping use. The Council consider that, prior to the use being implemented, 35% of the units were in service use, and the unit would exacerbate this further. However, this policy only applies to designated primary shopping frontages. The appeal site does not lie within such a frontage and the policy does not therefore apply. Notwithstanding this, the unit has led to 37% of the units within the local centre being in non-service uses. This is not significantly over the 33% guide and seems reasonable for a non-primary shopping frontage area, where shopping uses may be harder to attract.
7. I therefore conclude that the change of use has not led to an adverse effect on the vitality and viability of the Birkby Local Centre. In this respect the proposal complies with Policy S14 of the UDP. The proposal also complies with the National Planning Policy Framework, which states that planning decisions should promote strong neighbourhood centres and active street frontages.

#### *Living conditions*

8. The ground floor uses of the south side of Blacker Road are generally retail uses. It is not clear from the evidence or the plans provided if the upper floors are residential in nature or are uses ancillary to the ground floor. Filbert Street runs behind the rear of the appeal site. This street has a distinctly commercial feel, with a large wall of a industrial/commercial building running along its southern side, and the rear of the Blacker Road units on the northern side. The



rear yards of these units are commercial in nature, housing waste storage areas, bounded with dwarf walls and high metal railings.

9. The unit has a large stainless steel ventilation flue located on its rear elevation, located directly adjacent to a flue used for the adjacent unit. Whilst the unit has led to a run of 3 HFTs located in a row, there is no evidence that this has led to issues locally with noise and odour generation. Blacker Road is a busy street, where noise from traffic may be expected well into the evenings and it is reasonable to assume that any local residents may be inured to a certain degree against some local noise. The Council's report states that noise and odours from the ventilation system could be controlled by condition, and although the flue is already in place I see no reason why this condition could not be modified and implemented retrospectively to ensure that the equipment installed meets the necessary standards and safeguards the living conditions of any local residents.
10. I therefore conclude that the proposal, with the imposition of a suitable condition, would not have an adverse effect on the living conditions of nearby residents, with particular regard to noise and odours. The proposal complies with Policy S14 of the UDP.

#### *Other Matters*

11. The unit lies within the Birkby Conservation Area. The BCA covers a large area, and in the area of the appeal site is characterised by a mix of commercial and residential uses. The change of use has brought into use a unit on the Blacker Road frontage and has effected a visual change to the rear of the building, in the shape of the installed ventilation flue. However, this flue is seen in the context of the commercial nature of the rear of the properties on Filbert Street and is sited in between 2 existing flues. I therefore agree with the Council that the flue has a neutral effect on the character or appearance of the BCA. I have had regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. In this respect I am satisfied that the change of use and ventilation flue would preserve these interests.
12. A local resident raises concerns over local highways conditions. As mentioned above, Blacker Road is only open to motorised traffic heading in a south bound direction. Whilst the road is busy, parking bays are located down both sides of the street and the site is located in a sustainable area with good access to public transport. I do not consider that the use of the site for a HFT would lead to adverse effects on the local highway. I also note in this respect that the Council's Highways Officer acknowledges existing issues with traffic and parking problems in the area but considers that the unit would not have a substantial effect on this existing situation.

#### **Conditions**

13. The Council have recommended 4 conditions in the event of an approval, relating to implementation, compliance with plans, details of the ventilation system, and of any external lighting. Given the fact that the unit is already in place and operating, conditions relating to compliance with plans and implementation are not necessary.

14. As stated above, I agree with the condition requiring details of the ventilation system to be agreed, in the interests of the living conditions of any nearby residents. I have, however, altered this condition to take account of the fact that the unit is in operation. I do not consider that the condition requiring details of stray light and glare is necessary or reasonable in such a busy neighbourhood centre.
15. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Jon Hockley*

INSPECTOR