

**From:** Chris Dobson <ChrisDobson@rossendalebc.gov.uk>  
**Sent:** 02 December 2021 12:58  
**To:** Steven Hartley  
**Subject:** FW: Your Ref: APP/B2355/D/21/3284814 Our Ref: 2021/0463 - 42 New Way

Hi Steven,

Please see below E-Mail sent to the case officer at the planning inspectorate yesterday in relation to 42 New Way. As stated below the Council no longer wish to contest the appeal. Having spoken with the case officer this morning her advice was that there would be no need to complete the questionnaire which is due today and she has made a note of this on her system. She has asked her line manager for confirmation on the best way for the approval decision notice to be issued however I am happy for us to agree a way forward to allow this to happen.

Regards,  
Chris

---

**From:** Chris Dobson  
**Sent:** 01 December 2021 16:00  
**To:** 'APOCT1@planninginspectorate.gov.uk' <APOCT1@planninginspectorate.gov.uk>  
**Subject:** Your Ref: APP/B2355/D/21/3284814 Our Ref: 2021/0463 - 42 New Way

Good Afternoon Latoya,

Hope you are well. I write in relation to an appeal that has been submitted by the applicant in relation to 42 New Way in Whitworth under your reference APP/B2355/D/21/3284814. The decision notice on the original application stated the following as the reason for refusal:

*“Insufficient information has been submitted to demonstrate that all the land enclosed within the submitted red edge location plan can be lawfully used for residential purposes or be recognised as lawful residential curtilage. The proposed application is therefore contrary to the National Planning Policy Framework and Policy 24 of the Core Strategy.”*

Since the refusal decision was issued the Council has been provided with additional information from the applicants agent which shows the land in question is owned by the occupants of N.42 New Way by the submission of a conveyance dated August 1975 as well as the land registry website now being updated to show this. Previously this was shown as being unregistered land. Whilst this does not amount to proof that the land in question falls within the residential curtilage of the property following a review of the application the Council would not wish to contest the appeal as we no longer believe significant harm would be caused by the red edge as currently shown and the development work proposed as part of the application is considered acceptable.

Please could you therefore confirm how we can proceed to issue the approval notice for the application and if the questionnaire (which is due tomorrow) would still be required to be submitted?

Thank you,

Chris Dobson  
Trainee Development Management Officer - Enforcement

Rossendale Borough Council  
Telephone: 01706 238639  
Website: [www.rossendale.gov.uk](http://www.rossendale.gov.uk)



---

#### Disclaimer

The information contained in this communication from [chrisdobson@rossendalebc.gov.uk](mailto:chrisdobson@rossendalebc.gov.uk) sent on 2021-12-02 at 12:57:54 is confidential and may be legally privileged. It is intended solely for use by [js.hartley@outlook.com](mailto:js.hartley@outlook.com) and others authorised to receive it. If you are not [js.hartley@outlook.com](mailto:js.hartley@outlook.com) you are hereby notified that any disclosure, copying, distribution or taking action in reliance of the contents of this information is strictly prohibited and may be unlawful.

As a public body, Rossendale Borough Council may be required to disclose this email or any response to it under the Freedom of Information Act 2000, unless the information in it is covered by one of the exemptions in the Act. Please immediately contact the sender if you have received this message in error. If you are not the intended recipient, please contact us immediately, delete the message from your computer and destroy any copies. Internet communications are not always secure and therefore Rossendale Borough Council does not accept legal responsibility for this message. The recipient is responsible for verifying its authenticity before acting on the contents. Any views or opinions presented are solely those of the author and do not necessarily represent those of Rossendale Borough Council.

Rossendale Borough Council, Futures Park, Bacup, Rossendale, OL13 0BB  
Website Address: [www.rossendale.gov.uk](http://www.rossendale.gov.uk)  
Twitter: @RossendaleBC  
Facebook: Rossendale Borough Council  
Telephone 01706 217777

---



# The Planning Inspectorate

Costs & Decisions Team

3B Eagle  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

Direct Line: 0303 444 5601  
Customer Services: 0303 444 5000

---

Mr Steven Hartley  
Swallow Barn  
Hurst Lane  
Rossendale  
Lancashire  
BB4 8TB

Your Ref:  
Our Ref: APP/B2355/D/21/3284814  
Date: 31 August 2022

---

Dear Mr Hartley

**Local Government Act 1972 - Section 250(5)**  
**Town and Country Planning Act 1990**  
**Appeal by Mr Josh Law**  
**Site Address: 42 New Way, Whitworth, Rochdale, OL12 8AN**

## **APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Levelling Up, Housing and Communities ("the Secretary of State") to decide your application for an award of costs, on behalf of the appellant, made on 13 October 2021 against Rossendale Borough Council ("the Council"). The appeal was withdrawn on 5 January 2022 and the Inspectorate confirmed the withdrawal on 11 January 2022.
2. The appeal was against the Council's decision of 6 October 2021 to refuse planning permission for a single storey rear extension and two storey extension to front elevation. The reason for refusal was "*Insufficient information has been submitted to demonstrate that all the land enclosed within the submitted red edge location plan can be lawfully used for residential purposes or be recognised as lawful residential curtilage. The proposed application is therefore contrary to the National Planning Policy Framework and Policy 24 of the Core Strategy.*"
3. The Council responded to your costs application on 3 December 2021 and your final comments were made on 6 December 2021. However, as these submissions were received before the withdrawal of the appeal, the Secretary of State accepted further comments from the parties as a result of the withdrawal. I am sorry for the delay in deciding the application.

## **DECISION**

4. The application is allowed and a full award of costs, on grounds of unreasonable behaviour resulting in unnecessary or wasted expense, is justified.

### **Basis for determining the costs application**

5. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. PPG says that the withdrawal of any reason for refusal may give rise to a procedural award against a Council. The PPG goes on to say that Councils are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:
  - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
  - failure to produce evidence to substantiate each reason for refusal on appeal.
6. The Council refused the application because insufficient information had been submitted to show that all the land enclosed within the submitted red edge location plan could be lawfully used for residential purposes or be recognised as lawful residential curtilage. The Council felt that the location plan should place the red edge around the property and all the curtilage to the east of Tong End Brook, and the land to the west of Tong End Brook should be edged by a blue line. After the Council's decision was appealed the appellant provided further documentary evidence showing that the land to the west of Tong End Brook was owned by the appellant. The land registry website was also updated from stating the land in question was 'unregistered' to being shown to be owned by the appellant. Following a review of the application the Council decided that the red edged location plan as submitted was acceptable and that no significant harm would occur from the acceptance of the location plan; the Council therefore no longer contested the appeal. A further application for the same development (2021/0680) was subsequently made; this was granted planning permission by the Council and the appeal was withdrawn.
7. PPG says that the application site should be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings). A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site. PPG also says that applicants must complete a certificate that gives details about the ownership of the application site.
8. The appellant certified that nobody except the appellant owned any part of the land to which the appeal relates. The PPG does not say that the purpose of the red line is to define or solely to contain the curtilage. Although there was a change in circumstances in the form of the evidence that the land to the west of Tong End Brook had been formally registered within the ownership of 42 New Way, the Council accepts that registration only confirms ownership and does not define the residential curtilage. The Council also concedes that the matter of ownership was not raised in its reason for refusal. Therefore, it seems that the application was refused planning permission solely because the land was unregistered at the time, irrespective of ownership. The subsequent registering of the land satisfied the Council that no harm would be caused by the development. Therefore,

although the Council's reason for refusal had not apparently been satisfied, it nevertheless went on to grant planning permission for the same development. It follows that, by withdrawing its objections to the development, the Council no longer opposed the inclusion of land to the west of Tong Brook End within the red line. In granting planning permission for the same development the Council concluded that the development would not cause any planning harm as it would not unduly detract from visual and neighbour amenity or highway safety. The Secretary of State accepts the appellant's contention that this is a decision the Council could have reached when determining the appeal application as there had been no physical change in the application site or in the proposed development.

9. Furthermore, the Council's decision notice refers to the non-compliance of the proposed development with Policy 24 of its Core Strategy (Planning Application Requirements) and the National Planning Policy Framework. However, neither Policy 24 nor the National Planning Policy Framework refer to the main issue in the reason for refusal.
10. The Secretary of State concludes that the Council behaved unreasonably in refusing planning permission for the reasons given in its decision notice of 6 October 2021, by withdrawing its objection to the application, and then in granting planning permission for the same development where there was no change in the evidence relating to whether the development would cause planning harm. The Secretary of State therefore considers that, in appealing the Council's refusal of permission, the appellant incurred unnecessary or wasted expense and a full award of the appellant's appeal costs will therefore be made.

## **COSTS ORDER**

11. Accordingly, the Secretary of State for Levelling Up, Housing and Communities, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 174 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling him in that behalf, HEREBY ORDERS that Rossendale Borough Council shall pay to Mr Josh Law his costs of the appeal proceedings before the Secretary of State, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in paragraph 2 of this letter.
12. You are now invited to submit, on behalf of the appellant, details of those costs to Rossendale Borough Council with a view to reaching an agreement on the amount.
13. A copy of this letter has been sent to Rossendale Borough Council.

Yours sincerely

*Richard Holland*

Authorised by the Secretary of State  
to sign in that behalf

**Appeal against the decision of Rossendale Borough Council for the refusal of a householder application for the remodelling of an existing dwelling, including a single storey rear extension and a 2-storey extension to the front elevation.**

**42 New Way, Whitworth, OL12 8AN**

Application 2021/0463

- 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. J Law against the decision of Rossendale Borough Council.
- The application Ref 2021/0463, received on 11 August 2021, was refused by notice dated 6 October 2021.
- The proposed development is for the remodelling of an existing dwelling, including a single storey rear extension and a 2-storey extension to the front elevation.

**The proposed development**

42 New Way forms part of a mostly 'chalet' style development constructed in the early 1970's. Several of such dwellings have been altered over the intervening years, though no 42 remains largely as built and includes 2 no bedrooms. However, it has deteriorated in its appearance.

The proposed development is to refurbish it and to include a single storey extension along the length of the rear elevation and to add a two-storey gable addition to the front elevation. It would include 4 no. bedrooms.

It is within the Urban Boundary, as saved as part of the adopted Core Strategy 2011(CS) and within which policy 1 aims to contain most new development.

## **Matters not in dispute**

In its officer report, the local planning authority (LPA) finds that the design and appearance of the dwelling, including the proposed extensions would be acceptable, nor would there be any harm to the residential amenities of nearby residents, or to the character and appearance of the area. The Highway Authority raises no objections, nor does the Whitworth Town Council or any of the neighbours: -

### *4. CONSULTATION RESPONSES*

*LCC Highways – No objections*

*Whitworth Town Council – No objections*

### *5. NEIGHBOUR NOTIFICATION RESPONSES*

*To accord with the General Development Procedure Order letters were sent to neighbours and a site notice posted.*

*No comments/objections received'*

#### *'1) Principle*

*The site is located within the urban boundary; therefore, an extension to this residential property would usually be acceptable in principle'*

#### *'2) Visual Amenity*

*The proposals are considered acceptable in terms of visual appearance'.*

#### *'3) Neighbour Amenity*

*The proposals are therefore considered acceptable in terms of neighbour amenity.'*

#### *4) Access/Parking*

*The proposals would result in the increase of bedrooms at the property to four. The Council's adopted car parking standards state that for a four bedroom property, three off-street car parking spaces are required. The submitted plans have demonstrated these to be available within the curtilage of the property. In addition to this LCC Highways have not raised any objections to the proposals'.*

## **The Main Issue**

The main issue is the extent of the red edge upon the site location plan.

The red edge on the submitted plan includes land in the immediate ownership of the owner of the appeal property and with which it is associated. It includes land to the north and west of a small rivulet which crosses the back amenity space of the dwelling.

The LPA considers that *'insufficient information has been submitted to demonstrate that all the land enclosed within the submitted red edge location plan can be lawfully used for residential purposes or be recognised as lawful residential curtilage'*

The officer report clarifies the above reason for refusal and states: -

*'As of the 4th October 2021 the land in question to the west of Tong End Brook remains unregistered with the Land Registry and the Council have not been provided with any evidence to substantiate claims by the applicant and their Planning Agent that this land is within the ownership of No.42 New Way. Planning Officers, therefore, consider that insufficient information has been submitted to demonstrate that all the land as enclosed within the red edge location plan currently submitted is lawfully classified as residential curtilage associated to the property of No.42 New Way'.*

The appellant has recently bought the house and all the land within the submitted red edge on the submitted location plan.

There are conveyances relating to the land to the west of the stream dated 18 August 1974 (the vast majority of it) and 21 August 1994 ( a tiny triangular corner). A copy of the 1974 conveyance (including plan) is submitted with the appeal. It confirms at paragraph 1 that the land was purchased by the owners of 42 New Way (ie the appeal property). It would seem that the transaction was not Registered with the Land Registry at that time, probably because compulsory registration was not introduced until after this date.



While the LPA states that as at 4 October this land was unregistered with the Land Registry, such an application was lodged on 14 June 2021 and the completion of the registration is dated 7 October 2021. A copy of the registration is submitted with the appeal.

This should be sufficient to remove the reason for the refusal of the application by the LPA and which was based on a lack of evidence that the *'Council have not been provided with any evidence to substantiate claims by the applicant and their Planning Agent that this land is within the ownership of No.42 New Way'*.

In fact, prior to the issuing of the Decision Notice, we wrote to the LPA on 24 September 2021 stating that the land over the river was with the Land Registry for registration purposes, in the name of the appellant, and that it had been used for many years as private amenity space by the previous owners.

The officer report clarifies that the question of land ownership is central to the LPA's reason for refusal, making it, in its opinion uncertain as to whether it can be in use for residential purposes or part of the curtilage to the appeal property.

However, the LPA validated this householder application with its signed certificate A stating that all the land forming the application was owned by the appellant. At no time did it refuse to determine the application because of any reason connected to the certification.

The LPA did ask us to amend the red edge of the location plan to include the land to the west of the stream with a blue edge to denote ownership, albeit not curtilage land to the dwelling. We decided not to do so as we consider that the red edge as drawn meets the purpose of a red edge plan and because the red edge is not meant to define the curtilage to a property, as the LPA believes.

Planning Practice Guidance (PPG) states as follows under 'Making an application': -

*'What information should be included on a location plan?'*

*A location plan should be based on an up-to-date map. The scale should typically be 1:1250 or 1:2500, but wherever possible the plan should be scaled to fit onto A4 or*

*A3 size paper. A location plan should identify sufficient roads and/or buildings on land adjoining the application site to ensure that the exact location of the application site is clear.*

*The application site should be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (eg land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings). A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site.*

*Paragraph: 024 Reference ID: 14-024-20140306*

*Revision date: 06 03 2014'*

The Council's Validation checklist is reflective of the above: -

*'Required plans*

*(a) Location Plan (a plan which identifies the land to which the application relates)*

*The location plan should clearly identify the application site. The application site should be edged clearly with a red line. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings.) A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site'.*

The LPA assumes that the land beyond the stream is not part of the curtilage to the property and for this reason should not be included within the red edge.

But advice in the PPG and in the Council's own Validation checklist does not limit the red edge to 'curtilage land' (Even though it is). The documents say it should include 'all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings'.

We have included the land to the north and west of the stream in the red edge, not only because of the above reference to 'open areas around buildings' owned by the

appellant as part of his amenity space but so that, if necessary, the LPA had the opportunity to consider any necessary landscaping around its perimeter, given that it is surrounded by other dwellings

There is nothing to prevent land being included in the red edge which is not curtilage land or even amenity space. (Even though we believe it is both).

If the LPA considers that any of the land included within the submitted red edge is not part of the curtilage (or amenity space) and is being used as such, it has enforcement powers available to it.

The application is not made to define the curtilage of the property (and there is no reason why the land within the red edge automatically must all be curtilage land). Not only are there no reasons to exclude the land to the west of the stream from the red edge of the location plan, but there is, as explained above, a reason for its inclusion.

While the LPA, in its decision notice refers to the non-compliance of the proposed development with policy 23 of the Rossendale Core Strategy 2011 (CS) concerning 'Planning Application Requirements', this makes no reference to the Main Issue. Neither does the National Planning Policy Framework (2021) (the Framework) and quoted by the LPA as a reason for refusal.

For the above reasons we ask that the appeal be allowed.

Steven Hartley BA(Hons), Dist.TP (Manc), DMS, MRTPI, MRICS

HP and DA Ltd

October, 2021