

TEWKESBURY BOROUGH COUNCIL

Report to:	Planning Committee
Date of Meeting:	31 August 2017
Subject:	Current Appeals and Appeal Decisions Update
Report of:	Paul Skelton, Development Manager
Corporate Lead:	Robert Weaver, Deputy Chief Executive
Lead Member:	Cllr Mrs E J MacTiernan, Lead Member for Built Environment
Number of Appendices:	None

Executive Summary:

To inform Members of current Planning and Enforcement Appeals and of Communities and Local Government (CLG) Appeal Decisions issued

Recommendation:

To **CONSIDER** the report

Reasons for Recommendation:

To inform Members of recent appeal decisions

Resource Implications:

None

Legal Implications:

None

Risk Management Implications:

None

Performance Management Follow-up:

None

Environmental Implications:

None

1.0 INTRODUCTION/BACKGROUND

1.1 At each Planning Committee meeting, Members are informed of current Planning and Enforcement Appeals and of Communities and Local Government (CLG) Appeal

Decisions that have recently been issued.

2.0 APPEAL DECISIONS

2.1 The following decisions have been issued by the First Secretary of State of CLG:

Application No	16/00034/FUL
Location	Land adj. Rudgeley House, Cold Pool Lane, Badgeworth, Glos, GL51 4UP
Appellant	Mr Danny Connors
Development	Change of use of land for 2 traveller pitches, 2 mobile homes, 2 utility day rooms and 2 touring caravans for nomadic use only
Officer recommendation	Refuse
Decision Type	Delegated
DCLG Decision	Dismissed
Reason (if allowed)	<p>The Inspector concluded that the proposal would be inappropriate development in the Green Belt and agreed with the Council that as a result of the development the site's contribution to openness had largely been lost and the integrity of the green belt seriously compromised. The Inspector also agreed with the Council that the effect of the unauthorised works, and the domestication of the site had been to completely change the site's character, to that of a developed suburban garden, concluding that "As such, the appearance of the development is alien to its surroundings, and incompatible with the unspoilt and undeveloped character of this rural area". It was concluded that these considerations weighed heavily against the development.</p> <p>The Inspector also agreed with the Council that the site was poorly located for accessibility to schools, shops, and any other local facilities, and that the occupants of the proposed development would therefore be likely to be largely dependent on less sustainable transport modes such as the private car for the majority of journeys, contrary to the aims of National and development plan policy.</p> <p>Against the harms identified above, the Inspector recognised that the Council had an unmet need for gypsy and traveller sites and a lack of a five year supply of deliverable sites. Although he was satisfied that the shortfall in terms of identified deliverable sites was fairly small, and that there was a reasonable prospect that this could be made up through windfalls over the JCS period.</p> <p>In concluding the Appeal the Inspector acknowledged the serious implications of refusing the application for the occupiers of the site and their children, but concluded that the protection of the green belt, the recognition of the countryside's intrinsic beauty, and managing patterns of development to achieve greater sustainability, are all core principles of the NPPF and that these core principles could only realistically be secured by refusing permission. Consequently, he found that the identified</p>

	benefits of the development, to the site occupiers and their children, and to the supply of sites in the area generally, were not sufficient to clearly outweigh the harm that the development would cause. The very special circumstances that are required by paragraph 88 had therefore not been demonstrated. Having taken account of all the other matters raised, the Inspector concluded that the conflict with the development plan was not outweighed by the other material planning considerations.
Date	26 July 2017

Application No	16/01113/FUL
Location	Uphill Cottage, Churchdown Lane, Churchdown, Gloucestershire, GL3 2LR
Appellant	Mr Robert Mann
Development	Demolish existing derelict 'corrugated zinc' garage. Erect a detached outbuilding associated with Bee keeping (i.e. for honey preparation and storage).
Officer recommendation	Refuse
Decision Type	Delegated
DCLG Decision	Dismissed
Reason (if allowed)	<p>The Inspector agreed with the Council that the proposed building would represent inappropriate development in the Green Belt and would result in harm to its openness.</p> <p>Whilst the Inspector accepted that the loss of openness to the Green Belt would be modest, that reduction in openness would be at odds with the thrust of both national and local Green Belt policy and this had to weigh against the appeal proposal.</p> <p>In considering whether very special circumstances existed to outweigh the harm to the Green Belt by reason of inappropriateness and the loss of openness, the Inspector gave very limited weight to the prospective improvements to the appellant's beekeeping enterprise, as no firm justification has been given for a building of this size and type, at this location and he was not persuaded that they amounted to anything significant to counterbalance the harm</p>
Date	31 July 2017

Application No	16/00860/FUL
Location	Land at Hillview Stables Bushcombe Lane Woodmancote Cheltenham

Appellant	Mr James Duggan
Development	Erection of a single dwelling
Officer recommendation	Permit
Decision Type	Committee - Refuse
DCLG Decision	Allowed
Reason (if allowed)	<p>The Inspector considered that that the proposal would not result in harmful effects on the AONB's landscape and scenic beauty and it would therefore accord with the Framework objectives to conserve and enhance the natural environment. He felt that the site represents only a very small part of the wider protected landscape and it is within an area less sensitive to change than the higher escarpment land.</p> <p>In determining the appeal the Inspector concluded that Policy HOU4 of the Local Plan is out-of-date and that the presumption in favour of sustainable development applied. He thus gave limited weight to Policy HOU4 even though a five year housing supply could be demonstrated. However Officer's initial view is that in doing so the Inspector misdirected himself having regard to the law which has been clarified through a recent Supreme Court judgment involving two separate developments, known as the Richborough Estates/Suffolk Coastal judgment.</p> <p>This judgment clarified that policies for the supply of housing were effectively those which allocated land for development. On the other hand, policies of countryside protection etc. (such as HOU4 which seeks to protect the countryside for its own sake and encourage sustainable patterns of development) were not policies for the supply of housing. In this respect it is not considered that Policy HOU4 is a policy for the supply of housing and as such is not out of date. It is a policy which is consistent with the NPPF and should be given substantial weight.</p> <p>The Inspector however made no reference to this judgment in his decision and appears to have followed the law as it was understood before this judgement was given.</p>
Date	04 Aug 2017

Application No	16/00417/OUT
Location	Land rear of Dormans Mill Lane Prestbury GL52 3NE

Appellant	Gleeson Developments Ltd
Development	Residential development of up to 76 dwellings with the creation of a new access to Southam Road (BH4632 together with an emergency, pedestrian and cycle link to Mill Lane, associated landscaping, and public open space.
Officer recommendation	Refuse
Decision Type	Committee - Refuse
DCLG Decision	Dismissed
Reason (if allowed)	<p>In dismissing the appeal, the Inspector found that that the development would be contrary to the development plan as a whole and would not amount to sustainable development. This was because of the environmental harm to the Special Landscape Area which he agreed was a valued landscape which protects the foreground setting of the AONB.</p> <p>The Inspector considered that the Appellant had significantly overplayed the impact of urban features on the character of the area and underplayed the impact of the proposed development. The appellant argued that the development would be well related to the urban form of Prestbury however the Inspector agreed with the Council and the local protest group that it would contrast unacceptably with the low density character of development on the southern side of Mill Lane. He opined that while there is sporadic development to the north of Mill Lane, this is very limited in extent, and related more to the countryside character of the area rather than to the built-up area of Prestbury.</p> <p>The Inspector further concluded that the proposal would have an unacceptable impact on the setting of heritage assets, including the rural setting of the Prestbury Conservation Area afforded by the existing site and to the 'parkland' setting of the Grade II listed 'The Hayes'. Overall the Inspector concluded that the benefits of the scheme would not outweigh the harm, and that the appeal should be dismissed.</p> <p>In this case however the Inspector did have regard to the Richborough Estates/Suffolk Coastal Supreme Court judgment referred to above. He acknowledged that the Council could demonstrate a five year supply of deliverable housing sites, agreeing with the Council's evidence. However the Inspector proceeded to give limited weight to policy HOU4 on the basis that housing need as identified in the emerging JCS will require substantial changes to existing development boundaries and that if the acknowledged housing objectives for the JCS Boroughs are to be achieved.</p>
Date	15 Aug 2017

Application No	16/00539/OUT
-----------------------	--------------

Location	Trumans Farm Manor Lane Gotherington GL52 9QX
Appellant	Lioncourt Strategic Land
Development	Outline application with all matters reserved except for access for the development of up to 75 dwellings (inc 30 affordable homes) including access, landscaping and other associated works
Officer recommendation	Delegated Permit
Decision Type	Committee - Refuse
DCLG Decision	Dismissed
Reason (if allowed)	<p>The Inspector shared 'the views of Council Members' that the appeal proposal would encroach into the SLA which is already relatively narrow at this point and would significantly reduce the gap between the village and the AONB. Whilst he acknowledged that new planting was proposed, he felt this would not serve to offset the landscape harm he identified. The proposed development would also be at odds with the generally linear form of the existing village at its eastern end, and as is proposed to be continued by the 10 dwelling development put forward in the GNDP for the northern side of Gretton Road, opposite the appeal site.</p> <p>In respect of social cohesion/well-being, the Inspector concluded that, bearing in mind the concerns expressed by both the Council and the Parish Council on this matter, he was not persuaded that the appeal proposal would reflect the community's needs and support its health, social and cultural well-being, or contribute to supporting a strong, vibrant and healthy community, as set out in paragraph 7 of the Framework. On balance therefore, he concluded that the appeal proposal would have an adverse effect on the vitality and social well-being of Gotherington, with this failure to satisfy the social role of sustainable development carrying significant weight against the proposal.</p> <p>Another day, another Inspector, another decision...we then had yet another take on the five year supply position. Here the Inspector agreed that the Council could demonstrate a five year supply of deliverable housing sites however unlike his colleague who dismissed the Prestbury appeal, he gave substantial weight to policy HOU4.</p> <p>Notwithstanding this, the Inspector concluded that the presumption in favour of sustainable development (aka the 'tilted balance') did come in to play here as Policy LND2 (Special Landscape Areas) was not up to date as it is not fully consistent with the NPPF. This again was not consistent with the views of the Inspector at Prestbury. There, the Inspector concluded that the first part of policy LND2 is consistent with the advice in Paragraph 109 of the Framework, and attracts considerable weight.</p> <p>These three appeal decisions at Woodmancote,</p>

	Prestbury and Gotherington indicate that there is inconsistency amongst planning inspectors as to the proper application of the law in respect of determining the weight that should be attributed to various planning policies. It is accepted that weight is a matter for the decision-maker however appeal decisions are made in the name of the Secretary of State and the inconsistency of approach between Inspectors does not help all those involved in dealing with planning applications both in Tewkesbury Borough and across the country.
Date	15.08.2017

3.0 ENFORCEMENT APPEAL DECISIONS

3.1 None to report

4.0 OTHER OPTIONS CONSIDERED

4.1 None

5.0 CONSULTATION

5.1 None

6.0 RELEVANT COUNCIL POLICIES/STRATEGIES

6.1 None

7.0 RELEVANT GOVERNMENT POLICIES

7.1 None

8.0 RESOURCE IMPLICATIONS (Human/Property)

8.1 None

9.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

9.1 None

10.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

10.1 None

11.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

11.1 None

Background Papers: None

Contact Officer: Jane Bagley, Appeals Administrator
01684 272286 Jane.Bagley@teWKesbury.gov.uk

Appendices: None