

# TEWKESBURY BOROUGH COUNCIL

<b>Report to:</b>	Planning Committee
<b>Date of Meeting:</b>	3 May 2018
<b>Subject:</b>	Current Appeals and Appeal Decisions Update
<b>Report of:</b>	Paul Skelton, Development Manager
<b>Corporate Lead:</b>	Robert Weaver, Deputy Chief Executive
<b>Lead Member:</b>	Cllr E J MacTiernan, Lead Member for Built Environment
<b>Number of Appendices:</b>	1

<b>Executive Summary:</b> To inform Members of current Planning and Enforcement Appeals and of Communities and Local Government (CLG) Appeal Decisions issued.
<b>Recommendation:</b> <b>To CONSIDER the report</b>
<b>Reasons for Recommendation:</b> To inform Members of recent appeal decisions

<b>Resource Implications:</b> None
<b>Legal Implications:</b> None
<b>Risk Management Implications:</b> None
<b>Performance Management Follow-up:</b> None
<b>Environmental Implications:</b> 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:

<b>Application No</b>	17/00397/PDAD
<b>Location</b>	Bluebell Farm Cold Pool Lane Badgeworth Cheltenham Gloucestershire GL51 4UP
<b>Appellant</b>	Mr & Mrs D Hunt
<b>Development</b>	Prior approval for the conversion of agricultural barn into two dwellings including associated building works as permitted under the order
<b>Officer recommendation</b>	Refuse
<b>Decision Type</b>	Delegated Decision
<b>DCLG Decision</b>	Allowed
<b>Reason</b>	<p>The main issue was whether the operational development proposed would align with the overarching provision of Schedule 2, Part 3, Class Q of the GPDO in that the scheme constitutes the conversion of a building.</p> <p>The Inspector considered that the operational development proposed would not go beyond the scope of what could reasonably be considered to be a conversion of the building and therefore the Inspector considered that the proposed development meets all the relevant criteria contained within Schedule 2, Part 3, Class Q of the GPDO and that the appeal should be allowed and prior approval granted.</p> <p>This is a disappointing conclusion from the Inspector as his judgment appears to be at odds with other decisions received by the Council and with most recent case law on the issue.</p>
<b>Date</b>	21.03.2018

<b>Application No</b>	17/00785/FUL
<b>Location</b>	82 Gretton Road Winchcombe Cheltenham GL54 5EL
<b>Appellant</b>	Mr & Mrs Lee
<b>Development</b>	Variation of Condition 2 (Approved plans) and Condition 13 (Levels) and removal of Condition 1 (Commencement period), Condition 3 (Materials), Condition 8 (Site operatives parking), Condition 9 (Drainage), Condition 10 (Landscaping), Condition 12 (Boundary treatments) of planning permission no. 15/00295/FUL in order to regularise the development as implemented on site.
<b>Officer recommendation</b>	Permit
<b>Decision Type</b>	Committee Decision
<b>DCLG Decision</b>	Allowed
<b>Reason</b>	<p>The application was refused on the grounds that the dwelling as constructed has adversely impact the quality of the design which has subsequently impacted the character and appearance of the area and the living conditions of neighbouring residents.</p> <p>In allowing the appeal the inspector advised that the key consideration were whether the development as now proposed is acceptable rather than whether one version amounts to a preferable design.</p> <p>In terms of design, the inspector considered that the increased floor level is not apparent from nearby roads but can be seen from some private views from adjoining properties.</p> <p>The land level changes have resulted in surrounding properties being set at different levels.it is not uncommon that floor levels of properties are raised above the ground level and the finished floor level in the appeal property has only been increased modestly above the approved scheme.</p> <p>The increased parapet height, and reduction in the window sizes has changed the solid to void ratio. However, the overall appearance of the dwelling is well proportioned. While the overall height of the dwelling has been increased by over 1m, this is seen in the context of the surrounding residential properties where some roof heights sit significantly above the appeal dwelling.</p> <p>The inspector concluded that the development, as built, does not have a harmful effect on the character or appearance of the area.</p> <p>In terms of amenity, the inspector advised that the higher floor level and new boundary fence have no adverse material impact in terms of increasing the levels of overlooking to neighbouring properties, overbearing impacts or loss of light.</p>

	The inspector concluded that the variations from the approved scheme have not resulted in inadequate living conditions for the occupiers of the neighbouring properties.
<b>Date</b>	21.03.2018

<b>Application No</b>	17/00303/FUL
<b>Location</b>	Sunset Sunset Lane Southam Cheltenham GL52 3NL
<b>Appellant</b>	Mr Edwards
<b>Development</b>	Demolition of existing house and erection of a 2 storey, 5 bedroom contemporary dwelling
<b>Officer recommendation</b>	Refuse
<b>Decision Type</b>	Delegated Decision
<b>DCLG Decision</b>	Dismissed
<b>Reason</b>	<p>The application was refused due to the unjustified loss of a non-designated heritage asset and the erosion of the scenic beauty of the AONB from the proposed new dwelling.</p> <p>The Inspector concluded that the existing dwelling has a traditional appearance, despite the recent extensions and it sits comfortably within its plot. The proposed dwelling would be larger in terms of width and depth, which would result in a dominant and strident structure. The contemporary nature of the design would draw attention to it as it would stand out from adjacent residential dwellings. The use of local materials would not mitigate from this.</p> <p>Whilst additional landscaping was proposed, the Inspector considered that it would not adequately filter the views to mitigate the harmful effects. Furthermore, as the retention of the landscaping could only be secured for five years, he was not convinced that it would be reasonably controlled for the lifetime of the development.</p> <p>The Inspector agreed with the Council that the existing dwelling was a non-designated heritage asset of modest and local significance and that the demolition would result in its total loss, albeit there would be the opportunity for the recording of the building. He weighed this against the economic benefit from the construction of the dwelling, which was given limited weight as the proposal was for a single dwelling and as such, the benefits would be modest and short-lived. Given the modest benefits of the proposal, when weighed against the harms caused, the loss of the building had not been justified and therefore the proposal conflicted with JCS Policy SD8.</p>
<b>Date</b>	26.03.2018

<b>Application No</b>	17/00083/FUL
<b>Location</b>	Parcel 7710 Highgrove Lane Minsterworth GL2 8JG
<b>Appellant</b>	Mr Adam Smith
<b>Development</b>	Variation of Condition 2 of Planning application 13/01216/FUL to allow a change to the layout and variation of condition 4 to allow an increase in Gypsy and Traveller pitches from 5 to 10.
<b>Officer recommendation</b>	Permit
<b>Decision Type</b>	Committee Decision
<b>DCLG Decision</b>	Allowed
<b>Reason</b>	<p>The Inspector considered that the increased density of use and stationing proposed would not have a greater impact on the landscape character and appearance than the previous application, which was allowed on appeal in 2015.</p> <p>He considered that the use of landscaping (secured by planning conditions) would filter the views from both the road and the longer range views from the public footpath, and that the re-alignment of the caravans as proposed would have a minimal effect. He noted that the fencing that had been erected on site was unauthorised and the appellants explanation that this was a short term temporary measure.</p> <p>The Inspector did not consider that the requirement for lay-bys as requested by the County Highway Authority was necessary due to the nature of the lane as well as the likely familiarity with the area, is unlikely to result in any threat to vehicular or pedestrian safety.</p>
<b>Date</b>	29.03.2018

<b>Application No</b>	16/01155/OUT
<b>Location</b>	Land Adjoining The Timberyard Two Mile Lane Highnam Gloucester GL2 8DW
<b>Appellant</b>	Mr & Mrs D Kent
<b>Development</b>	Outline planning application for the erection of a single dwelling and associated access.
<b>Officer recommendation</b>	Refuse
<b>Decision Type</b>	Delegated Decision
<b>DCLG Decision</b>	Dismissed
<b>Reason</b>	<p>The application had been refused due to conflict with policy HOU4 of the development plan, as well as on landscape harm and accessibility grounds.</p> <p>Following the submission of the appeal there had been a change in material planning considerations given the adoption of the JCS. The Inspector thus invited comments from the parties on this change in circumstances.</p> <p>In dismissing the appeal the Inspector agreed with the Council that the site did not form part of the 'built-up area' of Highnam and as such, the proposal conflicted with policy SD10 of the JCS. The Inspector considered the proposal would essentially result in the protrusion of development into an important visual gap that would have little relationship with the existing development to the south. Moreover, he was not persuaded that the appeal site can be considered as an under-developed plot. It is essentially part of an agricultural field, in agricultural use and located outside of the built-up area.</p> <p>The Inspector did not accept the Appellant's argument that the JCS was silent on how applications such as this should be judged. Whilst there is an element of 'deferment' to the Tewkesbury Borough Plan, the JCS policies are clear on how applications should be considered. Thus the presumption in favour of sustainable development was not engaged in the case. The Inspector made clear however that even if it had been, he did not consider that this was a sustainable location for new housing development.</p> <p>In terms of accessibility, the Inspector concluded that even though the proposal is for a single dwelling, the location of the appeal site and the corresponding need to travel by car would not accord with the environmental dimension of sustainability.</p> <p>On landscape, the Inspector concurred with the overall views of the Council that the proposed development would fail to conserve the open rural character of the landscape and would cause significant harm to the character and appearance of the surrounding area. As such, the proposed development would be contrary to Policy SD6 of the JCS.</p>

	In dismissing a costs claim against the Council the Inspector found that there had been no unreasonable behaviour on the Council's part. The Council had not unreasonably tried to introduce a new reason for refusal; it had merely responded to the change in material planning considerations during the appeal process.
<b>Date</b>	13.04.2018

### 3.0 ENFORCEMENT APPEAL DECISIONS

#### 3.1

<b>Application No</b>	15/00111/EFNA
<b>Location</b>	Ripple Landfill Brockeridge Common Ripple Tewkesbury GL20 6HB
<b>Appellant</b>	Mark Adam Southall
<b>Enforcement Notice Served On</b>	
<b>Unauthorised Development</b>	Alleged unauthorised gypsy and traveller site.
<b>DCLG Decision</b>	Allowed
<b>Reason</b>	<p>A previous appeal decision to quash an enforcement notice to cease the use of the land as a residential caravan site was itself quashed in the High Court following a successful challenge by the Council and remitted for a re-hearing. The High Court agreed with the Council that the Inspector (for that Appeal) erred in law by failing to have regard to a material consideration, namely the requirement under Paragraph 121 of the NPPF that planning decisions ensure adequate site investigation information is presented to assess the risks posed by contamination arising from the historic use of the appeal site for land fill and resultant ground gases.</p> <p><b>Re-determined Appeal</b></p> <p>The Council maintained its position in the re-hearing on the basis of the appellant's updated site investigation evidence, which it considered deficient. Specifically, inadequate intrusive site investigations had been carried out to demonstrate that the land was incapable of being determined as contaminated land.</p> <p>The Inspector concluded that the inferences that could be drawn from the data provided in the appellant's updated site investigation report were reasonable. He also assessed historic and anecdotal evidence pertaining to the historic use of the site and subsequent ground gas monitoring that was undertaken in the early 1990s and concluded that, in view of past negative gas readings, it would be unlikely that these conditions would be markedly different. In that regard he considered that the Council's judgement on the issue of contaminated land was 'premature and disproportionate'.</p> <p>Nevertheless, taking into account the advice set out in the Planning Practice Guidance Note and the Council's position that further intrusive site investigations were required to demonstrate the acceptability of the site for its proposed use, the Inspector considered it would be</p>

	<p>prudent, on a precautionary basis, for further site investigations to be secured by condition. The condition states that if the site investigation/ remediation scheme put forward is ultimately unacceptable the use of the land as a caravan site would have to cease. At the time of the decision the first part of the condition requiring the submission for approval of a scheme of intrusive investigations to be submitted for approval by the Council had already been implemented. On that basis the Inspector did not consider it would be reasonable or proportionate to conclude that a conflict with the development plan had been demonstrated at this stage.</p> <p>The Inspector also considered the remaining issues the subject of the appeal, namely flood risk, odour, the effect on the character and appearance of the area, and the location of the development in relation to local amenities, services and facilities. In all respects he found no conflict with the development plan. With regard to flood risk, he has imposed a condition requiring the site layout to be confirmed as within Flood Zone 1 and above the 15.60 AOD level as recommended in the Flood Risk Assessment report.</p> <p>The Inspector concluded that the development would, in the main, accord with the development plan, with the one point of potential conflict capable of being overcome by a suitably worded condition. Therefore in this case, the application should be determined in accordance with the development plan and planning permission granted.</p>
<b>Date</b>	<b>13.04.2018</b>

**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

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**Background Papers:** None

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**Appendices:** Appendix 1: List of Appeals received

List of Appeals Received						
Reference	Address	Description	Date Appeal Lodged	Appeal Procedure	Appeal Officer	Statement Due
17/01280/FUL	Land Near Hillview Bentham Lane Bentham Cheltenham Gloucestershire GL51 4UT	Erection of a double garage.	27/03/2018	W	HMS	01/05/2018
17/00696/FUL	Bayeux Bamfurlong Lane Staverton Cheltenham Gloucestershire GL51 6SW	Construction of 1 No 2 bedroom bungalow	27/03/2018	W	SDA	01/05/2018
17/00618/FUL	Knapp Farm Hill Farm Birdlip Hill Witcombe Gloucestershire GL3 4SL	Conversion of existing redundant buildings to dwelling with the benefit of existing vehicular and pedestrian access.	27/03/2018	W	FIM	01/05/2018

### Process Type

- **FAS** indicates FastTrack Household Appeal Service
- **HH** indicates Householder Appeal
- **W** indicates Written Reps
- **H** indicates Informal Hearing
- **I** indicates Public Inquiry