

# TEWKESBURY BOROUGH COUNCIL

<b>Report to:</b>	Planning Committee
<b>Date of Meeting:</b>	5 June 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>	Lead Member for Built Environment
<b>Number of Appendices:</b>	One

**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:

<b>Application No</b>	17/00013/FUL
<b>Location</b>	Chargrove Paddock Main Road Shurdington Cheltenham Gloucestershire GL51 4XA
<b>Appellant</b>	Chargrove Paddock Ltd
<b>Development</b>	Erection of 3no. dwellings with associated landscaping and new vehicular/pedestrian access following closure of existing vehicular/pedestrian access and demolition of existing derelict buildings.
<b>Officer recommendation</b>	Refuse
<b>Decision Type</b>	Delegated Decision
<b>DCLG Decision</b>	<b>Dismissed</b>
<b>Reason</b>	<p>The Inspector concluded that the appeal site is not located within Shurdington Village. Consequently, the proposal would not amount to limited infill in the context of the village. Moreover, the proposed new dwellings would by way of their siting, height and bulk have the effect of materially reducing the openness of the Green Belt.</p> <p>The proposed new dwellings would therefore be inappropriate development which is, by definition, harmful to the Green Belt. The proposal would therefore conflict with Policy SD5 of the JCS.</p> <p>In addition, given that the appeal site is located outside the village of Shurdington, the proposal would not accord with infill criteria. Consequently, the proposal would conflict with Policies SD2 and SD10 of the JCS, which seek amongst other things to direct residential development to the most sustainable locations.</p> <p>The layout, design, loss of TPO trees and effect on the landscape character are neutral factors. Balanced against this is the contribution to the supply of housing of 3 new homes, this is a moderate benefit of the proposal. None of the aforementioned considerations, either individually or collectively, clearly outweighs the harm caused by reason of Inappropriateness. Very special circumstances do not exist in this case and the appeal was dismissed.</p>
<b>Date</b>	17.04.2018

<b>Application No</b>	16/01414/FUL
<b>Location</b>	Marlborough House Birdlip Hill Witcombe GL3 4SN
<b>Appellant</b>	Mr S Ellis
<b>Development</b>	Provision of a new access track from Green Lane, with associated works, to serve Marlborough House (part retrospective).
<b>Officer recommendation</b>	Refuse
<b>Decision Type</b>	Delegated Decision
<b>DCLG Decision</b>	<b>Dismissed</b>
<b>Reason</b>	The site is located within the AONB and the Inspector gave great weight to conserving its landscape and scenic beauty. The appellant argued that the proposed track would have highway safety benefits as it would be safer than the existing access to the property. He also proposed measures to mitigate the tracks appearance. The Inspector concluded that the proposed track would be at odds with the prevailing character of the immediate area. He considered that associated fencing and landscaping would increase its prominence in the landscape. Furthermore, he did not consider that the finish of the track in a different material would overcome the harm caused. He did not consider that there was substantive evidence that the existing access resulted in severe harm to vehicular, equine or pedestrian traffic and, whilst the proposal would be safer, the benefits were not outweighed by the harm to the AONB.
<b>Date</b>	24.04.2018

<b>Application No</b>	16/01426/OUT
<b>Location</b>	Land To The East Of Evesham Road Greet Cheltenham
<b>Appellant</b>	Mrs R Quilter, Mrs C Ward & Mr B Day
<b>Development</b>	Outline application for the erection of up to 10 dwellings and associated development. All matters reserved for future consideration except for access.
<b>Officer recommendation</b>	Refuse
<b>Decision Type</b>	Committee Decision
<b>DCLG Decision</b>	<b>Dismissed</b>
<b>Reason</b>	The Inspector considered each proposal (for up to 10nos. dwellings and up to 4nos, dwellings) on their individual merits, but to avoid duplication, dealt with the two schemes together within a single appeal decision. The Inspector concluded that the proposals could not be considered as infill development when assessed against the criteria of the development plan (JCS Policy SD10). In reaching this conclusion, the Inspector accepted that the appeal site is not isolated and is located reasonably close to local services and facilities in Winchcombe. However, he further noted that this does not provide an adequate justification for reducing the weight that should be given to Policy SD 10 of the JCS. To do so would allow residential development without regard to the quantified need for it and would be in direct conflict with the core planning principle of the Framework that planning should genuinely be plan-led (paragraph 17).

	<p>Whilst the Inspector accepted that the proposals would largely reflect the existing linear pattern of development, the introduction of either of the proposed schemes (up to 4 or 10 new dwellings) would cumulatively increase the presence of built form in the predominantly rural landscape. As such, the Inspector considered that the proposals would materially erode the transition from village core to open countryside when viewed in the context of the settlement as a whole. Therefore, the Inspector concluded that the overall effect of either proposal would be to increase the presence of suburban type development in the open countryside to the detriment of the rural character of the SLA.</p>
<b>Date</b>	24.04.2018

<b>Application No</b>	16/01425/OUT
<b>Location</b>	Land To The East Of Evesham Road Greet Cheltenham
<b>Appellant</b>	Mrs R Quilter, Mrs C Ward & Mr B Day
<b>Development</b>	Outline application for the erection of up to 4 dwellings and associated development. All matters reserved for future consideration except for access.
<b>Officer recommendation</b>	Refuse
<b>Decision Type</b>	Committee Decision
<b>DCLG Decision</b>	<b>Dismissed</b>
<b>Reason</b>	<p>The Inspector concluded that the proposals could not be considered as infill development when assessed against the criteria of the development plan (JCS Policy SD10). In reaching this conclusion, the Inspector accepted that the appeal site is not isolated and is located reasonably close to local services and facilities in Winchcombe. However, he further noted that this does not provide an adequate justification for reducing the weight that should be given to Policy SD 10 of the JCS. To do so would allow residential development without regard to the quantified need for it and would be in direct conflict with the core planning principle of the Framework that planning should genuinely be plan-led (paragraph 17).</p> <p>Whilst the Inspector accepted that the proposals would largely reflect the existing linear pattern of development, the introduction of either of the proposed schemes (up to 4 or 10 new dwellings) would cumulatively increase the presence of built form in the predominantly rural landscape. As such, the Inspector considered that the proposals would materially erode the transition from village core to open countryside when viewed in the context of the settlement as a whole. Therefore, the Inspector concluded that the overall effect of either proposal would be to increase the presence of suburban type development in the open countryside to the detriment of the rural character of the SLA.</p>
<b>Date</b>	24.04.2018

<b>Application No</b>	16/00901/OUT
<b>Location</b>	Parcel 1441 Cobblers Close Gotherington Cheltenham
<b>Appellant</b>	J J Gallagher Limited And Mr Richard Cook
<b>Development</b>	Outline planning application with means of access from Ashmead Drive to be determined (all other matters reserved for subsequent approval), for the erection of up to 50 dwellings (Class C3); earthworks; drainage works; structural landscaping; formal and informal open space; car parking; site remediation; and all other ancillary and enabling works.
<b>Officer recommendation</b>	Permit
<b>Decision Type</b>	Committee Decision
<b>DCLG Decision</b>	<b>Dismissed</b>
<b>Reason</b>	<p>A previous Hearing was held into this appeal in September 2017 but, due to the demise of that Inspector, the Hearing was held afresh in December 2017. The Inspector considered that there were 3 main issues to be considered:</p> <p><b>Whether the site is suitable for development at this time in light of the locational policies in the development plan</b></p> <p>The Inspector concluded that the site is outside the settlement boundary and none of the exceptional circumstances in the JCS or the Gotherington Neighbourhood Development Plan (GNDP) apply. For that reason the appeal scheme would conflict with the locational policies in the development plan and is not suitable for development at this time. This matter was considered to weigh heavily against the proposal.</p> <p><b>The effect on the character and appearance on the surrounding area including on the gap between Gotherington and Bishops Cleeve</b></p> <p>In this regard the Inspector concluded that the proposal would not cause significant harm to the intrinsic character of the countryside, and would not harm the character and appearance of the surrounding area within the Special Landscape Area (SLA), including the gap between Gotherington and Bishops Cleeve, and would not therefore conflict with Local Plan Policy LND2. The Inspector noted that this policy is not in complete accord with the NPPF and should only be afforded limited weight.</p> <p><b>The effect on the vitality and social well-being of Gotherington</b></p> <p>The Inspector concluded that the proposed development would harm the vitality and social well-being of Gotherington insofar that the extent of approved and potential development proposed for the settlement was substantial, would be hard to assimilate, and beyond that envisaged in the emerging Borough Plan and the more limited expansion set out in the Gotherington NDP. He also did not consider that persuasive evidence had been presented to demonstrate that existing facilities would be capable of expansion. Accordingly he found that the</p>

	<p>development would not meet the social sustainability role of the NPPF, which is to support strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environmental, with accessible local services that reflect the community's needs and support its health, social and cultural well-being.</p> <p><b>Other Matters</b></p> <p>In relation to housing land supply the Inspector considered that the Council's evidence base to be robust, persuasively demonstrating more than a 5 year housing land supply. He further supported the recently adopted JCS and GNDP and confirmed that if further housing land supply is required (in relation to the identified shortfall) this could be allocated in the GNDP via a plan-led approach. Whilst he stressed that this did not represent a cap on development he concluded that paragraph 14 of the NPPF was not engaged by reason of the housing land supply position.</p> <p>The Inspector therefore concluded that the benefits of the proposal were significantly and demonstrably outweighed by the adverse impacts of the proposal – particularly the conflict with the recently adopted development plan locational policies and the conflict with the social role of sustainable development.</p>
<b>Date</b>	27.04.2018

<b>Application No</b>	16/00501/CLE
<b>Location</b>	Part Parcel 2654 Corndean Lane Winchcombe GL54 5NL
<b>Appellant</b>	Portobello Designs Ltd
<b>Development</b>	Certificate of Lawfulness to establish that a two-storey extension has been commenced off the east elevation of Starvealls Cottage and constitutes permitted development.
<b>Officer recommendation</b>	Refuse Certificate
<b>Decision Type</b>	Delegated Decision
<b>DCLG Decision</b>	<b>Allowed</b>
<b>Reason</b>	<p>The Inspector considered that the digging of a foundation trench approximately 24 metres distance from the eastern elevation was constructed prior to the superseding of the 1995 GPDO. The Inspector also concluded that the principal elevation of the building is the eastern elevation, based upon the orientation of the entrance door and internal configuration since the building's alteration from 2nos. workers cottages, to provide a single dwelling. The</p> <p>Inspector noted that it is a matter of planning judgement that the principal and front elevation of Starvealls Cottage is its east elevation. The Inspector therefore, considered that the construction of the proposed extension to Starvealls Cottage was commenced in accordance with</p>

	Section 56 of the Act and when the 1995 GPDO was in force. The proposed extension would thus be lawful by virtue of the principal elevation of the cottage being its eastern elevation and the development not being considered by the Inspector to include works that constitute a separate engineering operation.
<b>Date</b>	27.04.2018

### ENFORCEMENT APPEAL DECISIONS

3.0

3.1

<b>Application No</b>	16/00005/ENFC
<b>Location</b>	Perry Barn Two Mile Lane Highnam GL2 8DW
<b>Appellant</b>	Mr Mark Emberson and Mrs Angela Emberson
<b>Enforcement Notice Served On</b>	8 <sup>th</sup> May 2017
<b>Unauthorised Development</b>	Without Planning Permission, the erection of a new two storey building in place of the existing barn.
<b>DCLG Decision</b>	<b>Dismissed &amp; Notice Variation</b>
<b>Reason</b>	<p>The Appeal against the Enforcement Notice was made on the following grounds:</p> <p><b><i>Ground (a) – that planning permission should be granted for what is alleged in the notice;</i></b></p> <p>Here the Inspector considered the main issue to be the effect of the development on the character and appearance of the area. The Inspector noted that the original barn was retained for a garage / workshop with minimal changes made to it so that it retained a rural character in accordance with the Council’s barn conversion policies. Whilst the new building is in the same position, it has none of the rural character. The inspector concluded the new building “...dominates rather than is subordinate to the adjacent main dwelling that can be viewed with it. Its design, including its scale and form resembles that of a two-storey dwelling”. He concluded that the outbuilding, by reason of its excessive size including its height and mass, and domestic design has a considerably harmful influence on the character and appearance of the area, all contrary to Policy.</p> <p>The appeal on this ground did not succeed</p> <p><b><i>Ground (b) – that the matters have not occurred as stated;</i></b></p> <p>The Inspector agreed with the Council that the Enforcement Notice correctly described the breach of planning control as the erection of a new two-storey building and that although the appellants argued that this did not happen in one operation of demolition and rebuild, nevertheless the building as it exists today contains little of the original barn and that, with the exception of some of the original floor slab, is unauthorised.</p>

	<p>The appeals on ground (b) therefore failed.</p> <p><b><i>Ground (f) – that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, and lesser steps would overcome the objections;</i></b></p> <p>The appellant argued that the requirement of the Enforcement Notice to restore the land to residential garden went too far for the reason that the footprint of the barn was not ‘garden’ in the first place.</p> <p>The Inspector agreed with the appellants and therefore deleted this requirement of the Notice and amended it to remove the requirement to restore the land to garden - as follows:</p> <p><i>“Remove all material resulting from the demolition and restore the land.”</i></p> <p><b><i>Ground (g) – that the time given to comply with the notice is too short.</i></b></p> <p>The Appellants argued that the period of 12 months for compliance with the requirements of the notice was too short. However, the Inspector considered 12 months was reasonable, noting there was no longer a requirement for any garden to become established.</p> <p><b><i>Overall conclusion</i></b></p> <p>Subject to the amendments, the Notice was up-held and planning permission (deemed to have been made under section 177(5) of the 1990 Act) was refused.</p>
<b>Date</b>	29.03.2018

**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:** 1 - List of Appeals Received.

List of Appeals Received						
Reference	Address	Description	Date Appeal Lodged	Appeal Procedure	Appeal Officer	Statement Due
17/01225/FUL	36 Deacons Place Bishops Cleeve Cheltenham Gloucestershire GL52 8UQ	Single storey rear extension and loft conversion (dormer window)	23/04/2018	W	SNB	
17/00748/CLE	Ashley Villa Badgeworth Lane Badgeworth Cheltenham Gloucestershire GL51 4UW	Use of land as residential garden	25/04/2018	W	SDA	13/06/2018
17/00585/FUL	Lawn Road Ashleworth GL19 4JS	The construction and use of 4 dwellings (2 x semi detached & 2 x detached) and associated development including garages and improvements to internal access road.	30/04/2018	W	BOR	02/06/2018
17/01153/FUL	Badgerbank Farm Bushcombe Lane Woodmancote Cheltenham Gloucestershire GL52 9QL	Erection of dwelling and associated works (Following approval for conversion of existing stable building to a dwelling approved as part of 15/00905/FUL)	30/04/2018	W	SDA	04/06/2018
17/00024/FUL	Shurdington Court Farm Little Shurdington Cheltenham Gloucestershire GL51 4TX	Change of use from equestrian stables and storage to 4 residential units.	01/05/2018	W	PAI	05/06/2018
17/01046/FUL	Land At Banady Lane Stoke Orchard Cheltenham Gloucestershire	Felling of a Perry Pear tree and the subsequent erection of 3no Affordable dwellings with associated car parking and private amenity.	01/05/2018	W	BOR	05/06/2018

## Process Type

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