

TEWKESBURY BOROUGH COUNCIL

Report to:	Planning Committee
Date of Meeting:	24 October 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:	1

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	16/01442/OUT
Location	North of 15 Bloxhams Orchard Ashleworth GL19 4JB
Appellant	Danwood Homes
Development	Proposed erection of 6 no. dwellings with all matters reserved for future consideration except for access
Officer recommendation	Refuse
Decision Type	Delegated
DCLG Decision	Dismissed
Reason	<p>The application was refused on the basis of conflict with Policy HOU4, landscape harm to the Landscape Protection Zone and drainage. The drainage matter was addressed at the appeal hearing and it was agreed by all parties that a satisfactory drainage scheme could be secured by condition.</p> <p>In respect of Policy HOU4 the Inspector concluded that the Council could demonstrate a five year supply of deliverable housing sites and that this limited the weight he could give to the social benefits of the appeal scheme from the modest increase in housing and the likely economic uplift benefits. The absence of any clear identified need for the type of dwellings proposed also limited the weight he attached to the scheme's benefits.</p> <p>Despite this the Inspector gave limited weight to Policy HOU4 on the basis that the policy is not entirely consistent with the NPPF. In support of this, the Inspector relied on case law from 2013 however did not give the parties opportunity to comment on that case. Officers do not consider that the case referred to by the Inspector is determinative on the point as to whether the Policy is consistent with the Framework and the Inspector appears to have ignored a plethora of more recent case law in favour of that case. Officers do not consider that because a policy in a plan does not use exactly the same terminology as the NPPF, it can automatically be considered out of date. That would render most development policies, even in plans adopted after the publication of the NPPF out of date and would bring into question the need for Local Plans in any event if the law simply requires us to prefer the wording of the NPPF.</p> <p>Notwithstanding the above, the Inspector agreed with the Council that the proposal would have a substantial adverse effect on the character and appearance of the area. Contrary to policy LND3 of the Local Plan</p>

	<p>(Landscape Protection Zone) that seeks to prevent development where it would, amongst other things, have a detrimental visual effect on the character of the landscape associated with the Severn Vale.</p> <p>Overall the Inspector concluded that the harm to the landscape would significantly and demonstrably outweigh the limited benefits of delivering 6 dwellings and would not represent sustainable development.</p>
Date	23.08.2017

Application No	16/01304/OBM
Location	Land North-East of Ducktone House Dean Lane Stoke Orchard Cheltenham Gloucester GL52 7RX
Appellant	P E Duncliffe Limited
Development	Planning Obligation modified as follows: release from the obligation to transfer Public Open Space to the Council
Officer recommendation	Refuse
Decision Type	Committee Refuse
DCLG Decision	Dismissed and Award for Costs Refused
Reason	<p>The application to vary the planning obligation had been refused on the basis that the resulting position would not serve the purpose of the obligation equally well as it is only the transfer of the public open space land into public ownership that is likely to secure the safe and unfettered access by the public to this public open space.</p> <p>The Inspector concluded that the basic standard of maintenance now proposed by the Appellant in the draft deed of variation would not be consistent with maintaining the site to a high standard, or to allow for it to be enhanced or improved to encourage use by residents of the development and the wider community of Stoke Orchard, in accordance with the advice in the Framework.</p> <p>He felt that the site in its current, somewhat minimalist state would be unlikely to offer positive encouragement to wider use by the community and that the modest enhancements proposed in the deed of variation would be unlikely to significantly change the position. Residents and others could easily carry away the impression that it was private land and be discouraged from using it.</p> <p>The Inspector did not consider in this instance that there is any persuasive justification for modifying the 2007 S106 agreement, voluntarily entered into, to release the owner from the obligation to transfer the site to the Borough Council. In my judgement the obligation continues to serve a useful purpose, and that purpose would not be served equally well by the proposed deed of variation.</p> <p>In relation to the costs application by the Appellant, the Inspector concluded that the Council was entitled to reach the conclusion it did, and that it has not acted</p>

	unreasonably.
Date	08.09.2017

Application No	16/01065/FUL
Location	Mill Farm Mill Lane Stoke Orchard Cheltenham Glos GL52 7SG
Appellant	Mr Doug Macleod
Development	6 no 4 bedroom houses
Officer recommendation	Refuse
Decision Type	Delegated
DCLG Decision	Dismissed and full costs awarded
Reason	<p>The application had been refused on 6 grounds including conflict with policy HOU4, Green Belt, Landscape Harm, impact on the nearby listed building, highway safety and archaeology.</p> <p>In dismissing the appeal the Inspector upheld each of the reasons for refusal. In respect of highways and archaeology the Appellant had argued that the Council had not requested further information which could have addressed those issues. Nevertheless, in respect of archaeology, the Inspector noted that the responses from the Council's Conservation Officer and the County Archaeologist were available for consideration and further action on the Council's web site. He also noted that no further substantive information was been provided to address those concerns during the course of the appeal. He reached similar conclusions in respect of highways matters.</p> <p>The Council made an application for costs on the basis that the appeal had no prospect of success. In making a full award of costs in the Council's favour the Inspector concluded that it was significant that the Council had contacted the Appellant's agent immediately following submission of the appeal and again, before work started in earnest on the Council's appeal statement, advising that a costs application was likely and that the appeal should be withdrawn. He also noted that no pre-application advice had been sought in advance of making the application. The Inspector criticised the Appellants appeal statement and that they had not sought to address any of the key issues raised. He also noted that the Appellant's statement included a number of errors.</p> <p>Ultimately the Inspector concluded that the Appellant behaved unreasonably in pursuing the appeal and that consequently, the Council had to devote time and expense to defending the appeal.</p>
Date	13.09.2017

Application No	17/00004/FUL
Location	8 Sandfield Road Churchdown Gloucester
Appellant	Mr Peter Smith

Development	The development proposed is erection of 1no. new dwelling
Officer recommendation	Refuse
Decision Type	Delegated decision
DCLG Decision	Dismissed
Reason	<p>The application had been refused on the basis of overdevelopment, impact on the living conditions of neighbours and impact on the setting of a nearby listed building.</p> <p>The Inspector agreed with the Council that the layout and scale of the development proposed would cause harm to the character and appearance of the area contrary to saved policies HOU2 and HOU5 of the Local Plan. Similarly, the Inspector agreed that the proposal would result in unacceptable living conditions for future occupiers of the proposed dwelling although he did not feel that the impact on neighbours would be so severe as to warrant refusal.</p> <p>The Inspector concluded that the proposal would result in 'less than substantial' harm to Ye Olde House, a Grade II listed building. Nevertheless he concluded that the limited public benefits of delivering a single dwelling (in the context of the housing land supply position) would not outweigh that, albeit, less than substantial harm.</p>
Date	05.10.2017

Application No	16/01334/FUL
Location	Inglecroft Post Office Lane Cleeve Hill GL52 3PS
Appellant	Mr & Mrs Boyce
Development	Proposed new dwelling within the residential curtilage of Inglecroft
Officer recommendation	
Decision Type	Non-Determination
DCLG Decision	Allowed
Reason	<p>This was another decision where the Inspector considered that Policy HOU4 was out of date, relying on the conclusions of the Inspector for the Bloxhams Orchard appeal reported above.</p> <p>The Inspector considered that Cleeve Hill could be considered a small village on the basis that there is a collection of dwellings and a pub. This view is not shared by Officers, nor by Woodmancote Parish Council. Therefore, the Inspector concluded that the site was an infill plot and the proposal would comply with emerging JCS Policy SD11.</p> <p>The Inspector considered the proposal would conserve the landscape and scenic beauty of the AONB and that it would be in a relatively accessible location.</p>
Date	05.10.2017

3.0 ENFORCEMENT APPEAL DECISIONS

- 3.1 None received
- 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

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Appendices: Appendix 1: List of Appeals received

Appendix 1

List of Appeals Received						
Reference	Address	Description	Date Appeal Lodged	Appeal Procedure	Appeal Officer	Statement Due

List of Appeals Received						
Reference	Address	Description	Date Appeal Lodged	Appeal Procedure	Appeal Officer	Statement Due
16/01465/FUL	Land To The South Of Colchesters Farm Nup End Lane Ashleworth Gloucester GL19 4JG	Erection of 1 no. two storey detached dwellinghouse and detached double garage with storage space above, and provision of associated vehicular access and driveway	18/09/2017	W	ED	
17/00311/OUT	12 Field End Churchdown Gloucester Gloucestershire GL3 2AT	Re-submission for outline planning consent for houses to rear of 12 Field End	18/09/2017	W	SDA	23/10/2017
17/00164/FUL	29 Binyon Road Winchcombe Cheltenham Gloucestershire GL54 5QQ	Two storey front and rear extensions	02/10/2017	FAS	JLL	
17/00075/FUL	Bramble Cottage Spring Lane Cleeve Hill Cheltenham Gloucestershire GL52 3PY	Increase roof height of dwelling, 2 storey rear extension, new fenestration and new entrance porch.	10/10/2017	FAS	SNB	
17/00280/PDAD	Manor Cottage Walton Hill Deerhurst Gloucester Gloucestershire GL19 4BT	Prior approval for change of use of agricultural building to a residential use (C3) of the use classes order and associated works.	27/09/2017	W	BOR	01/11/2017
16/00005/ENFC	Perry Barn Two Mile Lane Highnam Gloucester Gloucestershire GL2 8DW	Enforcement Notice Appeals	05/10/2017	H	JWH	15/11/2017

Process Type

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