

TEWKESBURY BOROUGH COUNCIL

Report to:	Planning Committee
Date of Meeting:	16 January 2018
Subject:	Current Appeals and Appeal Decisions Update
Report of:	Paul Skelton, Development Manager
Corporate Lead:	Robert Weaver, Deputy Chief Executive
Lead Member:	Cllr 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	16/01465/FUL
Location	Colchesters Farm, The Village, Ashleworth, GL19 4JG
Appellant	Mr P Finch
Development	Erection of a self-build cottage together with a garage and new vehicular access
Officer recommendation	Refuse
Decision Type	Delegated Decision
DCLG Decision	Dismissed
Reason	<p>The application had originally been confused due to the conflict with Policy HOU4 and Landscape Harm within the Landscape Protection Zone.</p> <p>During the course of the appeal there was a significant change in material planning considerations, firstly with the publication of the JCS Inspector's Final Report, and then adoption of the Joint Core Strategy.</p> <p>This change in circumstances altered the Council's case in that the development then fell to be considered under policy SD10 of the JCS. Whilst the site fell on the edge of the village, the proposal did not constitute infilling.</p> <p>The Inspector concluded that the principle of the erection of a new dwelling on the appeal site would not accord with the Policy SD10 in the JCS as Ashleworth is not now identified as an accessible location in which further development should generally take place. The proposal would also cause moderate harm to the local landscape particularly when seen from the adjoining in footpath.</p> <p>He continued that this conflict with the development plan had to be balanced with other factors and benefits. The appellant had argued that the proposal would constitute sustainable development as encouraged by the Framework and that the government seeks to significantly boost the supply of housing. Further the appellant argued that, even if a five year supply of housing land is shown, there should not be an embargo on development that is otherwise sustainable. However, the Framework makes clear that the planning system is plan-led and the three dimensions of sustainable development have been considered in the formulation of the strategy set out in the JCS which itself boosts housing supply in a sustainable way. Further, he concluded that the NPPF makes clear in paragraph 11 that proposals that conflict with the development plan should be refused unless other material considerations indicate otherwise.</p> <p>Overall, the Inspector concluded that proposal did not accord with the provisions of the NPPF and that the conflict with the development plan and the local</p>

	landscape harm that would arise has not been demonstrated to be outweighed by any other considerations.
Date	13.12.2017

Application No	15/00969/FUL
Location	Land at Kayte Lane Southam Gloucestershire GL52 3PD
Appellant	Mr Gilbert Smith
Development	Change of Use of land to include stationing of caravans for residential occupation by a gypsy-traveller family with associated hard standing and utility block.
Officer recommendation	Refuse
Decision Type	Committee
DCLG Decision	Allowed - 3 Year Temporary Permission
Reason	<p>A previous Appeal decision to allow a 5 year temporary permission for use of the land for a gypsy site was quashed in the High Court following a successful challenge by the Council. The High Court agreed with the Council that the Inspector (for that Appeal) wrongly considered that government policy on Intentional Unauthorised Development did not apply.</p> <p>Re-determined Appeal</p> <p>The Inspector concluded that the proposal was inappropriate development in the Green Belt and would reduce openness, but the harm would be limited by the proximity of the bridge and the dwelling to the north. Limited harm to the purpose of the Green Belt was also acknowledged. Substantial weight was attributed to these harms.</p> <p>In terms of landscape harm, it was accepted that the development and use would adversely affect the rural character and appearance of the area, and this would be encountered by numerous receptors, such as people using the roads and the tourist railway. But, having mind to the proximity of the other built form, and the low visual sensitivity of the area, the Inspector attached modest weight to the resulting harm.</p> <p>The Inspector did not consider the site to be remote and considered an appropriate level of public transport is available, commensurate with the traveller lifestyle. In terms of Highway Safety, the existing vehicular access was considered sub-standard. However, the Highway Authority confirmed during the appeal site visit that by moving the entry to the south, satisfactory sightlines could be provided. A condition was recommended requiring access details.</p> <p>With regard to Intentional Unauthorised Development the Inspector accepted the appellant's explanation that the decision to move onto the land in breach of the Injunction was intentional, but driven more by desperation for a safe</p>

	<p>place for his family to live than a desire to circumvent correct procedure. He reasoned further that there was no evidence of irreplaceable losses of such as ecology or species, and that the land is well able to be returned to an agricultural condition, and no lasting damage has been done to the Green Belt or landscape character which could not be repaired. In the balance, he concluded that there had been harm, but the level of harm was considered to be moderate.</p> <p>Against these identified harms, the Inspector argued that that, whilst the Council was able to demonstrate a 5 year supply of gypsy and traveller sites, the number of recent permissions, applications and appeals for gypsy sites, indicate a likely, but unquantified, level of unmet need that could only realistically be met in the short-term through the application of JCS Policy SD13. It was considered that the alternatives open to the Appellant and his family was a continued roadside living, or similar temporary stopping places. Substantial weight was attached to this finding. Furthermore, the family was considered to be in dire need of a settled base and substantial weight was also attached to this matter.</p> <p>With regard to the best interests of the children the Inspector commented that the children are suffering considerably from the present situation and lost opportunities now are not going to be made-up for if the situation continues. Very substantial weight was attached to this consideration.</p> <p>The Inspector concluded that in the balance, the harm to the Green Belt and the other harm identified was not outweighed by other considerations such that very special circumstances were shown to exist in order to allow <u>permanent occupation</u> of the site. He also recognised that having regard to the matter of intentional unauthorised development, the 5 year supply of sites and a more advanced Joint Core Strategy (that has been found to be sound), very special circumstances do not exist so as to allow a <u>temporary 5 year</u> permission.</p> <p>However, based on the pressing need to get the children back into formal education and for health concerns, and the timetable for adoption of the Tewkesbury Borough Plan, it was concluded that very special circumstances did exist to justify a 3 year temporary permission (made personal to the appellant and his family).</p>
Date	18.12.2017

Application No	17/00280/PDAD
Location	The Dutch Barn Manor Farm Deerhurst Walton GL19 4BT

Appellant	Mr Brian Morris
Development	Change of use of the agricultural building to a residential use
Officer recommendation	Refuse
Decision Type	Delegated Decision
DCLG Decision	Dismissed
Reason	<p>The application had been refused on the grounds that the development proposed went further than mere 'conversion' and as such permitted development rights did not apply. The Inspector concluded that proposal would entail the removal of all wall and roof coverings and the starting point would be a skeletal structure of the steel frame. The totality of the re-covering would go beyond what could be reasonably described as a conversion and would constitute re-building.</p> <p>Furthermore, the Inspector felt that the proposed works would exert greater load on the floor slab and the proposal has failed to demonstrate that the existing building is structurally strong enough to take the loading.</p>
Date	22.12.2017

Application No	15/00941/FUL
Location	Part Parcel 7200 Sandhurst Lane Sandhurst
Appellant	DB Land and Planning Ltd
Development	Erection of 16 dwellings off Sandhurst Lane Sandhurst
Officer recommendation	Refuse
Decision Type	Committee Decision
DCLG Decision	Dismiss
Reason	<p>This site was promoted as an affordable housing exception scheme and had been refused on the basis that the proposal would not be of high quality and that it had not been demonstrated that there were overriding reasons why the most vulnerable development was proposed to be in flood zone 2.</p> <p>The Inspector concluded that the proposed development would change the essentially open and rural character of the site and adversely impact upon the distinctive character and appearance of the locality and the intrinsic character and beauty of the countryside. In addition, the Inspector agreed with the Council that the appellant failed to provide convincing evidence to demonstrate that there are overriding reasons why two affordable dwellings were to be located in Flood Zone 2.</p>
	29.12.2017

3.0 ENFORCEMENT APPEAL DECISIONS

3.1 None

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
16/01234/FUL	Burberry Woods Burberry Hill Toddington Gloucestershire GL54 5DP	Conversion of existing barn to a dwellinghouse including retention of timber barn for storage, the demolition of all other structures, reinstatement of woodland/orchard, and long term landscape/ecological management.	06/12/2017	W	LJD	10/01/2018
16/00501/CLE	Part Parcel 2654 Corndean Lane Winchcombe Cheltenham Gloucestershire	Certificate of Lawfulness to establish that a two-storey extension has been commenced off the east elevation of Starvealls Cottage and constitutes permitted development.	19/12/2017	W	LJD	05/02/2018
17/00494/PDAD	Barn At The Furzens Furzens Lane Elmstone Hardwicke Cheltenham Gloucestershire GL51 9TQ	Prior approval for conversion of agricultural buildings into 1 no. dwelling (use class C3) and associated building operations	15/12/2017	W	EMB	19/01/2018
17/00083/FUL	Parcel 7710 Hygrove Lane Minsterworth.	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.	02/01/2018	I	JWH	06/02/2018

Process Type

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