

TEWKESBURY BOROUGH COUNCIL

Report to:	Planning Committee
Date of Meeting:	16 June 2020
Subject:	Current Appeals and Appeal Decisions Update
Report of:	Technical Planning Manager
Corporate Lead:	Deputy Chief Executive
Lead Member:	Lead Member for Built Environment
Number of Appendices:	1

Executive Summary:

To inform Members of current planning and enforcement appeals and Ministry of Housing, Communities and Local Government (MHCLG) 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 Ministry of Housing, Communities and Local Government (MHCLG) appeal decisions that have recently been issued.

2.0 APPEAL DECISIONS

2.1 The following decisions have been issued by the MHCLG:

Application No	18/01294/FUL
Location	The Old Chapel Sandfield Road Churchdown GL3 2HD
Development	Conversion of existing workshop/offices into 2 no. residential dwellings
Officer recommendation	Refuse
Decision Type	Delegated
DCLG Decision	Dismiss
Reason	<p>The Inspector considered the main issue to be the effect of the proposal on the character and appearance of the host building and the surrounding area.</p> <p>It was noted that the former Methodist chapel (dated 1877) was largely unchanged from its original form and made a positive contribution to the historic interest of the area and was recognised as a non-designated heritage asset.</p> <p>The Inspector found the proposed external alterations and introduction of windows and doors to accommodate the subdivision into two dwellings were unsympathetic; there being a lack of regard for the character, symmetry and form of prevailing architecture, contrary to Policies SD4 (Design) and SD8 (Historic Environment).</p> <p>This harm was considered to outweigh the limited benefit of providing two dwellings (in the context of the 'tilted balance').</p>
Date	12.03.2020

Application No	18/01287/FUL
Location	Sandycroft Cottage Dancey Road Churchdown GL3 1HP
Development	Erection of two self-build dwellings with associated parking and other works.
Officer recommendation	Non-determination
Decision Type	Written Reps
DCLG Decision	Dismiss
Costs Decision	Refuse
Reason	<p>Although the proposal was deemed to comply with JCS Policy SD10 insofar as it constituting 'infill' development; the Council set out in its Statement of Case that it would have refused the application for reasons relating to (1) the effect of the proposal on the character and appearance of the area; (2) the impact on the residential amenity of neighbouring property; and (3) the risk of flooding.</p> <p>The Inspector concurred with the Council's stance in respect of reason 1. It was commented that the siting of the proposed dwellings in this location would be at odds with the prevailing character of development in the area and would appear as an incongruous addition, not well-related to the established grain of development. The design of the proposed dwellings was not considered unduly harmful but the Inspector reasoned the proposal would conflict with JCS Policy SD4, PSTBP Policy RES5 and the design aims of the NPPF.</p> <p>In terms of residential amenity (reason 2), the Inspector concluded the scale and proximity of the proposed dwelling to the boundary would result in occupants of No.1 Dancey Road experiencing an overbearing impact that would diminish the enjoyment of their garden area to an unacceptable degree. Further, the Inspector considered the position of the proposed access and driveway would result in an unacceptable degree of disturbance for the occupiers of Sandycroft Cottage by reason of the effects of vehicle headlights shining directly at the property at close quarters. Consequently, the Inspector concluded that the proposal would conflict with JCS Policies SD4 and SD14.</p> <p>On the issue of flood risk, the Inspector acknowledged the concerns raised by the Council but was satisfied from the available evidence presented by both parties that the site is not subject to an unacceptable risk of flooding. It was concluded that further details of surface water drainage could be reasonably secured by condition to ensure compliance with JCS Policy INF2.</p> <p>Overall, the Inspector was mindful of the Council's five year housing land supply position and the proposal's provision of 2no. self-build units. While the Inspector recognised these as bringing economic and social benefits, the Inspector found the harm resulting from the proposal would significantly and demonstrably outweigh the benefits of providing the additional housing. The appeal was therefore dismissed.</p>

	The appellant's application for an award of costs was also refused. Above all, the Inspector was not convinced that a timely decision or further communication from the Council would have avoided the appeal. As such, the Inspector concluded that unreasonable behaviour resulting in unnecessary expense during the appeal process had not been demonstrated and an award for costs was not justified.
Date	30.03.2020

Application No	19/00377/FUL
Location	Orchard Lea Corndean Lane Winchcombe GL54 5NL
Development	Erection of a detached garage (alterations to that permitted under reference 14/01090/FUL) to form new first floor office/study.
Officer recommendation	Refuse
Decision Type	Delegated
DCLG Decision	Dismiss
Reason	<p>The Inspector identified that the main issue was the effect of the proposal upon the character and appearance of the area, which lies within the Cotswolds AONB, with particular regard to the design and materials of the proposed garage.</p> <p>The inspector concluded that, whilst the principle of an ancillary garage in this location was not disputed, the size and bulk of the current proposal would not be subservient to the host dwelling and would form a dominant feature within the street scene resulting in poor design and harm to the surrounding AONB.</p>
Date	02.04.2020

Application No	19/00020/FUL
Location	Land at Kayte Lane Kayte Lane Southam GL52 3PD
Development	Retrospective application for temporary retention of stable building until 17th December 2020.
Officer recommendation	Refuse
Decision Type	Delegated
DCLG Decision	Dismiss
Reason	<p>The Inspector considered there were 3 main issues relevant to the Appeal.</p> <p><i>Whether inappropriate development in the Green Belt including its effect on openness and the purposes of including land within it.</i></p> <p>Here the Inspector noted that the stable building was ancillary to the temporary residential use on site and used for transport, hobby and heritage purposes. As such, the development would not qualify as an exception under Paragraph 145 and therefore represents inappropriate development in the Green Belt. Furthermore, he considered that the stable building was prominently sited within the surrounding landscape detrimentally expanding the built form of the site. Consequently, the development failed to preserve the openness of the site both spatially and visually and contravened the purpose of including this land within the Green Belt, namely, to restrict urban sprawl and protect the countryside from encroachment.</p> <p>He therefore concluded the development was inappropriate development in the Green Belt.</p> <p><i>The effect of the development on the character and appearance of the area.</i></p> <p>The Inspector considered that the stable building appears in contrast to the open landscape characteristics of the surrounding area and unduly expands the built form of the site to form a prominent feature visible from the public realm. This was felt to harm the character and appearance of the surrounding area.</p> <p><i>Whether there were any very special circumstances to justify the development.</i></p> <p>The appellant argued that the temporary design of the development (with no foundation), the time limit on how long the development can remain on the site, and the potential for more harmful means of storing horses on site (such as a horsebox lorry) would justify allowing the stable building to be retained within the Green Belt.</p> <p>However, the Inspector did not consider that this provided reasonable justification for allowing the development temporarily in view of the clear harm caused to the Green Belt and the harm by reason of inappropriateness, and the other identified harm, was not clearly outweighed by other considerations so as to amount to the very special</p>

	circumstances necessary to justify the development.
Date	03.04.2020

Application No	18/01141/PIP
Location	Field Adjacent to Hawthorn House Minsterworth Gloucester GL2 8JH
Development	Permission in principle for residential dwellings estimates between 3-5 in number
Officer recommendation	Refuse
Decision Type	Delegated
DCLG Decision	Allowed
Costs Decision	Dismissed
Reason	<p>The Inspector considered there were two main issues relevant to the Appeal:</p> <p><i>Whether the proposed development would be a suitable location for housing</i></p> <p>The Inspector opined that the appeal site did not comprise previously developed land and neither did it represent in-filling within the existing built up areas of Minsterworth. He concluded the proposal would therefore conflict with Policies SP2 and SD10 of the JCS.</p> <p>He also noted that the site was outside the proposed settlement boundary in the emerging Borough Plan and was therefore also contrary to Policy RES3.</p> <p><i>The effect of the proposal on the potential presence of archaeological heritage assets.</i></p> <p>The Inspector noted the County Council Archaeologist's concerns about the site's archaeological sensitivity (as highlighted by previous investigation in the vicinity) but commented that as the proposal was for a permission in principle, only matters relating to: location; amount of development; and use can be taken into consideration - and that the site will not benefit from planning permission until such time as the Technical Details Consent (TDC) has been granted. He commented further that in the event that archaeological assets were to be found at TDC stage and were of such significance that their loss could not be mitigated against, the Council has the power to refuse TDC consent.</p> <p>Planning Balance and Conclusions</p> <p>In the overall balance and in the context of a 5-year supply of housing shortfall the Inspector concluded that the adverse impacts of the proposal (i.e. the conflict with JCS Policies SP2 and SD10 and emerging Borough Plan Policies RES2 and RES3) would not significantly and demonstrably outweigh the benefits identified. The proposal thus represented sustainable development.</p>

	<p>Costs</p> <p>Whilst in respect of archaeology the Inspector found that this matter could be dealt with at technical details consent stage, it was not unreasonable for the Council to have taken a different view and evidence was provided to support its position.</p> <p>Whilst the Appellant was unhappy that the application was not determined within the statutory time scale, there was no evidence before the Inspector that the Council had acted unreasonably.</p> <p>Overall, the Inspector found that the Council provided clear reasons and recommendations the application should be refused and taken a balanced approach in considering these to inform the reasons for recommending refusal. On that basis the Council had not acted unreasonably and an award of costs was refused.</p>
Date	13.05.32020

3.0 ENFORCEMENT APPEAL DECISIONS

3.1

Application No	19/00021/ECOU
Location	Oaklands Gloucester Road Staverton GL51 0TF
Enforcement Notice Served On	07.02.2019
Unauthorised Development	Planning permission 16/01066/FUL for a proposed agricultural building not implemented; change of use of land to to use as commercial depot for Pave Drive Limited
DCLG Decision	Dismissed and Notice upheld subject to variation
Reason	<p>In respect of each ground of appeal the Inspector found as follows:</p> <p>(a) The development causes significant harm to the Green Belt. Its retention would be contrary to the Joint Core Strategy and the NPPF.</p> <p>(b) The unauthorised use alleged in the notice has occurred on the balance of probabilities.</p> <p>(c) The boundary walling/fencing/piers is not permitted development.</p> <p>(f) The Enforcement Notice requirements are entirely appropriate to achieve the Enforcement Notice's Objectives. No lesser steps could be taken to achieve those objectives.</p> <p>(g) There is no evidence that the Enforcement Notice could not be complied with in the 6 month time frame.</p>
Date	17.04.2020

Application No	19/00020/BOCON
Location	Oaklands Gloucester Road Staverton GL51 0TF
Enforcement Notice Served On	07.02.2019
Unauthorised Development	Development not built in accordance with 16/00763/FUL – breach of conditions 4 (no external lighting) and 7 (removal of permitted development rights for, amongst other things, means of enclosure)
DCLG Decision	Dismissed and Notice upheld
Reason	<p>In respect of each ground of appeal:</p> <p>(a) In deciding whether or not planning permission ought to be granted for the unauthorised development the Inspector concluded that the means of enclosure that had been erected contrary to condition 7 of the planning permission cause substantial harm to the openness of the Green Belt and the character and appearance of the surrounding area. He also considered that the external lighting provided contrary to condition 4 has a visually harmful effect on the surrounding area.</p> <p>(c) The appellant claimed that planning permission was not required as the means of enclosure were erected prior to the implementation of the 2016 Planning Permission. Despite a sworn statement from the Appellant the Inspector found that clear photographic evidence showed that this was not the case and therefore the Means of Enclosure are in breach of Condition 7.</p> <p>(f) The appellant suggested that the reduction in the height of the Means of Enclosure could be reduced to permitted development levels; however, the Inspector concluded that this would not make the development carried out at the Appeal Site comply with Condition 7 because it would not have the benefit of an express grant of planning permission from the Council. In respect of the lighting, the appellant suggested removal of all of it would be unnecessary. The Inspector however did not have evidence before him which suggested what an appropriate lighting scheme would be and that it was the appellant to agree an appropriate scheme with the Council.</p> <p>(g) The Appellants argued that the period of six months in which to comply with the Enforcement Notice was too short and that this should be changed to one year. The Inspector disagreed with the appellant but did opine that it may well be that some of the existing Means of Enclosure could be retained or altered if they were to submit a scheme for new boundary treatment to the Council for express consent. He noted that some flexibility may be required due to the current COVID-19 pandemic.</p> <p>On this basis, the Inspector upheld the Council's enforcement notice, subject to minor variations, and dismissed the appeal.</p>

Date	17.04.2020
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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
19/00682/FUL	Land At Cleeve Hill Southam Cheltenham Gloucestershire	Erection of 3no. infill dwellings, new vehicular access and landscaping	02/03/2020	W	ALW	06/04/2020
19/00800/FUL	Noreen Ashleigh Lane Cleeve Hill Cheltenham Gloucestershire GL52 3QF	Erection of an agricultural storage building	04/03/2020	W	DLL	08/04/2020
19/00908/FUL	9 Church Road Bishops Cleeve Cheltenham Gloucestershire GL52 8LR	Change of use of existing ground floor of number 9 Church Road from class A3 cafe to A4 licenced cafe and bar.	09/03/2020	W	DLL	13/04/2020
19/00849/FUL	Land To The Rear Of Barnfield Cottage Wainlode Lane Norton Gloucester Gloucestershire GL2 9LN	Erection of single storey dwelling for occupation by disabled person	20/03/2020	W	PAI	24/04/2020
19/00647/FUL	121 Moorfield Road Brockworth Gloucester Gloucestershire GL3 4JQ	Erection of single storey rear and two storey side and rear extensions including conversion of existing garage.	25/03/2020	W	SNB	
19/00977/PIP	Land To The Rear Of The Hoot Twigworth Fields Twigworth Gloucester Gloucestershire GL2 9NH	Erection of 5 no infill dwellings	27/03/2020	W	DLL	01/05/2020

List of Appeals Received

Reference	Address	Description	Date Appeal Lodged	Appeal Procedure	Appeal Officer	Statement Due
18/01202/OUT	Part Parcel 3538 Church Road Maisemore Gloucester Gloucestershire	Outline application for up to 25 dwellings (consisting of 15 self-build and 10 discounted market houses) together with access and associated works such as footpath links to village hall and play area (all matters reserved).	17/04/2020	I	HMS	22/05/2020
17/00010/ENFC	26 Sallis Close Northway Tewkesbury Gloucestershire GL20 8TA	Appeal against Enforcement Notice	30/04/2020	W	JOE	11/06/2020
19/00097/CONDIS	Land South Of B4077 Newtown Toddington Cheltenham Gloucestershire	Application for approval of details subject to condition 10 (External Lighting) of the planning application ref number 15/00394/OUT	04/05/2020	W	LJD	08/06/2020
19/00689/FUL	Tree Tops Church End Lane Twyning Tewkesbury Gloucestershire GL20 6DA	Erection of 2 no. self-build two storey dwellings and associated detached garages, and provision of associated vehicular access and landscaping (Revised scheme to reference 18/00934/FUL)	05/05/2020	W	EMB	09/06/2020
19/00787/APP	Land To The South Of Brockhampton Lane Brockhampton Lane Brockhampton Cheltenham Gloucestershire	Erection of an agricultural hay and implement storage barn, with concrete apron and access track.	07/05/2020	W	DLL	11/06/2020

List of Appeals Received						
Reference	Address	Description	Date Appeal Lodged	Appeal Procedure	Appeal Officer	Statement Due
PP-08451692	41 Swallow Crescent Innsworth Gloucester Gloucestershire GL3 1BW	Construction of a detached 2-bed dwelling. (Revised scheme following refusal of application 19/00506/FUL)	26/05/2020	W	SNB	30/06/2020

Process Type

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