

TEWKESBURY BOROUGH COUNCIL

Report to:	Planning Committee
Date of Meeting:	15 December
Subject:	Current Appeals and Appeal Decisions Update
Report of:	Development Manager
Corporate Lead:	Deputy Chief Executive
Lead Member:	Lead Member for Built Environment
Number of Appendices:	One

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:

(A) Appeal Decisions	
Application No	19/00506/FUL
Location	41 Swallow Crescent Innsworth Gloucester Gloucestershire GL3 1BW
Proposal	Construction of a detached 2-bed dwelling. (Revised scheme following refusal of application 19/00506/FUL)
Officer recommendation	Refuse
Decision type	Delegated Decision
PINS reference	APP/G1630/W/20/3251553
PINS decision	Appeal Dismissed
Reason	<p>The main issues were the effect of the proposed development on:</p> <ul style="list-style-type: none">• the character and appearance of the area; and• the living conditions of the intended future occupiers of the dwelling with particular regard to outlook. <p>The Inspector considered that the design of the proposed dwelling would reflect some of the architectural features of neighbouring dwellings in respect to roof form, details and materials. However, the development would introduce a detached dwelling on a prominent corner location characterised by semi-detached dwellings. It would interrupt the general uniformity of existing development on Swallow Crescent, substantially reducing the sense of space at the junction. Furthermore, the narrow elevation would result in a conspicuously different built form in a prominent location. As such it would not positively contribute to the appearance of the street scene and would not be in keeping with the prevailing character. The harmful effect would not be sufficiently resolved by the proposed landscaping.</p> <p>The Inspector stated that in the eventuality the approved semi-detached dwellings are constructed, the outlook from these aspects would be predominantly of an expanse of wall closely positioned to the proposed dwelling. Furthermore, the small private garden would be substantially enclosed by the two-storey elevation of the neighbouring dwelling. As a result, the occupants of the proposed dwelling would have a sense of feeling hemmed in when using the garden and looking out of the bedroom and living room windows. As such the dwelling and garden space would be less pleasant to use. The effect would be sufficiently harmful to adversely affect</p>

	<p>future occupants' quality of life.</p> <p>Overall, the Inspector considered that the proposal would not result in acceptable living conditions for future occupiers of the dwelling with regards to outlook. It would be contrary to Policy SD14 of the JCS which states amongst other matters that new development should not create conditions that could impact on human health.</p> <p>The Inspector finally concluded that the proposed new dwelling would be harmful to the character of the area and the living conditions of future occupants for the reasons outlined above. The appeal was therefore dismissed by the Inspector.</p>
Date of appeal decision	13.08.2020

(A) Appeal Decisions	
Application No	19/00333/FUL
Location	Part Parcel 2363 Butts Lane Woodmancote Cheltenham Gloucestershire
Proposal	Erection of 5 dwellings with associated access.
Officer recommendation	Non-determination
Decision type	Delegated
PINS reference	APP/G1630/W/20/3244978
PINS decision	Appeal Dismissed and Planning Permission Refused
Reason	<p>When assessing the location of the development, the Inspector noted that the appeal site is located on the edge of the village and that whilst it was apparent from the site visit that there is development on the opposite side of Butts Lane, the appeal site forms an open field. The Inspector set out that layout of the surrounding lanes (Bushcombe Lane and Butts Lane) gives a very definitive edge to the built form of the village and that given the absence of development around the appeal site, the proposal could not be considered infilling, and the proposal would be more akin to an extension to the built form of the village.</p> <p>Consequently, the Inspector found that as the proposal does not meet any of the exceptions in Policy SD10 for housing on sites which have not been allocated, the site is not a suitable location for housing, having regard to the development strategy for the area.</p> <p>The Inspector then considered the impact of the development to the character and appearance of the area. He/she highlighted that the appeal site is located within the landscape character type 2; Escarpment and having walked along several public footpaths located in close proximity to the appeal site the Inspector confirmed it was evident that the site is highly visible from the raised slopes when looking down towards Woodmancote.</p>

	<p>The Inspector stressed how Butts Lane provides a very clear and stark definition between the built up area and the rural area, which is particularly evident from higher ground. The appeal proposal would be located in an area where the village transitions from a semi-urban environment into one of a rural nature. As such, the proposal would introduce built form into a location where currently there is none. The Inspector considered this urbanising effect would not be in keeping with the character and appearance of the area. The proposal would introduce built form into an open field which is characteristic of the Cotswolds Area of Outstanding Natural Beauty (AONB) escarpment, and would clearly extend the settlement into the countryside.</p> <p>Consequently, the Inspector concluded that the proposal would harm the character and appearance of the area, and would fail to conserve or enhance the scenic beauty of the Cotswolds AONB.</p> <p>In light of this, the Inspector confirmed that because he/she found significant harm to the character and appearance of the area and identified that the harm to the AONB provides a clear reason for refusal the presumption in favour of sustainable development is not triggered in this appeal.</p> <p>The Inspector acknowledged the benefits of the proposed development however considered the identified benefits did not outweigh the conflict with the development plan and therefore the appeal was dismissed and planning permission was not granted.</p>
Date of appeal decision	08.09.2020

(A) Appeal Decisions	
Application No	19/00468/FUL
Location	Court Farm Caravan & Camping Site Court Farm Tewkesbury Road Twigworth Gloucester Gloucestershire GL2 9PX
Proposal	Change of use of land from agricultural to a caravan site to be used as holiday accommodation.
Officer Recommendation	Non-Determination
Decision Type	Delegated
PINS Reference	APP/G1630/W/20/3245948
PINS Decision	Appeal Dismissed and Planning Permission Refused

Reason	<p>The Inspector noted that the proposed rows of caravans would appear crowded, creating an intrusive form of development that would be of a scale that would not be sympathetic to the areas open rural character. Whilst accepting the appellant's point that the screening around the site could be strengthened through an appropriately worded landscape condition, the Inspector set out that landscaping is seasonal and views into the site particularly from the north would be likely to be increased during the winter months. Although the site is not within a local or national landscape designation, views of the caravans and associated paraphernalia would intrude into and disrupt the open rural character.</p> <p>The Inspector recognised the fairly sustainable location of the site with access to service and facilities. He/she also acknowledged the land to the east of the A38 as a Strategic Allocation in the JCS and if developed this will likely change the nature of Twigworth. However, the Inspector considered that, given the future development on the eastern side of the A38 this highlights the need to ensure that proposals should respect the openness of parts of the A38 corridor to the west and are sympathetic to the rural character and key viewpoints are not detrimentally affected.</p> <p>In light of the above the Inspector concluded that the proposal would result in harm to the character and appearance of the area.</p> <p>Further to this, in respect to the effect on the setting of the Grade II Listed Building at Court Farm, the Inspector noted that it was clear from the available evidence that the buildings at Court Farm were originally largely isolated, surrounded by open fields and countryside, and the open agricultural backdrop, including the site, would have contributed visually to their character. Whilst the Listed Buildings have incorporated a number of additions to their original features, including subsequent outbuildings, the Inspector concluded the context and form of the farmstead can still be appreciated.</p> <p>The Inspector stated that rows of caravans in a fairly generic and high density layout would not be conducive to preserving the open setting of the historic farmstead and would erode the immediate agricultural setting jarring the open character. This would be heightened with associated paraphernalia likely to include fencing, decking and external light for the caravans which would make the development appear more prominent. In light of this the Inspector concluded the development would thus be an intrusive form of development within the setting of the Listed Building and out of character with them.</p>
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	<p>The Inspector found the harm to be less than substantial but nevertheless of considerable importance and weight. In this case, the Inspector acknowledged some public benefits in terms of the provision of additional tourist accommodation and associated benefits to the economy would exist. However, given the intrusive nature of the siting of the caravans and the effect on the areas open character surrounding the Listed Buildings, these benefits would not outweigh the harm caused. As such, the Inspector concluded the proposal would fail to satisfy the requirements of the Planning (Listed Buildings and Conservation Area) Act 1990 and the proposal would fail to preserve the setting of the group of Grade II Listed Buildings contrary to Policy SD8 of the JCS.</p> <p>For those reasons the appeal did not succeed.</p>
Date of appeal decision	07.09.2020

(A) Appeal Decisions	
Application No	19/00538/FUL
Location	19 Whitefields Road Bishops Cleeve Cheltenham Gloucestershire GL52 8RR
Proposal	Erection of a two storey rear extension.
Officer recommendation	Refuse
Decision type	Delegated Decision
PINS reference	APP/G1630/D/20/3246948
PINS decision	Appeal Dismissed Planning Refused
Reason	<p>The main issue of the appeal was the effect of the proposed development on the living conditions of the occupiers of nearby properties, with particular regard to outlook, privacy, daylight and sunlight.</p> <p>In terms of overlooking to the neighbouring dwellings at the rear, the Inspector stated that the proposed extension would allow shorter-range views into the properties of 12 and 14 Whitefields Road and their gardens than at present. The Inspector went on to say that "existing vegetation and boundary treatments would partly filter views. Nevertheless, there would be views over and through gaps in the vegetation. In addition, the replacement of an obscure glazed bathroom window on the rear elevation by a clear glazed one serving a bedroom would increase the likelihood of overlooking. Although the extension would extend straight from the rear of the appeal property, views from the first-floor windows would still be at a relatively direct angle into the rear garden spaces behind and the properties themselves. While there is no set separation distance given in local plan policies or a design guide, the appeal scheme would give rise to an unacceptable increase in the level of overlooking. This would be detrimental to the privacy of the occupants of those properties."</p>

	<p>The Inspector did not agree with the Council's assessment that there would be a harmful loss of outlook to no 16 Whitefields Road. The Inspector stated that "the appeal property is already a prominent feature in the outlook from 16 and 17 Whitefields Road. The proposal would increase the bulk of the appeal property as experienced from these neighbouring dwellings. Nevertheless, the proposal would not extend across the whole of the rear boundary of 16 Whitefields and the largely glazed conservatory would still provide an adequate outlook. Views from the kitchen window are already limited by the conservatory and garage. While the extension would still be an obvious presence from first floor rooms at 16 and 17 Whitefields Road, they would have an outlook over and away from the proposed extension. The extension would be highly prominent from the rear gardens. Notwithstanding this, it would not be an oppressive feature."</p> <p>The Inspector concluded that the proposal would unacceptably harm the living conditions of the occupiers of 12 and 14 Whitefields Road with regard to loss of privacy. As such, it would fail to accord with Policies SD4 and SD14 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy and Policy HOU8 of the Tewkesbury Borough Local Plan. The appeal was therefore dismissed.</p> <p>In relation to the costs decision, the Inspector concluded that the Council has not acted unreasonably or in a way that has put the applicant to unnecessary or wasted expense. The application for an award of costs was therefore refused.</p>
Date of appeal decision	03.11.2020

(A) Appeal Decisions	
Application No	
Location	Land Off School Road Apperley Gloucester Gloucestershire
Proposal	Permission in Principle for the erection of 1no. dwelling
Officer recommendation	Refuse
Decision type	Delegated Decision
PINS reference	APP/G1630/W/20/3249306
PINS decision	Appeal Dismissed Planning Refused

Reason	<p>The Inspector considered the main issue for consideration to be whether or not the principle of the proposed development was acceptable, with specific regard to the site's location.</p> <p>The Inspector acknowledged the site was adjacent to the rear boundaries of dwellings although considered that there was a marked change in character beyond the southern boundary of Westview. The inspector agreed with that the site does not lie within the service village. Further, the Inspector reasoned that the proposal would not constitute "infill development" and not represent a logical form of extension to the existing development, therefore would therefore conflict with JCS Policy SD10. The inspector highlighted that Policies RES2 and RES3 of the PSTBP of the emerging plan could only be afforded limited weight in the consideration of the appeal.</p> <p>The inspector further considered that the proposal would introduce built form on undeveloped land, outside of a settlement boundary that owing to its location would relate poorly with existing pattern of built form and to my mind would cause significant harm. The inspector advised that, in principle, the appeal proposal would not represent a logical form of extension to the existing settlement pattern or infill. For these reasons found conflict with criterion 4 of Policy SD10 of the JCS.</p> <p>Taking account of the Council's lack of a five year housing land supply, which means paragraph 11 of the NPPF was engaged, the Inspector concluded the proposal would contribute towards the shortfall in housing supply and would attract economic benefits, both during construction and afterwards.</p> <p>Notwithstanding this the Inspector considered that Policy SD10 constitutes as the most important policy, in reference to this appeal, as referred to by paragraph 11(d) of the Framework. And further considered that this policy is generally consistent with the Framework, and as such is not out of date for the purposes of paragraph 11. The Inspector concluded that the conflict with Policy SD10 carries significant weight.</p> <p>For these reasons, the Inspector found the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits and allowed the appeal. Concluding that the proposal would not be a sustainable form of development.</p>
Date of appeal decision	21.09.2020

3.0 ENFORCEMENT APPEAL DECISIONS

3.1

(A) Appeal Decisions	
Application No	17/00010/ENFC
Location	26 Sallis Close Northway Tewkesbury Gloucestershire GL20 8TA
Proposal	Appeal against Enforcement Notice
Officer recommendation	N/A
Decision type	N/A
PINS reference	APP/G1630/C/19/3243106
PINS decision	Dismissed and Notice upheld
Reason	<p>Officer to summarise decision</p> <p>The enforcement notice required the demolition of the single storey timber side extension and removal of the closeboard timber fencing and gate.</p> <p>The Appellant appealed on grounds (b), (c) & (d).</p> <p>Ground (b) is that the matters alleged by the notice had not occurred. The inspector stated the breach of control alleged in the notice had occurred so the ground (b) appeal failed.</p> <p>Ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The inspector concluded the Appellant had not demonstrated that any of the matters alleged in the notice are not in breach of planning control on the balance of probabilities. For that reason, the appeal on ground (c) failed.</p> <p>Ground (d) is that the alleged breach of planning control is immune from enforcement action due to the passage of time. It is for the Appellant to demonstrate (on the balance of probabilities) that the operational development was substantially completed four years before the date of the enforcement notice.</p> <p>The inspector concluded that the Appellant failed to demonstrate, on the balance of probabilities, that the alleged extension, fencing and gate were substantially completed four years before the date of the enforcement notice, so as to have gained immunity from enforcement action through the passage of time. The appeal on ground (d) did not succeed.</p> <p>In summary the inspector stated the appeal should not succeed and the enforcement notice was upheld.</p>
Date of appeal decision	28.08.2020

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

Contact Officer: Appeals Administrator
01684 272062 AppealsAdmin@tewkesbury.gov.uk

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
20/00131/ENFB	Part Parcel 1959 Cursey Lane Elmstone Hardwicke	Appeal against enforcement notice	08.11.2020	W	JOE	
20/00029/FUL	Ireley Grounds Broadway Road Winchcombe	Demolition of outbuildings and removal of tennis courts. Sub-division of main dwellinghouse (Ireley Grounds) into two dwellings. Erection of 4 no. detached dwellings, a terrace of 3 no. cottages and associated landscaping.	16.11.2020	W	CAS	
20/00332/FUL	Land To The Rear Of 54 & 52A Rookery Road Innsworth	Change of Use of a double-garage to one-bed dwelling for disabled person(s)	17.11.2020	W	DLL	
19/00772/FUL	Land Parcel 0088 Willow Bank Road Alderton	Residential development up to 28 units, including means of access and landscaping.	26.11.2020	W	ALW	

Process Type

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