

TEWKESBURY BOROUGH COUNCIL

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| Report to: | Planning Committee |
| Date of Meeting: | 16 March 2021 |
| Subject: | Current Appeals and Appeal Decisions Update |
| Report of: | Development Manager |
| Corporate Lead: | Head of Development Services |
| 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

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| Application No | PP-08368284 |
| Location | Land Adjacent To 1 St Clair Cottages Staverton Cheltenham GL51 0TW |
| Proposal | New 3 Bedroom Detached Dwelling Adjacent to 1 St.Clair Cottages |
| Officer recommendation | Refuse |
| Decision type | Delegated Decision |
| PINS reference | APP/G1630/W/20/3258448 |
| PINS decision | Appeal Dismissed |
| Reason | <p>The application had been refused on Green Belt and design grounds.</p> <p>The Inspector agreed with the Council that the proposed development was inappropriate development in the Green Belt as it did not meet any of the exceptions in paragraph 145 of the NPPF. Inappropriate development is, by definition, harmful to the Green and should not be approved except in very special circumstances.</p> <p>Similarly, the Inspector considered that the development would be harmful to the character of the area through not reflecting the rhythm and form of the development nearby, and sense of space of the immediate setting.</p> <p>Whilst they noted that the Council was not able to demonstrate a five year housing land supply, the Inspector concluded that the tilted balance did not apply given that the identified harm to the green belt constituted a clear reason for refusal.</p> <p>Overall, the Inspector concluded that the limited benefits (given the small scale of development proposed) did not outweigh the identified harms. As a result, the very special circumstances that are necessary to justify the development did not exist.</p> |
| Date of appeal decision | 06.01.2021 |

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| Application No | PP-08607344 |
| Location | Land Adj. Thrift House Ashleigh Lane Cleeve Hill Cheltenham Gloucestershire GL52 3QF |
| Proposal | Erection of 2no. dwellings, access improvements and associated works. |
| Officer recommendation | Refuse |
| Decision type | Delegated Decision |
| PINS reference | APP/G1630/W/20/3257703 |
| PINS decision | Appeal Dismissed |
| Reason | <p>The application was refused on the basis of conflict with the Council's housing policies due to its location and the harm to the landscape within the Cotswold Area of Outstanding Natural Beauty (AONB).</p> <p>In terms of the location of development, the Inspector was satisfied that the proposal was a form of infill development as it is a corner plot, which is adjacent to two other dwellings. However, the question remained as to whether the site is in a village for the purposes of policy SD10 of the JCS.</p> <p>The Inspector was satisfied that the settlement of Cleeve Hill is a village but he was of the opinion that the village envelope did not extend a significant distance down the B4632 towards Southam. Indeed, the Inspector noted that the site appeared closer to the village core at Southam although not within its envelope either. It was therefore concluded that the proposal would constitute infilling but would not fall within an existing built-up area of a town or village, contrary to policy SD10. However, due to the lack of a sufficient supply of housing land supply, the Council's housing policies were deemed to be out of date and carried diminished weight.</p> <p>In terms of the impact on the AONB, the Inspector stated that the proposed dwelling would not appear out of character. However, he found that the site is an area of mainly open land that does provide a pleasing gap in the built development along the B4632 between dwellings. The Inspector opined that his section of the B4632 is not continuously built up on all sides, which adds to the rural character of the site surroundings. He found that even with the proposed dwellings design to respond to the topography of the site, there would still be a significant loss of the existing openness this largely undeveloped plot provides.</p> <p>Whilst some mitigation was proposed in the form of the replacement of the front boundary fence and enhanced landscaping, which would have some beneficial effects, it was felt that the loss of openness in this particular location would not be fully outweighed by the eventual matured landscaping proposed. It was therefore concluded that the proposal would not conserve the AONB special qualities, contrary to policies SD6 and SD7</p> |

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| | <p>of the JCS.</p> <p>In weighing up the planning balance, the Inspector found that the harm to the AONB provided a clear reason for refusal and therefore the presumption in favour of sustainable development was not engaged. He went on to state that even if the tilted balance was engaged, the harm identified in the inappropriate location for the proposed dwellings and the harm to the AONB would significantly and demonstrably outweigh the benefits. The appeal was therefore dismissed.</p> |
| Date of appeal decision | 11.01.2021 |

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| Application No | 19/01071/OUT |
| Location | Land Off Ashmead Drive Cobblers Close Gotherington Cheltenham Gloucestershire |
| Proposal | 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. |
| Officer recommendation | Delegated Permit |
| Decision type | Committee Decision |
| PINS reference | APP/G1630/W/20/3256319 |
| PINS decision | Appeal Allowed |
| Reason | <p>The Council refused permission for a number of reasons; including conflict with the Council's housing policies, landscape impact and social cohesion. The application was also refused for a number of technical reasons relating to the absence of an appropriate planning obligation. However, these technical matters were addressed prior to the Inquiry through the completion of Section 106 Agreements with the Borough Council and the County Council.</p> <p>At the Inquiry, the Inspector considered that the main issues were whether the proposal would accord with the Council's plan led strategy for housing and growth; the effect of the proposal on the landscape character and appearance of the area; and the effect of the proposal on the social well-being and vitality of Gotherington.</p> <p>In terms of the Council's plan led strategy for housing and growth, the Inspector agreed with the Council that the proposal would not accord with the development plan in this regard. However, it was common ground between the parties that the Council could not demonstrate a 5 year supply of deliverable housing sites. Consequently, the policies which govern the spatial strategy and housing development in the area were deemed out of date by virtue of paragraph 11(d) of the Framework.</p> <p>Whilst it was common ground that the Council could not</p> |

demonstrate a 5 year supply of deliverable housing sites, the extent of the shortfall was contested by the Appellant. The Council advanced a supply of 4.37 years at the Inquiry whereas the Appellant alleged a supply of only 1.82 years.

Central to the Appellant's argument was the disputed use of additional housing supply from previous years to reduce future housing land supply requirements. The Appellant also challenged the level of housing the Council anticipated to be delivered at Fiddington, Ashchurch and Land at Stoke Road, Bishops Cleeve within specified timescales.

The Inspector agreed with the Appellant and concluded that past additional supply should be removed from the 5 year housing requirement. The Inspector also disregarded delivery from the disputed sites due to a lack of clear evidence that housing would be delivered within 5 years. The Inspector therefore concluded that the Council housing land supply was 1.82 years. Concerns were also raised in respect of future supply in the Borough.

With regard to landscape character and appearance, the Inspector concluded that given the site's location adjacent to the settlement boundary, the relatively enclosed nature of the site and its limited contribution to the Special Landscape Area; development of the site would not appear as a significant encroachment into the surrounding rural landscape that could be considered as harmful or disproportionate.

The Inspector also concluded that the gap between villages would be maintained and the linear nature of Gotherington would not be adversely affected. Views towards the AONB from the site would change, but with the views that would become available from the open space, the effect would be acceptable.

However, the Inspector did accept that the site is locally valued and the proposal would not enhance the landscape character of the area. For this reason, there would be some limited harm. There would also be a moderately adverse effect from the viewpoint at Nottingham Hill. Furthermore, whilst the effect on the view from Cleeve Hill would be neutral, it would not enhance landscape and scenic beauty. The Inspector therefore found there to be some limited harm to landscape character and appearance of the area and the setting of the AONB and moderate harm to views from the AONB.

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| | <p>Turning to the social well-being of Gotherington, the Inspector found that the cumulative development of the village would not be overly disproportionate and there was no tangible evidence that the village had reached capacity. It was therefore concluded that the proposal would not be harmful to the social well-being and vitality of the village.</p> <p>In weighing up the planning balance, the Inspector concluded that the proposal would conflict with the spatial strategy of the area and the NPD although the Council's housing policies were deemed to be out of date. Limited harm to the landscape character and moderate harm to views from the AONB was also found.</p> <p>In favour of the development was the provision of housing in general, affordable housing, net gains in biodiversity and the delivery of on-site facilities that would contribute towards the village's social wellbeing. Additionally, there would be economic benefits during construction and from the additional residents that would contribute towards spending in the area.</p> <p>The Inspector concluded that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The appeal was therefore allowed.</p> <p>The Council disagrees with the conclusions reached by the Inspector in respect of housing land supply and in particular the way that past oversupply, or additional supply, of houses was disregarded by the Inspector. In the context of a plan-led system, the Inspector's approach would artificially increase the housing requirement set out in the JCS. The Inspector's approach in this case fails to recognise that advance delivery, as has happened in the plan period to date, makes a real contribution to meeting the housing requirement (which is the policy aim).</p> <p>To read the policy as the Inspector did in this case leaves no distinction between an authority in which significant progress has been made in the early years of the plan to meeting its housing requirement, and one in which no such progress has been made. That defies common sense, undermines confidence in the plan-led system, and is contrary to the objective of the policy and of the NPPF as a whole.</p> |
| Date of appeal decision | 12.01.2021 |

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| Application No | 19/00888/FUL |
| Location | Villa Farm House Tewkesbury Road The Leigh Gloucester Gloucestershire GL19 4AQ |
| Proposal | Part demolition, extension and alteration of existing detached garages and store to provide annexe in association with existing farm house. |
| Officer recommendation | Refuse |
| Decision type | Delegated Decision |
| PINS reference | APP/G1630/D/20/3255874 |
| PINS decision | Appeal Dismissed |
| Reason | <p>The application had been refused on green belt and design grounds.</p> <p>In dismissing the appeal, the inspector found that the proposal would represent inappropriate development which would lead to a loss of openness to the green belt. Furthermore they agreed with the Council that the proposal would result in harm to the character and appearance of the area. The Inspector found no other considerations to outweigh these identified harms and very special circumstances did not exist to justify the conflict with green belt policy.</p> |
| Date of appeal decision | 14.01.2021 |

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| Application No | 19/01027/FUL |
| Location | Stonehaven Twigworth Fields Twigworth Gloucester Gloucestershire GL2 9NH |
| Proposal | Change of use of ancillary residential building and part of garden to include business use as dog day care/dog grooming (amended red line). Change of use of adjacent stip of land to residential and dog/daycare use. |
| Officer recommendation | Refuse |
| Decision type | Delegated Decision |
| PINS reference | APP/G1630/W/20/3257408 |
| PINS decision | Appeal Allowed Costs application Refused |
| Reason | <p>The main issues for the appeal were the effect of the proposal on the living conditions of neighbours with respect to noise and the effect on the character and appearance of the area</p> <p>The Inspector considered the Noise Assessment had been completed by a qualified and experienced specialist. The Council's assessment did not account for the fact that the use was only intended to operate during the day which was a significant difference when assessing the effect on living conditions when compared to a kennel use.</p> |

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| | <p>The Inspector considered that there would be no harm to the living conditions of occupants in nearby houses, subject to mitigation measures which could be secured by condition.</p> <p>In respect of the application for costs the Inspector found that the Council provided clear justification for its case in respect of character and appearance. He also recognised that noise issues can be complex and that the appeal could not have been avoided given the Council's concerns in that respect.</p> |
| Date of appeal decision | 18.01.2021 |

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| Application No | PP-08389198 |
| Location | 35 Church Road Bishops Cleeve Cheltenham Gloucestershire GL52 4LP |
| Proposal | Erection of first floor extension to 35 Church Road to provide 3 one bedroomed residential apartments. |
| Officer recommendation | Permit |
| Decision type | Committee Decision |
| PINS reference | APP/G1630/W/20/3256831 |
| PINS decision | Appeal Allowed Costs application Refused |
| Reason | <p>The main issues for the appeal were the absence of dedicated car parking provision and the effect of the proposed development on the setting of nearby heritage assets and, in particular the setting of the Grade I listed St Michael and All Angels Church.</p> <p>The Inspector considered the site has access to many services and facilities within easy walking distance and the close proximity to public transport facilities. The proposal would have little reliance on private cars in order to function successfully and the Inspector did not consider that on-site car parking was required in this case. Furthermore, cycle parking is provided in the development to meet sustainable transport requirements. The Inspector found that there was insufficient evidence of existing parking pressure or problems in Bishops Cleeve and displaced parking.</p> <p>Overall on this issue the Inspector concluded that the absence of dedicated car parking provision and car parking in the area would not mean that the development would not function well or have a resultant harmful effect on the character and appearance of the area.</p> <p>The Inspector found that the first floor extension would add some bulk and massing to the appeal building, but it would not constitute an overly visually prominent building in its immediate setting, nor would it dominate the approach to the churchyard. As such it would not harm the way that pedestrians and others experience the approach to the churchyard, the setting of the nearby listed buildings or the Conservation Area.</p> <p>Overall, the Inspector considered that the proposal has</p> |

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| | <p>been carefully and thoughtfully designed and amended to respond to its setting whilst achieving a modern development. It would be an attractive and visually sensitive and interesting scheme which would not be harmful to the setting of nearby heritage assets, in particular the setting of the Grade I listed St Michael and All Angels Church.</p> <p>In refusing the application for the award of costs the Inspector noted that the committee made an alternative judgement to officers' based on local knowledge and planning judgment and that the reasons for refusal were supported by the NPPF and/or development plan. The Inspector also concluded that the Committee understood the decision they were making and the need to apply the tilted balance in certain circumstances.</p> |
| Date of appeal decision | 08.02.2021 |

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| Application No | 20/00332/FUL |
| Location | Land To The Rear Of 54 & 52A Rookery Road Innsworth Gloucester Gloucestershire GL3 1AU |
| Proposal | Change of Use of a double-garage to one-bed dwelling for disabled person(s) |
| Officer recommendation | Refuse |
| Decision type | Delegated Decision |
| PINS reference | APP/G1630/W/20/3261538 |
| PINS decision | Appeal Dismissed |
| Reason | <p>The main issues for the appeal were the effect on the character and appearance of the area and whether satisfactory living conditions would be provided to future occupants of the dwelling with regards to privacy of the garden space.</p> <p>The Inspector considered that the character of the building would be significantly altered from that of an outbuilding to a residential unit with doors, fenestration and other paraphernalia associated with a dwelling. The proposed dwelling would, as a result of its scale and design, be an incongruous and distinct oddity in the street scene and would relate poorly to the surrounding two storey dwellings contrary to local plan policies.</p> <p>The Inspector found that rear amenity space would be overlooked from neighbouring properties. The provision of a pergola on the boundaries of the site would not sufficiently mitigate this harm because of the commanding position these neighbouring properties occupy, relative to the appeal site. A condition could not address the harm identified, as in order to achieve an acceptable level of privacy, a substantial structure would be required which would enclose an already small space and would make it an unpleasant space to use.</p> |

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| | The Inspector concluded that the moderate benefits of the proposal did not outweigh the significant harm that would be caused to the character and appearance of the area and the living conditions of the intended future occupiers, in conflict with the development plan. |
| Date of appeal decision | 10.02.2021 |

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| Application No | 19/01136/FUL |
| Location | Former A A Services Centre Cheltenham Road East Churchdown Gloucester Gloucestershire |
| Proposal | Car sales and mentoring training facility on the site of the former AA Service Centre |
| Officer recommendation | Refuse |
| Decision type | Delegated |
| PINS reference | APP/G1630/W/20/3256552 |
| PINS decision | Appeal Dismissed |
| Reason | <p>The main issues for the appeal were the effect of the proposal on the area of Green Infrastructure related to the allocated housing site, whether it would support the adjacent residential and employment uses, and its impact on highway safety.</p> <p>The Inspector noted that the site forms part of the Churchdown Strategic Allocation and falls within an area that has been shown as Green Infrastructure on the indicative plan in the JCS. In this particular location the green infrastructure is provided so as to protect and enhance visual linkages and safeguard existing landscape features as set out in Policy A2 of the JCS.</p> <p>The Inspector also noted that the site is previously developed land, which was historically used as a roadside service centre. All that is apparent of the former activity on the site are entrances and hardsurfacing, which the Inspector considered not to be dominant and concealed by the boundary planting.</p> <p>The proposal would introduce a significant area of cars on display onto the site as well as 2 mobile cabins, a storage unit akin to a shipping container, and palisade fencing. The Inspector found that these elements mean the proposal would be an intrusive and striking arrangement that would be distinctly at odds with the openness around, eroding the visual links that exist between the various surrounding landscaped areas. Moreover, as the works would be located roughly in the middle of this band of Green Infrastructure when travelling along Cheltenham Road East, this would exacerbate their harmful impact still further by increasing their prominence, and by diluting and fragmenting the open area and the separation the Green Infrastructure delivers between Gloucester and Churchdown.</p> |

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| | <p>Whilst mitigation was proposed in the form of landscaping, this did not allay the Inspector's concerns. He also considered that the site's lawful sui generis planning use as a roadside service centre did not attract significant weight. It was therefore concluded that the proposal would detract unacceptably from the openness and separation this site brings to this area of Green Infrastructure, and so would be contrary to Policies SA1 A2 and INF3 of the JCS.</p> <p>With regard to highway safety, the Inspector found insufficient details to show the junction arrangement is adequate to cope safely with the turning manoeuvres of a car transporter. He also observed that Cheltenham Road East carries a significant traffic flow and the development would cause unacceptable disruption to this if larger car-carrying transporters, being unable to turn around on site, had to load and unload from the kerbside, or reverse onto or off the carriageway. It was therefore concluded that the development would unacceptably affect highway safety.</p> <p>In light of the conflict with the development plan, the appeal was dismissed.</p> |
| Date of appeal decision | 17.02.2021 |

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| Application No | 19/00449/FUL |
| Location | Cotswold House Post Office Lane Cleeve Hill Cheltenham Gloucestershire GL52 3PS |
| Proposal | Addition of a single storey summer room to the west of house, with retaining walls and driveway added to garden and a new entry onto Post Office Lane. |
| Officer recommendation | Refuse |
| Decision type | Delegated |
| PINS reference | APP/G1630/W/20/3259879 |
| PINS decision | Appeal Dismissed |
| Reason | <p>The main issues in the appeal are the effect of the proposal on the character and appearance of the area, including on the significance of a potential non-designated heritage asset and the natural beauty of Cotswolds Area of Outstanding Natural Beauty (AONB).</p> <p>Cotswold House comprises a detached dwelling with similar characteristics to dwellings in the local area. Its age, form and positive contribution to the local area means the Council has regarded it as a non-designated heritage asset. However, the Inspector considered it was unclear what process the Council has followed to formally identify it as a non-designated heritage asset.</p> |

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| | <p>Nonetheless, the Inspector considered that Cotswold House makes a positive contribution to the local area due to its consistent relationship with other dwellings nearby whilst also bearing some of the defining characteristics of the wider AONB, such as discernible historic proportions, clean frontage and use of consistent materials.</p> <p>The Inspector noted that that Cotswold House appears to have been subject to a number of side extensions however, these present themselves as subservient and sympathetic additions to the original historic form, whilst retaining positive symmetrical proportions and clean frontage, which are prominent features in the landscape given the property's position above Post Office Lane.</p> <p>The proposal would comprise an extension to the front of the property, which would be forward of the existing building line. The Inspector considered that this would detract from the clean frontage of Cotswold House and also upset the level of symmetry it currently enjoys. Furthermore, the extension would introduce a roof design that would conflict with more traditional approaches in the area.</p> <p>Overall, the inspector concluded that the proposal would harm the character and appearance of the area, including the natural beauty of the AONB.</p> |
| Date of appeal decision | 25.02.2021 |

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

Contact Officer: Appeals Administrator
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Appendices: Appendix 1: List of Appeals received

Appendix 1

| List of Appeals Received | | | | | | |
|--------------------------|------------------------|---|------------|------------------|----------------|---------------|
| Reference | Address | Description | Start Date | Appeal Procedure | Appeal Officer | Statement Due |
| 21/00001/DECISI | 2 Oak Drive Brockworth | Erection of single storey 1-bed dwelling. | 25.02.2021 | W | JWN | |

Process Type

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