

# TEWKESBURY BOROUGH COUNCIL

<b>Report to:</b>	Planning Committee
<b>Date of Meeting:</b>	16 November 2021
<b>Subject:</b>	Current Appeals and Appeal Decisions Update
<b>Report of:</b>	Development Manager
<b>Lead Member:</b>	Lead Member for Built Environment
<b>Number of Appendices:</b>	One

## **Executive Summary:**

To inform Members of current planning and enforcement appeals and Department for Levelling Up, Housing and Communities 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 Department for Levelling Up, Housing and Communities appeal decisions that have recently been issued.

## **2.0 APPEAL DECISIONS**

**2.1** The following decisions have been issued by the Department for Levelling Up, Housing and Communities:

<b>Application No</b>	19/00400/CLE
<b>Location</b>	Court Farm Tewkesbury Road Twigworth Gloucester Gloucestershire GL2 9PX
<b>Proposal</b>	Lawful Development Certificate (Existing) for the use of land for the storage of caravans and motorhomes.
<b>Officer recommendation</b>	Refuse Certificate
<b>Decision type</b>	Delegated Decision
<b>PINS reference</b>	APP/G1630/X/20/3263146
<b>PINS decision</b>	Appeal Dismissed
<b>Reason</b>	<p>Section 191 (4) of The Town and Country Planning Act 1990 as amended indicates that if, on an application under this section, the Local Planning Authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. The Inspectors decision is therefore based on the facts of the case and judicial authority, this means that the planning merits of the development were not relevant to the appeal and the main issue was whether the Council's decision to refuse to grant the Lawful Development Certificate was well founded.</p> <p>In appeals of this nature the onus is on the appellant to show, on the balance of probabilities, that the use of the land for the storage of caravans and motorhomes has been continuous for a period of ten years beginning with the date on which the use commenced.</p> <p>Having regard to all the findings, the Inspector considered that the appellant has not demonstrated that, on the balance of probability, the material change of use of the appeal site as a whole to a use for the storage of caravans, motorhomes and vehicles occurred before 12 April 2009 and therefore it is less than probable that the land for which the Lawful Development Certificate was sought has been in continuous use for a period of ten years beginning with the date on which the use commenced.</p> <p>Accordingly, the Inspector concluded that the Council's refusal to grant a certificate of lawful use or development in respect of the appeal site for the storage of caravans and motorhomes was well-founded and that the appeal should fail.</p>
<b>Date of appeal decision</b>	22.07.2021
<b>Application No</b>	
<b>Location</b>	Land East Of Teddington Teddington Tewkesbury Gloucestershire

<b>Proposal</b>	Permission in Principle for the erection of up to 4 no. dwellings
<b>Officer recommendation</b>	Refuse
<b>Decision type</b>	Delegated Decision
<b>PINS reference</b>	APP/G1630/W/21/3269576
<b>PINS decision</b>	Appeal Dismissed
<b>Reason</b>	<p>The Inspector set out that main issues was whether the site was suitable for residential development, having regard to its location, the proposed land use and the amount of development, with particular regard to the local housing strategy, accessibility to services and reliance on private motor vehicle, and the character and appearance of the area, including the Cotswolds Area of Outstanding Natural Beauty (AONB).</p> <p>The site does not fall within a housing allocation, an urban area, or rural service centre or village. Development in these circumstances is restricted to infilling within existing built-up areas. The Inspector found that the while appeal site formed part of a larger undeveloped open field which separates The Poplars from Cotswold Cottage, the curvature of the road and mature roadside vegetation means that there are limited views of The Poplars with the rows of residential properties in Teddington which in turn serves to create a visual separation between the properties and the site is not seen as part of the continuous built-up area of the settlement.</p> <p>Furthermore, the Inspector identified that the garden to Cotswold Cottage would create a large gap and the development site which would contrast with the generally tight grain of development within Teddington. As a result the Inspector concluded that the development would not be infill development and would extend built form outside of the existing village edge eroding the countryside.</p> <p>In terms of accessibility, the Inspector found that bus services were infrequent and would not be and attractive or probable alternative to the car. Furthermore, the narrow and unlit nature of roads beyond the settlement would not lend themselves to safe use by pedestrians and would be unlikely to encourage cycling, particularly at times of darkness or adverse weather conditions.</p> <p>While the site may not be visible in the immediate area beyond existing mature vegetation, it would be seen within surrounding fields and rising open land beyond and contrasts with the continuous built up form of the village. The Inspector set out that the introduction of dwellings and domestic paraphernalia would bring about a change to the character of the site which would result in an adverse impact upon the AONB.</p> <p>The Inspector concluded that the location, the proposed land use and the amount of development would not be</p>

	suitable with regard to the local housing strategy, accessibility to services and reliance on private motor vehicles and the character and appearance of the area including the AONB and the appeal was dismissed.
<b>Date of appeal decision</b>	03.09.2021

<b>Application No</b>	20/00964/OUT
<b>Location</b>	46 Rookery Road Innsworth Gloucester Gloucestershire GL3 1AU
<b>Proposal</b>	Outline application for the erection of a dwelling with all matters reserved.
<b>Officer recommendation</b>	Refuse
<b>Decision type</b>	Delegated Decision
<b>PINS reference</b>	APP/G1630/W/21/3273609
<b>PINS decision</b>	Appeal Dismissed
<b>Reason</b>	<p>The main issue in this appeal was the effect of the proposed development on the character and appearance of the area.</p> <p>The Inspector set out that whilst seeking outline planning permission with all matters reserved, the proposed development would introduce a detached dwelling into one of the characteristic gaps between two pairs of semis, all but filling it. This would noticeably reduce the spacious feel to the area, upsetting its pleasant rhythm and balance. It would accordingly result in a cramped appearance to the street scene and thus be harmful to the character and appearance of the area.</p> <p>The Inspector ascribed significant weight to the harm identified and therefore, and in regard to the specific circumstances of this case, concluded the adverse impacts of granted a planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF when taken as a whole and it would not therefore be sustainable development for which the presumption in favour applies.</p> <p>In light of this the Inspector dismissed the appeal.</p>
<b>Date of appeal decision</b>	08.09.2021

<b>Application No</b>	19/00883/FUL
<b>Location</b>	Sunset Sunset Lane Southam Cheltenham Gloucestershire GL52 3NL
<b>Proposal</b>	Demolition of modern extensions and erection of double and single storey side and rear extensions.
<b>Officer recommendation</b>	Refuse
<b>Decision type</b>	Delegated Decision
<b>PINS reference</b>	APP/G1630/D/21/3277456
<b>PINS decision</b>	Appeal Allowed planning permitted
<b>Reason</b>	<p>The main issues in this appeal were the effect of the proposed development on the character and appearance of the host dwelling and whether it would conserve and enhance the natural beauty of the Cotswolds Area of Outstanding Natural Beauty (AONB).</p> <p>The Inspector considered that whilst the proposed extension would have a significant scale in comparison to the existing dwelling, the generously-sized plot would minimise its visual impact and prevent the proposal from appearing overly-dominant and that although the proposed additional floorspace would be substantial, the extended property would sit comfortably within the large plot and would maintain a proportionate scale and depth in relation to the host dwelling and its surroundings.</p> <p>The inspector concluded that when viewed directly from the south the two-storey extension would project beyond the existing east-facing elevation of the stone façade. However, the significant distance between these two aspects would minimise the prominence of this projection. Moreover, the orientation of the proposed extension and host dwelling would serve to further minimise clear views of this projection when approaching the property from the east along the highway.</p> <p>The Inspector acknowledged the proposed extension would include a relatively large amount of glazing along the western elevation that would be prominent given the steep decline of the land towards the B4632. However, the Inspector considered that the views of the extended property would be limited due to the trees lining the road, there are already a number of windows along the western elevation of the existing property and any subsequent increase in light from the proposed scheme would only be seen in the context of an existing large dwelling.</p> <p>Given the above, the Inspector concluded the proposed development would not result in harm to the character and appearance of the host dwelling and it would conserve the natural beauty of the Cotswolds AONB. On that basis the appeal was allowed.</p>
<b>Date of appeal decision</b>	15.09.2021

<b>Application No</b>	19/00772/FUL
<b>Location</b>	Land Parcel 0088 Willow Bank Road Alderton Tewkesbury Gloucestershire
<b>Proposal</b>	Residential development of 28 units, including means of access and landscaping.
<b>Officer recommendation</b>	Refuse
<b>Decision type</b>	Committee Decision
<b>PINS reference</b>	APP/G1630/W/20/3259637
<b>PINS decision</b>	Appeal Allowed
<b>Reason</b>	<p>The Inspector considered the main issues to be</p> <ul style="list-style-type: none"> <li>- Whether this was an appropriate location for housing</li> <li>- Impact on local landscape character</li> <li>- The effect on social well-being and community cohesion</li> <li>- The effect on mixed and balance communities.</li> </ul> <p>The Inspector agreed that the proposals conflicted with the development plan and its strategy for the distribution of new housing. Nevertheless, in doing so, she noted the fact that the Council could not demonstrate a five-year supply of deliverable housing sites.</p> <p>In terms of landscape impacts, the Inspector agreed that the proposed development would cause some harm to local landscape character, notably to the countryside setting to Alderton, but that the degree of harm would be moderate.</p> <p>In respect of social cohesion, the Inspector noted the concerns of the local community, taking into account the neighbourhood development plan which <i>'seeks to conserve the active, cohesive nature of the Alderton community and, citing the community's views, indicates the overriding concerns of residents are the rate of new development, and, amongst other things, the resultant impact on the small village environment and the close-knit nature of the community'</i>. However, the Inspector stated that she did not find that the proposal would represent a disproportionate increase in the size of Alderton and that, with time, perceptions of negative social impacts associated with a new residential population at the village edge would dissipate. She concluded that proposed development would consequently not irreversibly undermine the social well-being and community cohesion of Alderton.</p> <p>Whilst the Inspector noted that the Council could not demonstrate a five year supply of deliverable housing sites, she commented that <i>'... in my judgement, the Council's method of taking account of an over-supply against the annual requirement is not be [sic] an unreasonable one.... To continue to require 495 homes a</i></p>

	<p><i>year when the past over-supply would indicate a lesser requirement, would, it seems to me, be to 'artificially inflate' the housing requirement. I am not convinced, having accepted this position, that the appellant's argument that the supply is as low as 2.08 years is robust'.</i></p> <p>Notwithstanding this, given that the tilted balance was in play because of the absence of a five year supply, the Inspector ultimately concluded that she did not find that the adverse impacts of granting permission would be of such magnitude so as to significantly and demonstrably outweigh the benefits and allowed the appeal.</p>
<b>Date of appeal decision</b>	21.09.2021

<b>Application No</b>	20/00976/PIP
<b>Location</b>	and At Longlands Shurdington Road Badgeworth Cheltenham Gloucestershire GL51 4TU
<b>Proposal</b>	Permission in principle application for the erection of up to 5no dwellings.
<b>Officer recommendation</b>	Refuse
<b>Decision type</b>	Delegated Decision
<b>PINS reference</b>	APP/G1630/W/21/3275077
<b>PINS decision</b>	Appeal Dismissed
<b>Reason</b>	<p>The Inspector identified the main issues for this Permission in Principle application as whether the site is suitable for residential development, having regard to its location, the proposed land use and the amount of development (i.e. those matters which consideration of PIP applications are limited), with particular regard to:</p> <p>a) the settlement strategy for the area; b) whether the proposal would be inappropriate development in the Green Belt; and c) if so, whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.</p> <p>The Inspector agreed with the Council that the appeal site would not be a suitable location for new residential development, with particular regard to the settlement strategy of the area, taking into account both the JCS and the emerging TBP.</p> <p>In terms of assessing whether the proposal would constitute inappropriate development in the Green Belt, the Inspector was mindful of existing building on the site and that perhaps one or two dwellings could be provided on site without having a greater impact on the openness of the Green Belt than the existing development.</p>

	<p>However, this could not be said for the higher end of the proposed amount, i.e. 4 or 5 dwellings. The Inspector therefore agreed with the Council that the proposal would constitute inappropriate development in the Green Belt for the purposes of the JCS and NPPF.</p> <p>Turning to whether very special circumstances existed so as to justify the development, the Inspector noted that the harm to the Green Belt carried <u>substantial</u> weight. He concluded that, taken together, the other considerations in this case did not clearly outweigh the harm that he had identified. Not only did this in his view indicate a clear reason for refusing the development proposed under paragraph 11 d) i) of the NPPF, it also meant that the very special circumstances necessary to justify the proposal did not exist.</p>
<b>Date of appeal decision</b>	

<b>Application No</b>	20/00464/FUL
<b>Location</b>	Part Parcel 3152 Tewkesbury Road Deerhurst Gloucester Gloucestershire
<b>Proposal</b>	Hybrid planning application seeking; 1. Full planning permission for the erection of a B2 unit (general industrial) with associated landscaping, access and parking. 2. Outline planning permission (all matters reserved except access) for a mix of B1, B2 and B8 use classes (employment).
<b>Officer recommendation</b>	Minded to Permit
<b>Decision type</b>	Committee Decision
<b>PINS reference</b>	APP/G1630/W/21/3275995
<b>PINS decision</b>	Appeal Dismissed
<b>Reason</b>	<p>The fundamental issue related to the effect of the proposal on highway safety in respect of vehicular movements at the Cursey Lane junction with the A38. The Inspector examined highways evidence from both the Appellants and the Council and reasoned that the Council's transport and highways evidence identified design faults with the Cursey Lane and A38 junction when assessed against the Design Manual for Road and Bridges (DMRB). The Inspector concludes that given the flaws in its design, there is a risk that vehicles using the junction would cause obstruction to fast moving traffic on both lanes of the A38.</p> <p>The Inspector found that the Appellants supporting highways evidence did not address the argument that the traffic along Cursey Lane was minimal and concluded that without any survey information that demonstrated to the contrary, it was reasonable to expect the Cursey Lane and A38 junction to currently experience a modest level of vehicular movement. With this the Inspector considered that it was considered that it was likely that a</p>

	<p>proportion of the traffic to and from the development would use the A38 crossover point to access the northbound lanes and to gain access to Cursey Lane when travelling from the south. However, there was no evidence on the likely increase in such movements. In the absence of this information and in light of the junction's design defects and the appellant's underestimate of trip generation, the Inspector concluded that it had not been clearly demonstrated that traffic generated by the proposal would be safely accommodated at the junction.</p> <p>Therefore, the Inspector concluded that the development would harm highway safety in respect of vehicular movements at the Cursey Lane junction with the A38 and in these regards it would be contrary to JCS policy INF1. For the same reasons, the inspector found that it would not accord with TBP policy EMP5 which looks to ensure safe and satisfactory vehicular access at new employment development.</p> <p>The Inspector acknowledged that the site was allocated as a rural business centre where new employment development is acceptable in principle. Moreover, the Inspector judged that B2 unit would enable the expansion of an existing business and the scheme would support economic growth.</p> <p>However, the Inspector concluded that, from the evidence submitted the development would have an unacceptable impact on highway safety. The harm was judged to attract considerable weight and the proposal would not accord with the development plan when read as a whole. The Inspector considered that the benefits of the scheme and other factors are of insufficient weight to justify granting planning permission contrary to the development plan.</p> <p>The appeal was therefore dismissed.</p>
<b>Date of appeal decision</b>	23.09.2021

<b>Application No</b>	PP-08712572
<b>Location</b>	The Lodge The Leigh Gloucester Gloucestershire GL19 4AG
<b>Proposal</b>	Outline application for the erection of 1 no. detached dwellinghouse including associated access, garaging and car parking, with all matters reserved for future consideration except for access
<b>Officer recommendation</b>	Refuse
<b>Decision type</b>	Delegated Decision
<b>PINS reference</b>	APP/G1630/W/21/3267323
<b>PINS decision</b>	Appeal Dismissed
<b>Reason</b>	The Inspector noted the main planning issues within this case to be, whether the proposal would be in a suitable

	<p>location for housing, having regard to the local development strategy for the area, accessibility to services and reliance on private motor vehicle; and the effect of the proposed development on the character and appearance of the area.</p> <p>The Inspector concluded that the proposed development would not be in a suitable location for housing, having regard to the local development strategy for the area, accessibility to services and reliance on private motor vehicle. The Inspector gave this conflict moderate weight, given the existing housing shortfall, and that the fact that the Emerging Plan is yet to be adopted.</p> <p>In addition, the Inspector advised that the proposed development would harm the character and appearance of the area, thereby failing to accord with saved Local Plan, JCS and emerging TBP policies.</p> <p>The Inspector gave significant weight to the fact that the site would not be in an accessible location and would result in a heavy reliance on private vehicles, contrary to the aim to provide sustainable patterns of growth.</p> <p>The lack of a 5-year housing supply meant that paragraph 11d) of the Framework applied, but nevertheless, the scheme would be contrary to the Framework where it seeks to actively manage patterns of growth and ensure safe and suitable access to the site can be achieved for all users. The Inspector also gave this element significant weight.</p> <p>Having considered the above factors, the Inspector concluded that the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.</p>
<b>Date of appeal decision</b>	03.09.2021

**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.

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**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
21/00451/OUT	Land To The North West Of Fiddington Tewkesbury	Outline application for residential development (up to 460 dwellings), a primary school, associated works, ancillary facilities and infrastructure, open space, recreation facilities and landscaping. Vehicular access from the A46 (T) and Fiddington Lane.	25.10.2021	I	CAS	

### Process Type

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