

TEWKESBURY BOROUGH COUNCIL

Report to:	Planning Committee
Date of Meeting:	18 January 2022
Subject:	Current Appeals and Appeal Decisions Update
Report of:	Development Manager
Lead Member:	Lead Member for Built Environment
Number of Appendices:	1

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:

Application No	21/00104/CLP
Location	Green Meadows Caravan Park Bamfurlong Lane Staverton
Proposal	Proposed Use of land for the siting of 37 caravans for residential purposes
Officer recommendation	Refuse Certificate
Decision type	Delegated Decision
PINS reference	APP/G1630/X/21/3277211
PINS decision	Appeal Allowed planning permitted
Reason	<p>The decision turns on whether the use of the land for the siting of 37 caravans for residential purposes would result in a material change of use of the land and thus constitute development, which would require express planning permission.</p> <p>Although it is common ground that the number of caravans is not subject to conditions, the Council considers it to be material that the 1993 permission did not expressly authorise the siting of more than 31 caravans, nor did it imply that more caravans could be sited without it having to be first demonstrated that a material change of use of the caravan site would not occur.</p> <p>Case Law established by I'm Your Man and in Cotswold Grange Country Park. It held that there is a difference between a limitation of numbers of caravans in the description in the grant of permission, and a limitation of such numbers in the form of a condition, and that only the latter was capable of imposing a limitation at law.</p> <p>The siting of an additional caravan, bringing the total to 37, would be an intensification of the present use. The intensification of an existing use can, but will not necessarily, amount to a material change of use. What is at issue is whether the extent and nature of the change amounts to a definable change in the character of the existing use of the site and whether, as a matter of fact and degree, the increase in the scale of the use of the land as a caravan park would reach the point where it gives rise to such materially different planning circumstances.</p>

	<p>Public views of caravans are currently limited to glimpses through the site access and along the internal driveway. The additional caravan would be seen against the backdrop of the densely built-up site and positioned closely existing caravans. It would not give rise to traffic movements that would be noticeable different or problem in terms of parking provision or highway safety or negatively impact existing residents.</p> <p>While the character and appearance of the site would change to a limited extent, any such change would not, in my view, materially change the definable character of the use of the site. The siting of the additional caravan as proposed and shown on drawing AY.02B539947.04 dated 21/01/2021, would therefore be lawful given the accepted use of the land.</p>
Date of appeal decision	11.11.2021

Application No	20/00976/PIP
Location	Land At Longlands Shurdington Road Badgeworth
Proposal	Permission in principle application for the erection of up to 5no dwellings.
Officer recommendation	Refuse
Decision type	Delegated Decision
PINS reference	APP/G1630/W/21/3275077
PINS decision	Appeal Dismissed
Reason	<p>The proposal is for housing outside of a defined settlement boundary within the Green Belt.</p> <p>The Inspector identified, in regard to the spatial strategy, that the proposal would conflict with Policies SP2 and SD10 of the Core Strategy which collectively guide the distribution of new development. The proposal would also conflict with Policy RES3 of the ETBP as the proposal isn't 'very small-scale development'. The proposal therefore conflicts with the spatial strategy which seeks to guide the distribution of new housing.</p> <p>It was common ground that the proposal would constitute the complete redevelopment of previously developed land in the Green Belt. Paragraph 149(g) of the NPPF states a local planning authority should regard the construction of new building on previously developed land in the Green Belt as inappropriate if it has a greater impact on the openness of the Green Belt than the existing development.</p> <p>The appeal scheme proposed up to 5 dwellings and the Inspector considered that whilst the lower end of the proposed amount, i.e. 1 or 2 dwellings, could be reasonably created on site without having a greater impact on the openness of the Green Belt than the existing development, this would not be the case for the</p>

	<p>higher end of the proposed amount, i.e. 4 or 5 dwellings. In the latter case the amount of buildings, their potential spread across the site, the accompanying residential paraphernalia, and the likely increase in vehicles entering and leaving the site would all contribute to the proposal having a greater impact on the openness of the Green Belt than the existing development.</p> <p>The Inspector therefore concluded that the proposal constitutes inappropriate development which is, by definition, harmful to the Green Belt.</p> <p>In conclusion the Inspector identified that the proposal would be inappropriate development in the Green Belt through unacceptably reducing its openness which carries substantial weight. This indicates a clear reason for refusing the application under paragraph 11 d) i) of the NPPF and it also means that the very special circumstances necessary to justify the proposal do not exist. Therefore, the proposal would not comply with the Green Belt aims of Policy SD5 of the Core Strategy, or the NPPF and consequently would be unacceptable.</p> <p>The Inspector, having considered the development plan as a whole, Green Belt policy, and all other relevant material considerations, concluded the appeal should be dismissed.</p>
Date of appeal decision	30.09.21

3.0 ENFORCEMENT APPEAL DECISIONS

3.1

Application No	20/00131/ENFB
Location	Part Parcel 1959 Cursey Lane Elmstone Hardwicke
Development	The unauthorised material change of use of land from agriculture to use as a Gypsy / Traveller site including the siting of static caravan, portaloo, laying of hardstanding on the land and accessway and the unauthorised use of the accessway by motor vehicles.
Proposal	Appeal against enforcement notice
Officer recommendation	Issue Notice
Decision type	Notice Issued
PINS reference	APP/G1630/C/20/3259091
PINS decision	Dismissed and Notice upheld
Reason	<p>The enforcement notice was appealed on two grounds. The first ground was ground (a), that planning permission ought to be granted. The second ground was ground (f) that the steps required by the notice exceed what is necessary to remedy any breach of planning control.</p> <p>Ground (a) appeal:</p> <p>The inspector considered there to be three main issues as well as other matters.</p> <p>i. The effect of the development on highway safety</p>

- ii. The effect of the development on the character and appearance of the area
- iii. The extent to which the site can be considered to be a sustainable location

In respect of Highway safety, the Inspector observed during his site visit a more or less continuous flow of traffic, no street lighting, no footways, , and vehicles traveling at speed. The required visibility splays to both the left and the right of the site entrance are 2.4m x 160m. From the required set-back of 2.4m the Highway Authority measured the achievable visibility distance to the left (south west) as 16m and, to the right (north east) as approximately 32m. This is very substantially below the required distance. The inspector saw no reason to disagree with the Council that the intensification of the existing access would fail to provide a safe and suitable access to all users. The development therefore conflicts with policy INF1 (1) and policy SD13 (2) (ii) of the Gloucester, Cheltenham, and Tewkesbury Joint Core Strategy 2011-2031 (JCS), adopted December 2017 and Framework paragraph 112.

In respect of landscape harm, the Inspector stated that the development would only be truly apparent to users of the bridleway and the public footpath which pass directly past two sides of the site. While the full development would have an unacceptable impact on the appearance of the landscape, the harm would be appreciated only by users of the public routes in the immediate vicinity. Furthermore, the appellant has proposed steps, which could be secured by condition, to mitigate the impact on the surroundings of the site. The inspector considered the conflict with JCS policy SD13 (2) (i) to be very limited in nature.

On the issue of sustainability, the Inspector considered that the distance from day-to-day facilities located in Stoke Orchard and the distance to full facilities in Bishops Cleeve and Tewkesbury not to be significant.

The Inspector found the appeal proposal was not inconsistent with the wording of JCS policy SD13 (2) (iv) although he recognised tension with paragraph 105 of the NPPF which aims to limit travel generally.

On balance the Inspector concluded that the appeal proposal would not be in conflict with the development plan policies on this issue. He noted that this conclusion was consistent with the conclusions of the Inspector in the Cold Pool Lane appeal (Appeal ref: APP/G1630/W/17/3192162).

On other matters, the Inspector accepted the Council was able to show a 5-year supply of Gypsy and Traveller sites, however the Council did not challenge the Appellant's evidence that no alternative sites were

	<p>available.</p> <p>The Inspector noted reference was made to the health of a family member although no supporting evidence of the condition has been provided. The Inspector had regard both to the best interests of the child and to the fact that this is a primary consideration that must be afforded an importance or weight as great as any other material consideration. In the best interest of the children, the Inspector was clear it would be beneficial for access to schooling, health and other facilities to be available and that such provision would be likely to result from occupation of the site, however the court has held that the best interests of the child should be interpreted as the need to safeguard and promote their welfare. As the inspector noted under Highway safety, the very means by which such facilities may be accessed from the site, works directly against the best interests of the child. In simple terms, the access to the site is not safe whether by vehicle, cycle or on foot and cannot be made so on land within the appellant's control.</p> <p>For these reasons, with particular regard to the interests of the child, the Inspector concluded the material considerations did not outweigh the conflict with the development plan. The ground (a) appeal did not succeed.</p> <p>Ground (f) appeal:</p> <p>The Inspector understood the Appellant was arguing that the hard surfacing that was laid was done so to restore the pre-existing vehicular access needed for all-weather use of the land for grazing of horses. No evidence was provided as to the pre-existing surface of the track. However, evidence from the Bridleway landowner showed the height of the track had been raised significantly and caused drainage issues and was no longer safe for horse riders to use. The Inspector noted this suggests the work carried out resulted in different conditions to those before the hard surface was laid.</p> <p>The inspector summarised this ground of appeal by stating the requirement to remove the hardstanding from the area shown on the notice plan seems wholly reasonable and proportionate, the ground (f) appeal therefore failed.</p> <p>It should be noted that through the issuing of a stop notice and through civil court action taken by the bridleway owner, the majority of works required by the enforcement notice have been complied with. In any case, an inspection will be made after the expiry of three months to evidence full compliance with the enforcement notice.</p>
Date of appeal decision	09.12.2021

Application No	20/00067/ENFC
Location	Slate Mill Tewkesbury Road Elmstone Hardwicke
Development	Enforcement Notice issues against unauthorised erection of a dwelling.
Proposal	Enforcement notice issued against unauthorised erection of a dwelling.
Officer recommendation	Issue Notice
Decision type	Notice Issued
PINS reference	APP/G1630/C/21/3276207
PINS decision	Dismissed and Notice upheld
Reason	<p>This appeal was made against an enforcement notice issued against the unauthorised erection of a dwelling. The appeal proceeded on grounds: (d) that at the date when the notice was issued, no enforcement action could be taken, and (f), that the steps required by the notice exceed what is necessary to remedy any breach of planning control.</p> <p>With respect to the appeal under ground (d), the appellant's advanced an argument that the building subject to enforcement action had been converted from an existing agricultural building. Consequently, the use of the converted building as a dwelling – for a period in excess of four years – was immune from enforcement action.</p> <p>The Inspector found, on the evidence, that very little of the original building was retained and that works carried out crossed the line from a conversion to a new build. Consequently, the appropriate time period for enforcement action is ten years as a change of use of land and not four years as the appellant suggested. The ground (d) appeal was dismissed.</p> <p>With respect to the ground (f) appeal, the Inspector found the building bears very little resemblance to the former agricultural building. Furthermore, no information could be retained for agricultural purposes. The ground (f) appeal was dismissed.</p> <p>The owners have 11 months from the date of the appeal decision to comply with the requirements of the enforcement notice.</p>
Date of appeal decision	25.10.21

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

List of Appeals Received						
Reference	Address	Description	Start Date	Appeal Procedure	Appeal Officer	Statement Due
19/01025/FUL	Land At Hygrove House Main Road Minsterworth	Retrospective application for the installation of a agricultural access track, including the part retention of works and construction of an overspill car park.	16.12.2021	W	VIS	
17/01268/FUL	Greenacres Main Road Minsterworth	Change of use from ancillary equestrian to residential use and erection of 7 new dwellings.	04.01.2022	W	04.01.2022	

Process Type

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