

TEWKESBURY BOROUGH COUNCIL

Report to:	Planning Committee
Date of Meeting:	20 September 2022
Subject:	Current Appeals and Appeal Decisions Update
Report of:	Development Manager
Head of Service/Director:	Head of Development Services
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.

Financial Implications:

None

Legal Implications:

None

Environmental and Sustainability Implications:

None

Resource Implications (including impact on equalities):

None

Safeguarding Implications:

None

Impact on the Customer:

None

1.0 INTRODUCTION

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	21/00063/FUL
Location	Evington Manor Tewkesbury Road Coombe Hill
Proposal	Removal/Variation of Condition 1 (approved plans), Condition 8 (Protected Species Method Statement) and Condition 9 (Demolition of Vine Tree Farm) of the planning application reference. 17/00478/FUL, to allow the original dwellinghouse on the site to be retained for use as a bat roost and ancillary storage in association with Evington Manor.
Officer recommendation	Refuse
Decision type	Delegated Decision
PINS reference	APP/G1630/W/22/3290655
PINS decision	Appeal Dismissed
Reason	<p>A replacement dwelling has been constructed on site and has been occupied however despite Conditions on the original planning approval, the original dwelling remains in place.</p> <p>The appeal application sought to vary Conditions of the planning permission to allow the former dwelling to be retained for ancillary storage purposes with a bat roost within the roof.</p> <p>In considering the appeal the Inspector assessed the effects upon the character of the area, flooding, biodiversity and whether the retention of the building is acceptable with regards to policies controlling the location of dwellings including replacement dwellings.</p> <p>The Inspector concluded that if Vine Tree Farm were to be retained for storage and bat roost it would have the appearance of a dwelling and would be read as a second dwelling at the site. The building would also be disproportionate for ancillary storage and the retention would result in unacceptable harm to the character and appearance of the site and its rural surroundings.</p> <p>In terms of flooding, the Inspector concluded that insufficient information had been provided to demonstrate that the retention would not increase the risk of flooding being located in Flood Zone 2.</p> <p>In terms of ecology, the Inspector had insufficient information to demonstrate that the retention of the</p>

	<p>building and its dual use would not result in harm to biodiversity and protected species.</p> <p>In terms of the suitability of then location for residential development the Inspector concluded that with regard to Policy SD10 of the JCS a new dwelling would not have been permitted at the site other than a replacement dwelling. The Inspector noted that former plan policy HOU7 and TBP Policy RES9 do not expressly require the demolition of a dwelling as part of any permitted replacement.</p> <p>The Inspector advised that he had have no evidence to suggest that Condition 9 was only imposed specifically to avoid 2 buildings in use as dwellings on the site. While a Condition could be imposed to restrict the use of the building to ancillary storage and bat roost which would not result in conflict with identified policies, this would however not overcome the harms identified above.</p> <p>In dismissing the appeal, the Inspector concluded that the removal of Vine Tree Farm is both reasonable and necessary, therefore Condition 9 needs to be retained to secure its demolition. By extension, it is both reasonable and necessary to secure the approved site layout, replacement bat roost and protected species method statement, so the Conditions need to be retained in their current form and not varied.</p>
Date of appeal decision	30.06.2022

Application No	21/01218/FUL
Location	Claydon Park Claydon Tewkesbury
Proposal	Variation of Conditions 3 (static caravan positioning) and 5 (landscaping scheme). Removal of Conditions 7, (commercial activities) 12 (timber cladding) and 13 (erection of gates/walls/fences) of planning application No.14/00347/FUL
Officer recommendation	Minded to Refuse
Decision type	Delegated
PINS reference	APP/G1630/W/22/3290434
PINS decision	Appeal Allowed planning permitted
Reason	<p>The application site is occupied by 2 mobile homes. The appeal application sought to vary/remove Condition numbers 3 – siting of caravans, 5 - landscaping, 7 – restriction of commercial activities within the site 12 – cladding of the caravans and Condition 13 - means of enclosure which were previously imposed on planning permission Ref 14/00347/FUL.</p> <p>In respect of Condition 3 the Inspector was satisfied that siting of the caravans closer to the site boundaries would not be harmful to the character of the area, and this Condition was varied to allow the retention of caravans in situ.</p>

	<p>In respect of Condition 5 and the Inspector found that additional landscaping was necessary in the interest of the visual amenity of the area and a new condition was imposed to secure the implementation of the approved landscape scheme.</p> <p>In terms of Condition 7 the Inspector concluded that given that no commercial activity was originally proposed and that the Council has the power to enforce any material change of use that occurs at the site, the condition is not necessary to make the development acceptable in planning terms and thus fails the tests set out in the Planning Practice Guidance. The Condition restricting commercial activities was deleted.</p> <p>Condition 12 required the caravans to be timber clad to integrate with the area. The Inspector concluded that the condition was overly onerous and not necessary. The Inspector also identified that the Planning Policy for traveller sites (PPTS) accepts that sites will be located within rural areas and as such it is to be expected that in many cases caravans will be the main form of accommodation that is provided. In this light, it should not be necessary to disguise them with the use of timber cladding, despite being lighter in colour and more visible. This Condition was deleted.</p> <p>Condition 13 restricted means of enclosure as permitted development. The inspector advised that the PPTS sets out that when considering applications weight should be attached to, amongst other things, sites being soft landscaped in such a way to increase its openness and not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community. The Inspector found this condition reasonable and necessary and was retained.</p>
Date of appeal decision	20.07.2022

Application No	21/00982/FUL
Location	Manor Farm Southam Lane Southam
Proposal	Change of use of a portal framed agricultural building and land adjacent to west and south for the storage of caravans and motorhomes together with the siting of 6 no. storage containers (part retrospective).
Officer recommendation	Refuse
Decision type	Delegated Decision
PINS reference	APP/G1630/W/22/3292230
PINS decision	Appeal Dismissed

Reason	<p>The appeal site is located within the Green Belt (GB) and SLA. The Inspector identified the main issues as whether the proposal would be appropriate development in the GB, the effect on the SLA and 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 the development.</p> <p>The Inspector set out that the proposal is for a change of use, so the key assessment is whether the proposal would preserve the openness and purpose of the Green Belt. The inspector set out that while land contains agricultural buildings, the openness of the Green Belt is clearly evident around the site and in the wider area.</p> <p>The Inspector agreed with the Council that the use of existing buildings for storage of caravans would have no adverse impact on openness of the GB. However the outside storage of containers, caravans and Motorhomes would inevitably lead to a harmful loss of openness, both visually and spatially. the proposal would therefore not preserve GB openness and conflicts with a purpose of including land within it.</p> <p>The proposal would also be uncharacteristic and harmful to the rural landscape.</p> <p>The Inspector accepted that the proposal would provide valuable supplementary income to the appellant at a difficult economic time, would help to enhance the viability of the agricultural business and the provision of storage would also be a helpful service for local businesses and benefit the local economy.</p> <p>The Inspector concluded that the proposed storage outside of the building would be inappropriate development in the terms set out by the Framework and would result in moderate harm to GB openness and the purpose of including land within it. Furthermore there are no special circumstances which would outweigh the harm to the openness of the Green Belt and the appeal was dismissed.</p>
Date of appeal decision	25.07.2022

Application No	22/00096/FUL
Location	2 Denley Close Bishops Cleeve
Proposal	Proposed studio/study above existing detached garage
Officer recommendation	Refuse
Decision type	Delegated Decision
PINS reference	APP/P0119/D/22/3300467
PINS decision	Appeal Dismissed

<p>Reason</p>	<p>The main issues of this appeal are the effect of the development upon;</p> <ul style="list-style-type: none"> • the character and appearance of the area. • the living conditions of the occupiers of 1 Kayte Close (No. 1), with particular reference to daylight and outlook. <p>Character and appearance:</p> <p>The appeal site comprises a two storey semi-detached house and a detached, flat roofed double garage, located at the end of a short section of Denley Close. The surrounding area is characterised by detached and semi-detached single and two storey properties, many with detached single storey garages. Whilst the garage forms the end of the vista along Denley Close, its simple, flat roof design means it is subservient to nearby houses. Although described by the appellant as a small proposal, due to the pitched roof design, increased height and windows in the upper floor, the development would introduce a new building form into the area and have the appearance of a detached house when viewed along Denley Close. As a result of its scale and position, despite the use of matching materials, the enlarged garage would appear unusually prominent and would fail to respect the characteristics of the street scene.</p> <p>Therefore, the Inspector concluded that the development would unacceptably harm the character and appearance of the surrounding area. In these respects, it would be contrary to Policy SD4 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (December 2017) (JCS) and Policy RES10 of the TBP.</p> <p>Living conditions:</p> <p>The back of the garage is located close to the boundary of No.1. With a modest garden depth, the rear elevation of No.1 includes windows at ground and first floor level. Given its proximity to the rear elevation of No.1 and increased height as a result of the development, the garage would be clearly visible and an intrusive and overbearing feature in the outlook from the windows of No.1 facing towards Denley Close.</p> <p>The existing side boundary of No.1 comprises hedging behind a high wall which already cause a degree of overshadowing. However, the height of the proposed ridgeline would exceed these boundary features and so the development would significantly reduce the levels of light that could reach the ground and first floor windows of No.1. This would result in an unacceptable reduction to the levels of daylight enjoyed by the neighbouring occupants.</p> <p>For these reasons, the Inspector concluded that the development would unacceptably harm the living conditions of occupiers of No.1 with regard to outlook and</p>
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	<p>daylight, in conflict with Policies SD4 and SD14 of the JCS, and Policy RES10 of the TBP. Amongst other things, these policies ensure that the living conditions of neighbouring occupiers are not unduly harmed by a proposal.</p> <p>Overall, the appeal was dismissed as the proposed development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.</p>
Date of appeal decision	04.08.2022

Application No	21/01463/FUL
Location	7 Oldbury Road Tewkesbury
Proposal	Replacement windows.
Officer recommendation	Refuse
Decision type	Delegated Decision
PINS reference	APP/G1630/D/22/3299713
PINS decision	Appeal Dismissed
	<p>This application sought to replace the existing wooden single glazed windows with double glazed UPVC windows.</p> <p>The site is located within Tewkesbury Conservation Area and the Tewkesbury Article 4 Direction. The dwelling itself is deemed to be a non-designated heritage asset.</p> <p>The application was refused on 12.04.2022 as the installation of the windows would result in moderate less than substantial harm to the non-designated heritage assets and would cause moderate less than substantial harm to the Tewkesbury Conservation Area.</p> <p>Following this decision, an appeal and an appeal for costs were submitted.</p> <p>On 17.08.2022 the Planning Inspectorate dismissed both the appeal and the appeal for costs.</p> <p>The appeal was dismissed as in this case the balance lies in the harm to the Tewkesbury Conservation Area by reason of the replacement windows not being outweighed by the public benefits. The development has an adverse effect on the character and appearance of the property and the Tewkesbury Conservation Area. In doing so it fails to enhance or preserve the Tewkesbury Conservation Area. The development causes less than substantial harm to the significance of the Tewkesbury Conservation Area and the public benefits identified do not outweigh this harm.</p>

	The costs appeal was dismissed as the Inspector did not consider that the Council failed to properly evaluate the application or consider the merits of the proposal. Therefore, the appeal could not have been avoided. It was found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, had not been demonstrated. Accordingly, the application for an award of costs was refused.
Date of appeal decision	17.08.2022

3.0 ENFORCEMENT APPEAL DECISIONS

3.1

Application No	21/00357/PDAD (plot 2) & 21/00363/PDAD (plot 3)
Location	Plot 2 and 11 Warren Fruit Farm Evesham Road Greet
Proposal	Prior Approval for conversion of agricultural buildings into smaller dwelling houses (use class C3) and associated works on plots 2 and 11.
Officer recommendation	Prior Approval Refused
Decision type	Delegated Decision
PINS reference	Appeal A (plot 2) - APP/G1630/W/21/3279781 Appeal B (plot 11) - APP/G1630/W/21/3280097
PINS decision	Appeal Dismissed
Reason	<p><u>Summary</u></p> <p>This decision concerns the outcome of an appeal determined by The Planning Inspectorate dated 3rd February 2022 for the development stated above. The Inspector considered appeals A & B referenced above on their own merits but due to similarities in the schemes and evidence presented, a single decision letter was issued regarding both.</p> <p>The appeal challenged the LPA's reason for refusal of the above applications that relate to Schedule 2, Part 3, Class Q of the General Permitted Development Order (agricultural buildings to dwellinghouses), which were:</p> <ol style="list-style-type: none"> 1. Insufficient information has been provided to demonstrate that the proposal would accord with Part Q.1(a) of Class, Q, Part 3, Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (as amended). It is therefore not possible for the Local Planning Authority to establish whether or not the proposal would constitute permitted development. 2. The proposal, by virtue of its location and siting, would result in unacceptable harm to the character and appearance of the surrounding area and is not in a sustainable location for residential development. This level of harm would be heightened by the cumulation of Class Q development proposals located elsewhere on the site which would collectively have an undesirable urbanising effect on the valued landscape contrary to the provisions of the National Planning

	<p>Policy Framework. The proposed development would therefore not accord with condition Q.2(1)(e) of Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).</p> <p>3. There are inaccuracies within the supporting documentation as to the size of the building and it has not been possible to determine whether the area of land shown as “curtilage” would be no larger than the area occupied by the agricultural building. The Local Planning Authority cannot therefore establish if the proposal would constitute permitted development in compliance with Part X of Part 3, Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (as amended).</p> <p>The Inspector noted a long-contested planning history for the appeal sites and the wider farm, including involvement with the Council’s enforcement team. However, also stated that these appeals were separate matters and determined on their own merits based on the evidence submitted.</p> <p>Also noted was that per the GPDO, the planning authority may refuse a prior approval application where the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified as being applicable to the development in question.</p> <p>In reaching a decision the Inspector cited a number of areas where there was insufficient data presented to demonstrate that plots 2 and 11 were used for agriculture for the purposes of a trade or business as part of separate established agricultural units. Accordingly, neither proposal would comprise permitted development within the parameters of Part Q1(a) (f) of the GPDO.</p> <p>The Inspector dismissed other Class Q appeal decisions submitted by the appellant, which were not considered sufficiently similar to the current appeals.</p> <p><u>Enforcement</u></p> <p>This appeal has determined that the existing unauthorised site should not be given planning permission, temporary or otherwise.</p> <p>During a visit to the Warren Fruit farm site on 30th August 2022, both agricultural buildings were seen to be unoccupied with straw on the floor and no residential paraphernalia evident. There are no current enforcement cases open against these plots.</p>
Date of appeal decision	03.02.2022

Application No	21/00358/PDAD (plot 6), 21/00355/PDAD (plot 20), 21/00353/PDAD (plot 21), 21/00364/PDAD (plot 23), 21/00374/PDAD (plot 24) & 21/00376/PDAD (plot 25)
Location	Plots 6, 20, 21, 23, 24 and 25 Warren Fruit Farm Evesham Road Greet
Proposal	Prior Approval for conversion of agricultural buildings into smaller dwelling houses (use class C3) and associated works on plots 6, 20, 21, 23, 24 and 25.
Officer recommendation	Prior Approval Refused
Decision type	Delegated Decision
PINS reference	Appeal A (plot 6) - APP/G1630/W/21/3280037 Appeal B (plot 20) - APP/G1630/W/21/3287266 Appeal C (plot 21) - APP/G1630/W/21/3287267 Appeal D (plot 23) - APP/G1630/W/21/3287268 Appeal E (plot 24) - APP/G1630/W/21/3287272 Appeal F (plot 25) - APP/G1630/W/21/3287274
PINS decision	Appeals Dismissed
Reason	<p><u>Summary</u></p> <p>This decision concerns the outcome of an appeal determined by The Planning Inspectorate dated 17th June 2022 for the development stated above. The Inspector considered appeals A - F referenced above on their own merits but due to similarities in the schemes and evidence presented, a single decision letter was issued regarding all to avoid repetition.</p> <p>The appeal challenged the LPA's reason for refusal of the above applications that relate to Schedule 2, Part 3, Class Q of the General Permitted Development Order (agricultural buildings to dwellinghouses), which were:</p> <ol style="list-style-type: none"> 1. Insufficient information has been provided to demonstrate that the proposal would accord with Part Q.1(a) of Class, Q, Part 3, Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (as amended). It is therefore not possible for the Local Planning Authority to establish whether or not the proposal would constitute permitted development. 2. The proposal, by virtue of its location and siting, would result in unacceptable harm to the character and appearance of the surrounding area and is not in a sustainable location for residential development. This level of harm would be heightened by the cumulation of Class Q development proposals located elsewhere on the site which would collectively have an undesirable urbanising effect on the valued landscape contrary to the provisions of the National Planning Policy Framework. The proposed development would therefore not accord with condition Q.2(1)(e) of Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). 3. There are inaccuracies within the supporting documentation as to the size of the building and it has not been possible to determine whether the area of land shown as "curtilage" would

	<p>be no larger than the area occupied by the agricultural building. The Local Planning Authority cannot therefore establish if the proposal would constitute permitted development in compliance with Part X of Part 3, Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (as amended).</p> <p>The Inspector noted a long-contested planning history for the appeal sites and the wider farm, including involvement with the Council's enforcement team. However, stated that these appeals were separate matters and determined on their own merits based on the evidence submitted.</p> <p>Detailed under Main Issues was that the planning authority may refuse a prior approval application where the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified as being applicable to the development in question.</p> <p>Also, that development under class Q is not permitted if the site was not solely used for an agricultural use as part of an established agricultural unit on 20 March 2013 and that 'Agricultural use' is also defined as being used for the purposes of a trade or business.</p> <p>In reaching a decision the Inspector cited a number of areas where there was insufficient data presented to support that each plot were themselves operating as individual agricultural trade or businesses under the 'Warren Smallholders Cooperative'. As a result, the Inspector did not consider it necessary to consider whether the schemes comply with other relevant limitations and conditions set out in the GPDO.</p> <p>With regards to other Class Q appeal decisions that were provided by the appellant, the Inspector found that none of the cases were directly comparable to these appeals and thus did not influence the decision.</p> <p><u>Enforcement</u></p> <p>This appeal has determined that the existing unauthorised site should not be given planning permission, temporary or otherwise.</p> <p>During a visit to the Warren Fruit farm site on 30th August 2022, all 6 agricultural buildings were seen to be unoccupied with straw on the floor and no residential paraphernalia evident. There are no current enforcement cases open against these plots.</p>
Date of appeal decision	17.06.2022

4.0 CONSULTATION

4.1 None

5.0 ASSOCIATED RISKS

5.1 None

6.0 MONITORING

6.1 None

7.0 RELEVANT COUNCIL PLAN PRIORITIES/COUNCIL POLICIES/STRATEGIES

7.1 None

Background Papers: None

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Appendices: Appendix 1: List of Appeals received

None

Process Type

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