

TEWKESBURY BOROUGH COUNCIL

Report to:	Planning Committee
Date of Meeting:	20 December 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 and inform Members of recent appeal decisions.

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

Application No	21/01011/PIP
Location	Land At Manor Farm Stoke Road Stoke Orchard
Proposal	Erection of up to 9 nos. dwellings
Officer recommendation	Non determination
PINS reference	APP/G1630/W/21/3288137
PINS decision	Appeal Allowed
Reason	<p>The Inspector set out that the proposal for Permission in Principle is an alternative way of obtaining planning permission for housing led development and the scope is limited to the consideration of location and land use.</p> <p>The Inspector set out that the site was an undeveloped field on the outer edge of Stoke Orchard which is slightly removed from the main built-up area.</p> <p>The Inspector confirmed that the proposal would be subject of criterion 4 of JCS Policy SD10; however, the site could not be considered as lying within the existing built-up area of Stoke Orchard. Notwithstanding this, the Inspector identified adjoining residential and commercial development and considered that, while the proposal would introduce some additional urbanisation, surrounding development would ensure any encroachment into the countryside would not be excessive and that the sites accessibility is good.</p> <p>The Inspector identified that there would be some encroachment into the landscape which would conflict with JCS Policy SD6 and TBP Policy LND2; however, this harm would be minor given the relationship with residential and commercial properties to the north and south of the site, and that the new housing could also assimilate effectively with the surrounding built form, without unduly interfering with the prevailing rural character of the village and would broadly align with the limits of TBP Policy RES4. Accordingly, the Inspector concluded the principle would be acceptable.</p> <p>In considering the planning balance, the Inspector set out that the Council could not demonstrate a five-year housing supply and the tilted balance was engaged which would outweigh the conflict with Policies SD6 and SD10 of the JCS and LND2 of the TBP. However, the Inspector reflected on the importance the NPPF places on small and medium size sites in significantly boosting the supply of housing and that the benefits of the scheme would</p>

	<p>outweigh the harms identified. Furthermore, the Inspector concluded that the site is a suitable location for the development.</p> <p>In respect of other matters, the Inspector noted that highway safety, noise and archaeology were matters to be assessed at the technical details consent stage.</p>
Date of appeal decision	31.08.2022

Application No	21/00976/OUT
Location	Land Off Brook Lane Twigworth/Down Hatherley
Proposal	Residential Development (up to 160 dwellings), associated works, including demolition, infrastructure, open space and landscaping. Vehicular access from the A38.
Officer recommendation	Non-determination
PINS reference	APP/G1630/W/22/3295270
PINS decision	Appeal Allowed
Reason	<p>The appeal was subject to an Inquiry held on 9 August 2022. In April 2022 the Planning Committee resolved that had the Council been in a position to determine the proposal, the application would have been refused on three grounds relating to failure to provide financial contributions in mitigation of the proposal on local infrastructure, failure to provide adequate education facilities, and failure to provide a mixed and balanced community to meet the needs of the local area.</p> <p>The appeal decision notes that, since the planning committee, the appellant, the Council and GCC entered into further discussions and several legal agreements had been signed, as follows:</p> <ul style="list-style-type: none"> • a Unilateral Undertaking securing the provision of 35% of the proposed dwellings as affordable housing, dated 9 August 2022 (the AH UU); • a Unilateral Undertaking securing contributions towards education, libraries and highways, including a Travel Plan, dated 9 August 2022 (the ELH UU); • a Unilateral Undertaking securing the provision of a play area, public open space, their management and maintenance, and a contribution towards the provision of refuse and recycling bins, dated 9 August 2022 (the POS UU); and, • a planning agreement securing contributions towards primary school transport, dated 9 August 2022 (the s106). <p>The Inspector confirmed that the ELH UU and POS UU provide payments to mitigate the effect of the proposal on</p>

	<p>local infrastructure, the s106 secures the required contribution towards education facilities, and the AH UU secures the necessary affordable housing, all of which together would create a mixed and balanced community.</p> <p>The Inspector concluded that there were no contested main issues for the appeal and that appropriate mitigation had been provided through legal agreements, or could be controlled by condition.</p> <p>The Inspector found no material harm from the proposal on any other matter and that the proposal would therefore accord with the Development Plan when considered as a whole.</p>
Date of appeal decision	11.10.2022

Application No	21/00777/PIP
Location	Land at Meadow View Gloucester Road Staverton
Proposal	Permission in principle for the erection of up to 3 dwellings and associated access (Rural Exception Site).
Officer recommendation	Non-determination
PINS reference	APP/G1630/W/22/3290632
PINS decision	Appeal Dismissed
	<p>The Council contended that the appeal proposal would fail to be a sustainable form of development having regard to the national and development plan policies in respect to the delivery of new housing (Putative Reason 1), and that the appeal proposal would represent inappropriate development in the Green Belt and would cause harm to the openness of the Green Belt (Putative Reason 2).</p> <p>The Inspector considered that the site is not located within or adjacent to the continuous built form of Staverton, and that the site is located amongst a group of dispersed buildings clearly detached from the continuous built-up area of Staverton.</p> <p>The Inspector found that the proposal would conflict with Policies SP2, SD10, and SD12 of the JCS which collectively guide the distribution of new development, and with Policies RES4 and RES6 of the Borough Local Plan support the vitality of rural communities and the continued availability of services and facilities in the rural areas, and very small-scale residential development will be acceptable in principle within and adjacent to the built-up area of other rural settlements.</p> <p>The Inspector noted that the Framework establishes that the construction of new buildings within the Green Belt is</p>

	<p>inappropriate, but that there is a closed list of exceptions to this in paragraph 149. The Inspector considered that the proposal does not comply with any of the Framework's exceptions to the construction of new buildings in the Green Belt, and that the proposal therefore constitutes inappropriate development in the Green Belt for the purposes of the Framework and Policy SD5 of the JCS and Policy GRB4 of the Borough Plan. The Inspector commented that inappropriate development is, by definition, harmful to the Green Belt, and that it follows from this that the proposal would conflict with the purpose of the Green Belt in terms of its assistance in safeguarding the countryside from encroachment.</p> <p>The Inspector considered that, even the lower end of the proposed amount (i.e. 1 or 2 dwellings) would serve to add built form and associated domestic paraphernalia to what is currently an open and undeveloped parcel of land, meaning that the proposal would reduce the openness of the Green Belt in spatial terms and that whilst this effect would be limited and localised, the proposal would result in harm to the openness of the Green Belt.</p> <p>The Inspector commented that these matters carry substantial weight and, whilst the proposal would offer a number of discrete benefits, given the maximum quantum of development proposed, overall, these would amount to no more than moderate weight in favour of the proposal.</p> <p>The Inspector therefore found that these benefits would not clearly outweigh the harm identified. Consequently, the Inspector found that the very special circumstances necessary to justify the proposal do not exist, and that, therefore, the proposal would not comply with the Green Belt aims of Policy SD5 of the JCS or Policy GRB4 of the Borough Plan, or the Framework, and consequently would be unacceptable. As this provides a clear reason for refusing the proposed development, the Inspector considered that the proposal would not benefit from the presumption in favour of sustainable development (paragraph 11 of the Framework) and concluded that the appeal be dismissed.</p>
Date of appeal decision	08.08.2022

Application No	PP-09831957
Location	Land At Court Farm Tewkesbury Road Twigworth
Proposal	Outline application with all matters reserved for 4no. dwellings.
Officer recommendation	Refuse
Decision type	Delegated Decision
PINS reference	APP/G1630/W/22/3302403
PINS decision	Appeal Dismissed
Reason	<p>The reasons for refusal of the application were that the application site was located outside of a settlement boundary and was not adjacent to any settlement boundary and as such the site was not located within a suitable location for the proposed development, having regard to the development strategy for the area. The scheme was also considered to have a detrimental impact on the character and appearance of the area and the scheme would not preserve the setting of the nearby Grade II listed buildings.</p> <p>The Inspector considered that suitable landscaping could be secured at the reserved matters stage to help to reinforce the delineation between the site and the surrounding fields. Therefore, it was concluded that a small residential scheme of up to 4 dwellings would be in keeping with the prevailing pattern of development along Tewkesbury Road.</p> <p>The Inspector concluded that the proposal would not harm the character and appearance of the area, nor would it harm the setting of the nearby Grade II Listed Buildings.</p> <p>However, by virtue of its location outside of any defined settlement boundary, the appeal site would not be a suitable location for the proposal, having regard to the development strategy for the area. Therefore, the scheme failed to comply with Policies SP2 and SD10 of the Joint Core Strategy, Policy RES3 of the Local Plan and Policy H2 of the NDP. The Inspector explained there were insufficient material considerations worthy of sufficient weight that would indicate otherwise, and the appeal was dismissed.</p>
Date of appeal decision	29.11.2022

Application No	22/00118/FUL
Location	Carrant House Aston-On-Carrant Tewkesbury
Proposal	Demolition of flat roofed double garage and construction of two storey outbuilding to provide garage and garden store with ancillary annex accommodation over.
Officer recommendation	Refuse
Decision type	Delegated Decision
PINS reference	APP/G1630/D/22/3303221
PINS decision	Appeal Dismissed
Reason	<p>The application sought permission to demolish the existing single storey double garage and erect a two-storey outbuilding with a garage and store on the ground floor and ancillary accommodation on the first floor.</p> <p>The application was refused for two reasons:</p> <ul style="list-style-type: none"> - the outbuilding would not be in keeping with the character and appearance of the host dwelling and the surrounding development by virtue of the design, size, bulk and massing; and - the development would have an unacceptable impact upon the living conditions of the occupiers of neighbouring property by reason of loss of light. <p>The Inspector considered that the outbuilding would be in keeping with the dwelling but did agree that the outbuilding would have an unacceptable impact on the living conditions of the occupiers of the neighbouring dwelling with particular regard to loss of light.</p> <p>The appeal was therefore dismissed by the Inspector.</p>
Date of appeal decision	03.11.2022

Application No	21/01540/FUL
Location	Land At Heather Chase Cleeve Hill Southam
Proposal	Erection of dwelling, detached garage and associated works.
Officer recommendation	Refuse
Decision type	Delegated Decision
PINS reference	APP/G1630/W/22/3296358
PINS decision	Appeal Dismissed
Reason	<p>The planning application was refused in April 2022 on three grounds:</p> <ul style="list-style-type: none"> - not representing infill within the existing built-up area of a town or village; - an unwarranted intrusion into the Cotswold AONB and would therefore cause significant harm to the beauty of the Cotswold AONB; and - the elevated position of the proposed dwelling and proximity to the shared boundary would result in harmful overlooking. <p>The Inspector considered that the appeal site forms part of an arrangement of dwellings between Cleeve Hill and Southam but does not lie within either village. The Inspector also noted that while the Council accepts that the development can be considered to comprise infill, it does not lie within or adjacent to the built-up area of a settlement and accordingly found that the site is not a suitable location for new development.</p> <p>The Inspector commented that the proposed development would result in the construction of a substantial building within what is currently a large, expansive garden area. The scheme would also involve a substantial amount of engineering works to accommodate the dwelling at this location. Consequently, the scheme would erode the pleasant, rural aspect of the site due to the introduction of what would appear as a more intensive form of development. The Inspector found the proposal would be harmful to the character and appearance of the Cotswolds Area of Outstanding Natural Beauty.</p> <p>Finally, the Inspector also agreed that the proposal would result in an unacceptable impact on the living conditions of the occupiers of adjacent occupiers, with particular regard to overlooking. This was due to the raised patio sitting substantially above the level of the garden of the neighbouring property.</p>
Date of appeal decision	11.10.2022

Application No	20/00026/ENFC & 20/00287/FUL
Location	Overton Farm Maisemore
Proposal	Enforcement notice and planning application for the retention of agricultural building to house machinery
Officer recommendation	Refuse/Enforce
Decision type	Delegated Decision
PINS reference	APP/G1630/C/22/3298078 & APP/G1630/W/22/3298544
PINS decision	Appeal Allowed & Enforcement Notice quashed – Planning permission granted
Reason	<p>This summary covers two appeal decisions relating to the same matter.</p> <p>The LPA was advised in January 2020 that an agricultural building has been erected at Overton Farm without the benefit of planning permission. The planning compliance team investigated the matter and identified a breach of planning control had taken place.</p> <p>The owners subsequently submitted a planning application (20/00287/FUL) seeking retrospective permission for the development. The LPA refused permission and issued an enforcement notice. Appeals were submitted against the refusal of planning permission and the issuing of an enforcement notice.</p> <p>In allowing the appeal and quashing the enforcement notice the Inspector considered the main issue to be whether there is a justified need for the agricultural storage building.</p> <p>The Council considered that there was no current justification for any new agricultural buildings at the site as there were only 4 Gloucestershire heifers and most of the agricultural land was rented out.</p> <p>The appellant provided a Farm Business Plan setting out the appellant's proposals to increase the livestock numbers over the next four years and to take back rented land as cattle numbers increase.</p> <p>In taking account of the limited agricultural activity on the agricultural land at present, the Inspector identified that the appellant had submitted a separate planning application for a livestock building which supported the appellant's aspirations to establish a farming enterprise as set out in their plan. The Inspector noted that the NPPF, in supporting economic growth in rural areas to create jobs and prosperity seeks to support the sustainable growth and expansion of all types of business and enterprise in rural areas, including through well designed new buildings. They noted that the NPPF also seeks to promote the development and diversification of agricultural and other land based rural businesses.</p> <p>Overall, the Inspector concluded that the building was of a design consistent with its intended use and that the</p>

	<p>appeal proposal would be reasonably necessary for the purposes of agriculture on the unit and would accord with Policy ARG1 of the Tewksbury Borough Plan. Accordingly, planning permission was granted. No conditions were imposed on the development given the retrospective nature of it.</p> <p>The decision was subject to a costs application by the appellant. The Inspector found no legal defect with the Enforcement Notice and, while not in full agreement with the Council, they found there was no unreasonable behaviour on the part of the Council which led the appellant to incur unnecessary or wasted expense. Consequently, no costs award was made.</p>
Date of appeal decision	10.10.2022

Application No	21/00009/FUL
Location	Land At Lawn Road Ashleworth
Proposal	Erection of 4 detached dwellings and the demolition of Gymnasium building (Class D2) (Revision of permitted application 20/00487/FUL).
Officer recommendation	Refuse
Decision type	Delegated Decision
PINS reference	APP/G1630/W/22/3290028
PINS decision	Appeal Allowed planning permitted
Reason	<p>The application sought permission for the erection of 4 dwellings and demolition of a gymnasium building. The application was a re-submission of a previously approved application that permitted 3 dwellings.</p> <p>The proposal was refused on the basis that the fourth new dwelling would not be well related to the existing built development and would result in an unduly harmful encroachment into the open countryside.</p> <p>The Inspector allowed the appeal citing the main issues as the principle of proposed development, with specific regard to its location outside the settlement limits, and the effect of the proposal on the character and appearance of the area.</p> <p>The Inspector found that whilst the scheme was not strictly in accordance with Policies SP2 and SD10 of the Joint Core Strategy and Policy RES3 of the Local Plan, the proposed development would provide a suitable location for housing, having regard to the character and appearance of the area, the approach of the Framework and the specific circumstances of the case. The Inspector also judged that the proposal would also represent sustainable development in accordance with paragraph 8 of the Framework.</p>
Date of appeal decision	07.09.2022

Application No	21/00954/FUL
Location	The Old Stores New Town Toddington
Proposal	Demolition of single storey extension to The Old Stores, sub-division and 2 storey rear extension to the Old Stores. Erection of 3no. dwellings and associated garaging/carport and new access roadway.
Officer recommendation	Refuse
Decision type	Delegated Decision
PINS reference	APP/G1630/W/22/3294352
PINS decision	Appeal Dismissed
Reason	<p>The application sought planning permission for the subdivision of a designated heritage asset into two dwellings and the erection of 3 new build dwellings.</p> <p>Whilst the principle of development was found to be acceptable as the site was located within the Development Boundary of Toddington, the application was refused on the grounds that the proposal would have had an unacceptable impact upon the character and appearance of the area, the access being unsafe and the lack of information as to drainage and flood risk management.</p> <p>The applicant appealed the Council's decision to refuse the application to the Planning Inspectorate. The appeal was subsequently dismissed. Through the course of the appeal the appellant demonstrated that flood and drainage matters could be resolved. The Inspector found that there would be no harmful effect through any increased flood risk, however, found that would be harm to the character and appearance of the area, as well as to highway safety and that these matters were decisive.</p>
Date of appeal decision	14.10.2022

Application No	21/01197/PIP
Location	Gretton Farm Gretton Road Gretton
Proposal	Permission in principle for between 1 and 6 new dwellings.
Officer recommendation	Permit
Decision type	Committee Decision
PINS reference	APP/G1630/W/22/3296143
PINS decision	Appeal Allowed planning permitted
Reason	<p>The proposal was for permission in principle, a process which seeks to establish whether a site is suitable in principle for housing led development.</p> <p>In addition to the suitability of the site having regard to the location, land use and amount the Inspector also considered the effect of the proposal on the character and appearance of the area and principle of new housing</p>

	<p>at Gretton having regard to the development strategy for the area.</p> <p>The Inspector identified that housing in the area is arranged in an informal linear form along the road. The existing boundary hedging and embankment to the rear provide a green backdrop and the site which appears as a visible gap in the street scene. Although details of the houses and layout are not required at the PIP stage the Inspector was satisfied that a maximum of six dwellings could be accommodated on the site which would complement the form of development in the area and would not encroach into the open countryside or dilute character.</p> <p>The Inspector referred to TBP Policy RES4 with particular respect to 'very small-scale development' at rural settlements and acknowledged that facilities in Gretton were limited and there would be a need to travel for day-to-day facilities and future occupiers could help sustain the bus service and facilities in nearby settlements.</p> <p>The Inspector also acknowledged that Gretton had also exceeded the 5% growth envisaged by Policy RES4 criterion b. and agrees that the level of exceedance is significant and this further development would add to this and would conflict with the policy. The Inspector also identified conflict with policy RES3 of the TBP and JCS Policy SD10.</p> <p>However, the Inspector considered the tilted balance to be engaged and referred to the NPPF which recognises that small sites can make an important contribution to meeting the housing requirement of an area. The proposal would provide a small enhancement to the vitality and economic benefit to the area and the absence of harm to the character is a neutral consideration.</p> <p>However, the benefits of the proposal would be moderate, as would adverse effects, and these would not significantly and demonstrably outweigh the benefits.</p> <p>In respect of other matters including flood risk and biodiversity, the Inspector advised these matters would be given full consideration at the technical details consent stage and development could not proceed without this.</p>
Date of appeal decision	21.09.2022

3.0 ENFORCEMENT APPEAL DECISIONS

3.1 None

4.0 CONSULTATION

4.1 None

5.0 ASSOCIATED RISKS

5.1 None

6.0 MONITORING

6.1 Not applicable

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

Appendix 1

List of Appeals Received						
Reference	Address	Description	Start Date	Appeal Procedure	Appeal Officer	Statement Due
22/00032/DECISI	Liberty Farm Stanway Road Stanton	Retrospective application for the erection of an agricultural building (amended scheme to planning permission ref: 07/01385/FUL) and the erection of a permanent agricultural workers dwelling.	10.10.2022	W	PAI	
22/00018/DECISI	Former Poultry Farm Littleworth Winchcombe	Outline application for the redevelopment of the land and buildings at the 'Former Poultry Houses' for office use, a solar farm and associated works with all matter reserved except access, layout and landscaping and scale.	19.10.2022	W	BOR	
22/00037/DECISI	Bruford Painswick Road Brockworth	Permission in principle for the erection of three dwellings.	24.10.2022	W	SNB	
22/00040/DECISI	Church Farm Church Lane Norton	Retrospective planning permission for the siting of two mobile homes for workers of Kennels.	08.11.2022	H	JLL	
22/00042/DECISI	Regency Court Park Bamfurlong Lane Staverton	Removal of condition 3 of application 00/5174/1014/FUL to enable the siting of residential static caravans (park homes).	17.11.2022	H	JLL	

List of Appeals Received						
Reference	Address	Description	Start Date	Appeal Procedure	Appeal Officer	Statement Due
22/00043/ENFORC	Claydon House Farm Claydon Tewkesbury	Appeal against 17/00115/ENFC	24.11.2022	W	WIC	

Process Type

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