

Appeal Progress Report

This report is public

Report of Assistant Director - Planning and Development

Purpose of report

To keep Members informed about planning appeal progress including decisions received and the scheduling of public inquiries and hearings for new and current appeals.

1. Recommendations

- 1.1 To note the position on planning appeals contained within the report.

2. Introduction

- 2.1 This report provides a monthly update regarding planning appeals, including new appeals, status reports on those in progress and determined appeals.

3. Report Details

3.1 New Appeals

20/03210/F - 113 Cromwell Road, Banbury, OX16 0HF - Formation of means of access and associated dropped kerb.

Officer recommendation – Refused (Delegated)

Method of determination: Householder (Fast Track)

Start Date: 02.09.2021 **Statement Due:** N/A **Decision:** Awaited

Appeal reference – 21/00027/REF

20/03419/F – 18 Boxhedge Road, Banbury, OX16 0BP – Retrospective – uPVC rear conservatory.

Officer recommendation - Refused (Delegated)

Method of determination: Written Representations

Start Date: 10.09.2021 **Statement Due:** 15.10.2021 **Decision:** Awaited

Appeal reference – 21/00028/REF

20/03420/LB – 18 Boxhedge Road, Banbury, OX16 0BP – Retrospective – uPVC rear conservatory.

Officer recommendation - Refused (Delegated)

Method of determination: Written Representations

Start Date: 10.09.2021 **Statement Due:** 15.10.2021 **Decision:** Awaited

Appeal reference – 21/00029/REF

3.2 New Enforcement Appeals

None

3.3 Appeals in Progress

20/00789/CLUE – Belmont, 8 Foxglove Road, Begbroke, Kidlington, OX5 1SB - Certificate of Lawful Use Existing for amenity land to west of dwelling at no. 8 Foxglove Road as a domestic garden, with the introduction of boundary fence and hedge on the western and northern boundaries.

Officer recommendation – Refusal (Delegated)

Method of determination: Written Representations

Start Date: 11.12.2020 **Statement Due:** 22.01.2021 **Decision:** Awaited

Appeal reference – 20/00035/REF

20/00871/F - OS Parcel 3300 north of railway line adjoining Palmer Avenue, Lower Arcott - Erection of a free-range egg production unit, gatehouse and agricultural workers dwelling including all associated works - re-submission of 19/00644/F

Officer recommendation – Refused (Committee)

Method of determination: Written Representations

Start Date: 26.02.2021 **Statement Due:** 02.04.2021 **Decision:** Awaited

Appeal reference – 21/00007/REF

20/01747/F - Land south side of Widnell Lane, Piddington - Change of Use of land to a 6no pitch Gypsy and Traveller site to include 6no mobiles, 6no tourers and associated operational development including hardstanding and fencing.

Officer recommendation – Refused (Committee)

Method of determination: Written Representations

Start Date: 12.02.2021 **Statement Due:** 19.03.2021 **Decision:** Awaited

Appeal reference – 21/00003/REF

20/03327/F - Land SW of Coleridge Close and Rear 6, Chaucer Close, Bicester, OX26 2XB - Development of a detached dwelling with new access onto Howes Lane - Resubmission of 20/00138/F.

Officer recommendation – Refusal (Delegated)

Method of determination: Written Representations

Start Date: 13.07.2021 **Statement Due:** 17.08.2021 **Decision:** Awaited

Appeal reference – 21/00021/REF

21/01057/F – 177 Warwick Road, Banbury, OX16 1AS - Variation of Condition 2 (opening times) of 03/00144/F - amendment of opening hours at the store, trading hours for Monday-Saturday 11.00am - 12.00am and Sunday 12.00 noon - 11.00pm

Officer recommendation – Refusal (Delegated)

Method of determination: Written Representations

Start Date: 26.07.2021 **Statement Due:** 02.08.2021 **Decision:** Awaited

Appeal reference – 21/00022/REF

21/01083/F - Wykham House, Wykham Lane, Broughton, OX15 5DS - Creation of new driveway from Wykham Lane to existing car parking area of Wykham House - Removal of 4m of brick wall and build pillars to exposed ends. Remove grass bank from brick wall to road, install Marshalls permeable paving - scoop/blend edges of grass bank into permeable driveway - install cobble setts to join Wykham Lane to Marshalls permeable paving.

Officer recommendation – Refusal (Delegated)

Method of determination: Written Representations

Start Date: 04.08.2021 **Statement Due:** 08.09.2021 **Decision:** Awaited

Appeal reference – 21/00023/REF

3.3 Enforcement Appeals in Progress

20/00419/ENF - The Stables, at OS Parcel 3873, Main Street, Great Bourton, Cropredy, Oxfordshire, OX17 1QU

Appeal against the enforcement notice served for “*Without planning permission the change of use of the land to use as a caravan site currently accommodating one mobile home type caravan designed and used for human habitation together with associated parking and storage of motor vehicles and trailer, storage of touring caravans and associated domestic paraphernalia*”.

Method of determination: Hearing

Start Date: 24.02.2021

Statement Due: 07.04.2021

Decision: Awaited

Hearing date: Tuesday 16th and Wednesday 17th November 2021

Hearing venue: The Pavilion, Banbury Cricket Club, White Post Road, Bodicote, OX15 4BN

Appeal reference: 21/00008/ENF

3.4 Forthcoming Public Inquires and Hearings between 8 October 2021 and 4 November 2021

None

3.5 Results

Inspectors appointed by the Secretary of State have:

3.5.1 **21/00087/F - Dismissed the appeal by Mr and Mrs Mills against the refusal of planning permission for first floor side extension with associated internal and external works.**

51 Walton Avenue, Twyford, OX17 3LA

Officer recommendation – Refusal (Delegated)

Method of determination: Householder (Fast Track)

Appeal reference – 21/00024/REF

The Inspector identified the main issue being the effect on living conditions of the occupants of the adjacent property, 49 Walton Avenue, with regards to light and outlook.

The Inspector found that the proposed two-storey side extension would cause harm to the living conditions of the occupants of No.49 due to its massing and impact on natural light which would be blocked by the scheme. Whilst a letter from the current occupants of No.49 was provided in support of the application, the level of harm was, nonetheless, considered unacceptable.

The appeal was dismissed.

3.5.2 **21/00043/F - Allowed the appeal by Mr R Taylor against the refusal of planning permission for Installation of a two bay wood framed garage with adjoining log store in the front left hand corner of the plot. Greystones, Banbury Road, Deddington, Banbury, OX15 0TN.**

Officer recommendation – Refusal (Delegated)

Method of determination: Householder (Fast Track)

Appeal reference – 21/00026/REF

The Inspector identified the impact on the character and appearance of the street scene and the potential harm to a mature oak tree to the front of the site as the key issues in this case.

In respect of the tree, the Inspector concluded that an arboricultural method statement, submitted during the appeal process, successfully demonstrated that the proposed garage could be constructed without unduly affecting the health of the tree. Whilst acknowledging that Council guidance advised against constructing structures, such as garages, in front of a property's principal elevation, the Inspector concluded that it would be acceptable in this instance given the distance of the building from the roadside, its relationship with the host dwelling - the key features of which would remain unobscured, and the fact that the oak tree would also help to soften the impact of the garage by partially screening it from the road.

Based on this assessment and subject to a condition to ensure that the oak tree was protected during the build, the appeal was allowed.

3.5.3 21/00182/Q56 – Allowed the appeal by Mr P Stead and Mrs V Tew against the refusal of prior approval for Change of Use of part of an agricultural building and curtilage to one residential dwelling. Little Haven, Barford Road, South Newington, OX15 4LN.

Officer recommendation – Refusal (Delegated)

Method of determination: Written Representations

Appeal reference – 21/00019/REF

The Inspector considered the main issue to be whether the proposal would be permitted development meeting the requirements of Schedule 2, Part 3, Class Q(b) of the Order, having regard to whether it would comprise building operations reasonably necessary for the building to function as a dwellinghouse.

The Inspector was satisfied that the steel frame and the existing roof would both be retained and that the Appellant's suggestion that approx. 88% of the existing external fabric would be retained was not undermined by any detailed evidence. The Inspector held that the evidence indicated the building would be structurally capable of functioning as a dwelling. The Inspector noted that internal works are generally not development and therefore that the insertion of internal insulation and partitions was not prohibited under Class Q.

The Inspector therefore concluded that, *“based on the information presented, although the cumulative extent of the works proposed to facilitate a residential use would be considerable, ... it would not be to a degree that would amount to a fresh build of the structure, nor involve building operations that fall outside of those described in Class Q.1(i) of the Order.”* Accordingly she allowed the appeal.

3.5.4 20/03409/F – Dismissed the appeal by Mr Blackwell against the refusal of planning permission for A single storey, connecting link between the garage and the original barn conversion dwelling. Heath Barn, Sibford Gower, Banbury, OX15 5HQ.

Officer recommendation – Refusal (Delegated)

Method of determination: Householder (Fast Track)

Appeal reference – 21/00025/REF

The Inspector identified the main issue being the impact on the character and appearance of the area, with particular regard to the historic character of the converted stone barn.

The Inspector found that the addition of the linking structure between the barn and the garage outbuilding, albeit modest, would be apparent in both long and medium views over the site. The Inspector also agreed with Officers that the historic significance of the non-designated heritage barn would be harmed due to the loss of plan form, new openings and the addition of the linking structure to the simple barn.

The appeal was dismissed.

3.5.5 19/00963/OUT – Allowed the appeal by Hollins Strategic Land LLP against the refusal of planning permission for Resubmission of application 17/02394/OUT – Outline application for permission for up to 40 dwellings with associated landscaping, open space and vehicular access off Berry Hill Road (all matters reserved other than access). OS Parcel 9100 Adjoining And East Of Last House Adjoining And North Of Berry Hill Road, Adderbury

Officer recommendation – Refused (Committee)

Method of determination: Hearing

Appeal reference – 21/00004/REF

Appeal decision summary to follow in the next Appeals Progress Report

3.5.6 20/03175/Q56 – Allowed the appeal by Dr C Evans against the refusal of prior approval for Conversion of existing barn to a single large dwellinghouse under Class Q permitted development (re-submission of 20/02051/Q56). Part Of Os Parcel 5900 East Of Broughton And North, Sandfine Road, Broughton
Officer recommendation – Refusal (Delegated)
Method of determination: Written Representations
Appeal reference – 21/00020/REF

The Inspector considered the main issue to be whether the proposal would be permitted development, having regard to (i) the proposed curtilage, (ii) the use of the established agricultural unit and (iii) change of use meets the requirements of Class Q of the GPDO so as to constitute 'permitted development'.

The Inspector held that the curtilage of the building did not need to relate to an existing physical delineation or enclosure on the ground. She noted there to be some ambiguity in the submitted plans as to the size of the building but overall was satisfied that the proposal would adhere to the definition of curtilage in paragraph X of the Order.

In relation to the use of the building, the Council had concluded that the use was a mix of equine and agricultural. Planning permission had been granted for said use in 2002 but the Inspector noted that it did not necessarily follow that the site was used as approved. The Inspector noted the requirement to be that the appeal building and the curtilage were in agricultural use on 20th March 2013. The Inspector noted that grazing of horses was an agricultural use but that the keeping of horses was not. The Inspector was convinced by the Appellant's submission that the horses present at the site on 20th March 2013 were retired due to age and/or ill health and were present for mixed grazing and to assist in keeping sheep. Further, the Inspector was satisfied that the horses were not kept within the appeal building or the proposed curtilage.

In respect of building operations, the Inspector held that the building was suitable for conversion without significant structural interventions, and was satisfied by the Appellant's submission that there would be limited alteration to the building, and that the alterations proposed – building up the existing block walls to eaves height, replacing the roof covering and providing additional openings for windows – would be permissible under Class Q. The Inspector noted that the existing timber boarding would be retained, with the blockwork increased in height behind.

The Inspector concluded that *“the cumulative extent of the works proposed to facilitate a residential use would be considerable, but given the retention of original fabric in this case, not to such a degree that it would amount to a fresh build of the structure”* and that the proposal fell within the requirement of Class Q(b).

In relation to a separate costs application, the Appellant had contested that the Council's refusal itself was unreasonable, that it had not been evidenced and that the Council's questioning of the evidence submitted was unreasonable.

The Inspector disagreed with the Appellant, finding that the consideration turned on a matter of 'fact and degree', that based on the evidence submitted with the application it was not unreasonable for the Council to draw upon general available evidence but that the Appellant had submitted additional, more specific evidence with the Appeal, and finally that the Council had clearly outlined its concerns and reasonably defended those concerns at appeal.

However, on the matter of the curtilage, the Inspector agreed that the Council had acted unreasonably in apparently basing its decision on the red line rather than a 'T line' marked on the plans. The Inspector made a partial award of costs, in relation to the matter of curtilage.

3.5.7 20/01902/Q56 – Allowed the appeal by Mr R Yates against the refusal of prior approval for Change of use of existing farm buildings into a single residential dwelling (use class C3). Barns, Crockwell House Farm, Manor Road, Great Bourton
Officer Recommendation – Refused (Delegated)
Method of determination – Written Representations
Appeal Reference – 21/00018/REF

The Inspector considered the main issue to be whether the proposed change of use meets the requirements of Class Q of the GPDO so as to constitute ‘permitted development’.

The Council had advised the appellant and PINS that after a case review it did not wish to defend part of one of the refusal reasons.

The Council’s view was that the building was not capable of being converted and therefore did not benefit from any ‘permitted development’ rights under Class Q.

The Inspector, having seen the building, understood the Council’s concern and opined that significant changes to the form of the structure would be required to make it, at least, waterproof, but held that since he was only required to assess the proposal under part Q(a) he could consider the change of use without having to consider the alterations to the building required.

In relation to the use of the building, the Inspector found no reason to disagree with the Appellant’s evidence submitted with the appeal that the building had been in agricultural use until about 2009 and vacant since then. The Council had submitted that there was insufficient evidence to establish the extent of the agricultural unit, and the Inspector agreed there was substance to this concern, but that sufficient evidence had been provided at appeal to satisfy him that an assessment could be made. He concluded that the building had been used solely for agricultural purposes and did not conflict with Part Q.1. Accordingly, he allowed the appeal.

In relation to a separate costs application, the Appellant had contested that the Council had incorrectly assessed the proposal as applying for both a change of use (part Q(a)) and the building operations reasonably necessary to convert the building (part Q(b)), and as such has refused development that should reasonably have been permitted.

The Appellant had completed an application form that referred to both parts (a) and (b) but had submitted a covering letter which made it clear that only part Q(a) was applied for. This covering letter was not published or made available to the case officer, but the Inspector held that the Council’s mistake in considering the proposal under part Q(b) constituted unreasonable behaviour and accordingly allowed the costs application in this respect.

On other matters contested by the Appellant the Inspector disagreed, noting that the Council’s case had some justification and that the Appellant’s evidence had been variable and that additional evidence was submitted with the appeal.

4. Conclusion and Reasons for Recommendations

4.1 The report provides the current position on planning appeals which Members are invited to note.

5. Consultation

5.1 None.

6. Alternative Options and Reasons for Rejection

6.1 None. The report is presented for information.

7. Implications

Financial and Resource Implications

- 7.1 There are no financial implications arising from this report. The report is for information only. The cost of defending appeals is met from existing budgets other than in extraordinary circumstances.

Comments checked by:

Karen Dickson, Strategic Business Partner, 01295 221900

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Legal Implications

- 7.2 As this report is purely for information there are no legal implications arising from it.

Comments checked by:

Matthew Barrett, Planning Solicitor, 01295 753798

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Risk Implications

- 7.3 This is an information report where no recommended action is proposed. As such there are no risks arising from accepting the recommendation.

Comments checked by:

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Equality & Diversity Implications

- 7.4 This is an information report where no recommended action is proposed. As such there are no equality implications arising from accepting the recommendation.

Comments checked by:

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8. Decision Information

Key Decision:

Financial Threshold Met	No
Community Impact Threshold Met	No

Wards Affected

All

Links to Corporate Plan and Policy Framework

Seeking to uphold the Council's planning decisions is in the interest of meeting the strategic priorities from the Business Plan 2020/21:

- Housing that meets your needs
- Leading on environmental sustainability
- An enterprising economy with strong and vibrant local centres
- Healthy, resilient and engaged communities

Lead Councillor

Councillor Colin Clarke, Lead Member for Planning

Document Information

None

Background papers

None

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