

Cherwell District Council

Planning Committee

3 August 2017

Appeals Progress Report

Report of Head of Development Management

This report is public

Purpose of report

This report aims to keep members informed upon applications which have been determined by the Council, where new appeals have been lodged. Public Inquiries/hearings scheduled or appeal results achieved.

1.0 Recommendations

The meeting is recommended:

- 1.1 To accept the position statement.

2.0 Report Details

New Appeals

- 2.1 **16/02334/OUT – Land Adj to Ridgeway House, Hogg End, Bloxham.** Appeal by Mr Smith and Ms Leyburn against the refusal of outline planning permission for the redevelopment of existing domestic tennis court, stable and land to provide new residential dwelling and associated parking and amenity areas.

17/00356/F – Shipton Manor, Shipton-on-Cherwell, OX5 1JL. Appeal by Mr NG against the refusal of planning permission for extensions to Shipton Manor House and associated outbuildings, conversion of outbuildings to wine store and pedestrian link, creation of new driveway from existing access and alteration to existing access, removal of existing internal tarmac roads.

17/00357/LB – Shipton Manor, Shipton-on-Cherwell, OX5 1JL. Appeal by Mr NG against the refusal of listed building consent for extensions to Shipton Manor House and associated outbuildings, conversion of outbuildings to wine store and pedestrian link, creation of new driveway from existing access and alteration to existing access, removal of existing internal tarmac roads.

17/00514/F – Corner Flag, Main Street, Murcott, OX5 2RE. Appeal by Mr and Mrs Price against the refusal of planning permission for a single storey front extension.

17/00518/F – Land West of Lock Barn, Canal Road, Thurpp, OX5 1JQ. Appeal by Mr Smithson against the refusal of planning permission or the change of use from business to residential and erection of new dwelling and detached garage. Demolition of existing building.

17/00569/F – Bluebell Cottage, 22 Springhill Road, Begbroke, OX5 1RX. Appeal by Mr West against the refusal of planning permission for a two storey side extension to dwelling or first floor side extension over approved ground floor extension (16/02145/F).

17/00888/F – Formely The Star Public House, Bucknell Road, Bicester, OX26 2DG. Appeal by Castlepride Management Limited against the refusal of planning permission for proposed extension and alterations to the building including change of use of ground floor from public house (use class A4) to retail (use class A1), 3 flats on the first floor and 2 flats in the extended roof space.

2.2 Forthcoming Public Inquires and Hearings between and 3rd and 31st August 2017.

None.

2.3 Results

Inspectors appointed by the Secretary of State have:

1) Dismissed the appeal by Ms Sheehan against the refusal of prior approval for the conversion of existing office (Class B1) to residential use (Class C3) comprising 6 apartments. 25 Bankside, Kidlington. 16/01407/O56 (Delegated).

The appeal related to the refusal of an application for the change of use of part of an existing office building in an industrial estate in Kidlington to 6 residential apartments, sought under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015.

The Council raised no objections in respect of the transport and highway impacts, contamination or flooding risks. The Inspector agreed that the main issue was whether the noise from adjacent commercial premises would provide acceptable living conditions to the intended future occupiers of the development.

There were a variety of uses in close proximity of the site, including a garden machinery repair unit, a vehicle hire premises and an accident repair centre and tyre premises.

The appellant had submitted a noise assessment report, which recommended that windows should be acoustically glazed and kept shut, in order to ensure that levels of internal noise for the dwellings would be acceptable. The Council stated that this report was inadequate to demonstrate that internal noise levels for the new dwellings would be acceptable, but the Inspector disagreed with this, finding that the report demonstrated that noise from nearby commercial and

industrial sources could be suitably mitigated, such that an acceptable internal acoustic environment to the residential units could be provided.

However, the Inspector found this mitigation would include having the windows kept shut at all times and if the future occupiers wanted fresh air into their property then they would be disturbed by the noise sources emanating from the industrial estate.

The proposal also included an area to the side of the residential units to be used as an amenity area. The appellant's noise report did not include an assessment of nearby activities on this area but the Inspector found that noise would be clearly audible and intrusive in this space. New screen walling was proposed, but the Inspector held that the acoustic environment in this outdoor amenity area would be poor and no boundary treatment could mitigate the harm caused by the noise from the industrial estate.

In dismissing the appeal, the Inspector concluded that the reliance on the windows to be fixed shut to provide an acceptable living environment and the acoustic environment of the outdoor amenity area would result in a poor standard of amenity for future occupiers.

2) Dismissed the appeal by Mr and Mrs Bedwell against the refusal of planning permission for the construction of a new dwelling (resubmission of 15/01338/F). Land Adj to 26 Balliol Road, Bicester. 16/01970/F (Delegated).

This appeal related to refusal of planning permission for the erection of a new dwelling to the side of the existing dwelling at 26 Balliol Road, Bicester.

The Inspector considered the main issue to be the effect that the proposal would have on the character and appearance of the area.

The new dwelling was proposed to be located on the land to the side of 26 Balliol Road, an area which currently serves as the curtilage for the dwelling. The appeal site is located at the junction of Cedar Drive and Balliol Road, and the dwelling was proposed to face towards Cedar Drive. The Inspector identified that Cedar Drive and Balliol Road had fundamentally different characters, with Cedar Drive having large, detached dwellings that sit on sizeable plots, whilst Balliol Road is characterised by single storey dwellings, often with box dormers, on more modest plots.

By fronting onto Cedar Drive, the Inspector stated that this orientation would appear out of character with the pattern of development on Balliol Road and would not be viewed in the context of Cedar Drive, given its siting and plot size being out of character with the more generous plots on this road. The dwelling would therefore fail to form a cohesive relationship with the pattern of development on either Cedar Drive or Balliol Road.

The dwelling would be principally viewed as part of the street scene of Balliol Road. The proposed dwelling would be two storeys in scale, whilst all of the surrounding dwellings are single storey bungalows. The proposed dwelling would therefore represent an incongruous and prominent addition to the street

scene on Balliol Road. Due to its siting on the curtilage to the side of 26 Balliol Road, the dwelling would appear cramped and at odds with the more spacious corner plots, which are a feature of the area. The proposed dwelling would appear overbearing, due to its siting in close proximity of the footway.

Thus, the Inspector concluded that the proposal would have an adverse effect on the character and appearance of the area and would be contrary to the development plan, and that the appeal should therefore be dismissed.

3) Dismissed the appeal by Mr Slatter (51 Wise Avenue, Kidlington, OX5 2AT. 16/01274/F (Delegated)) and Mr Wilkes (53 Wise Avenue, Kidlington, OX5 2AT. 16/01275/F (Delegated)) against the refusal of planning permission for the demolition of existing porch and construction of replacement single storey front extension to form entrance lobby and cloakroom.

The two appeals each related to the refusal of planning applications for a single storey front extension, to form entrance lobby and cloak room.

These were separate planning applications with separate appeal decisions. This summary covers both decisions as they were very similar.

The Inspector considered the main issue to be the effect of the proposals on the street scene.

The Inspector noted examples in the area of porches to the front elevation of dwellings, with doors that face towards the street. He noted that the appeal properties themselves currently both benefit from what he described as a 'modest porch' to the front with an entrance that faces out towards the highway. He found that these porches were subservient to the host dwelling and integrate well with their surroundings including the host dwelling. He concluded that while front porches are a regular feature within the surrounding area, they are modest and subservient additions to their host dwelling.

Turning to the appeal proposals, the Inspector found them to be considerably larger than the structure they would each replace, and to appear at odds with others nearby. He agreed with the Council that the increased height and depth would make them appear overly large and prominent and fail to reflect the proportion and scale of the host dwelling. He also agreed with the Council that the positioning of the front doors in the side elevation would be out of character with the prevailing design of porches within Wise Avenue, and that this would exacerbate their impact resulting in development which would be visually harmful to the existing street scene, contrary to saved Policies C28 and C30 as well as the Council's Home Extensions & Alterations Design Guide (2007).

The Inspector noted the examples of porches cited by the appellant that featured doors in their side elevation, but found that these were not characteristic and were generally smaller in both height and bulk to the appeal proposals. He noted the appellants' personal circumstances and the benefits the appeal proposals would provide them, but concluded that this did not provide sufficient justification to overcome the policy objections identified above. Finally the Inspector noted that the proposals had not generated any objections locally,

but confirmed that this lack of objection did not overcome the harm identified above.

- 4) Allowed the appeals by Mr and Mrs Gault against the refusal of planning and listed building consent for retrospective removal of conditions 3 (stain fence), 4 (gates colour) and 5 (ivy growth) of applications 16/00992/F + 16/00993/LB respectfully. Springfields, 24 Station Road, Cropredy, OX17 1PP. 16/02228/F + 16/02229/LB (Delegated).**

The appeal related to three conditions (nos 3, 4 and 5) imposed on a grant of retrospective planning permission and listed building consent for a fence and gates enclosing a Grade II listed building. Condition 3 required the fence to be stained within 6 months in accordance with details to be agreed by the LPA; Condition 4 required the gates to be painted within 6 months in accordance with details to be agreed by the LPA, and Condition 5 required the submission within 6 months of a method statement for the encouragement of the growth of ivy upon the fence (so as to obscure the fence from view).

The Inspector acknowledged that the Council's decisions had been taken on balance, and only on the basis that the effect of the gates and fence could be made acceptable by conditions imposed on those approvals. The Inspector therefor confined himself to the question as to whether the three conditions in question met the six tests (e.g. necessity, reasonableness).

The Inspector concluded that, although the fence was utilitarian and affected the setting of the listed building, Condition 3 should be removed because ivy was almost entirely obscuring the fence and the staining required by the condition would be rendered superfluous in time.

For the same reason, the Inspector concluded Condition 5 was no longer required, but that it was reasonable and necessary to ensure a degree of protection while the ivy was establishing, and so imposed a replacement condition.

The Inspector found the gates to be stark and non-traditional in style and to have a significant impact on the Conservation Area and the setting of the listed building. The Inspector therefore agreed with the need for Condition 4 but amended its wording in order to make it reasonable and to require the said details within three rather than six months.

The Inspector also held Conditions 1 and 2 to be unreasonable and so allowed the appeal without compliance with conditions 1, 2 or 3 but with replacement conditions 4 and 5.

- 5) Dismissed the appeal by Mrs Clark-Dunn against the refusal of felling two Maple trees subject to TPO 2/1980. 18 Hut Close, Bicester, OX26 6HX. 16/02248/TPO (Delegated).**

The Inspector dismissed the appeal.

The appeal related to an application to fell two trees that form part of a TPO prior to the development of Hunt Close in Bicester. Noting that the original TPO

had been revoked and replaced, and that only one of the two trees was protected, the Inspector confirmed herself to consideration of the western Maple.

The Inspector considered that there were two main issues, first being the amenity value of the tree and the likely impact of felling and, second whether the work was justified in the circumstances of the case.

On the first issue the Inspector found the appeal tree to be a mature specimen and highly visible from public viewpoints where the tree has a pleasing, natural shape that is typical of its species. The Inspector concluded that the tree has a substantial positive impact on the local environment and that felling it would have a detrimental impact on the character and appearance of the area.

On the second issue the Inspector found that the garden was generous by today's standards, that the tree was a minor part of the overall rear garden and that there remained ample room for usual domestic activities. The Inspector found it hard to see how the tree reduced light levels to the house to any significant extent, and opined that people who move to such pleasant and attractive areas should accept trees as an integral part of the environment. The Inspector noted she had not been presented with any evidence that the appeal tree was likely to fail and that the appellant's tree consultant had concluded the tree "probably did not pose a present threat". The Inspector concluded that insufficient justification had been provided to fell the tree.

6) Part dismissed and part allowed the appeal by Mr and Mrs Fisher against the refusal of planning permission for a single storey rear extension with log burning flue. Dormer window to North elevation. Pitched roof on existing flat roof porch. Gravel finish to driveway. 4 Church Lane, Mollington, OX17 1AZ. 16/02548/F (Delegated).

The Inspector issued a split decision in respect of this appeal.

The appeal related to the refusal of an application for a single storey rear extension with log burning flue, a dormer window to North elevation and the addition of a pitched roof on existing flat roof porch.

The inspector considered the main issue to be the effect of the proposal on the character and appearance of the area, having particular regard to its location within the Mollington Conservation Area.

The Council had argued that the proposed dormer window and pitched roof to the existing porch, both to the front elevation of the dwelling, would result in a visually incongruous form of development that, would make the frontage of the dwelling more prominent and result in a loss of uniformity in the frontages of the application site and its attached neighbour, failing to preserve the character and appearance of the Conservation Area.

The Inspector agreed, finding that the dormer window and pitched roof over the porch would appear markedly different from the adjoining building and would unbalance the frontage when viewed as a pair and give an incongruous appearance in the street scene, and would not relate well to surrounding built form. The Inspector concluded that these changes to the front would have an

unacceptable effect on the character and appearance of the Mollington Conservation Area.

The Council had considered that the proposed rear extension and log burning flue to be acceptable, being not readily visible from the public domain, and not having a detrimental impact on the residential amenity of either neighbour.

The Inspector agreed, and so issued a split decision, granting permission for the elements which the Council had considered acceptable and dismissing the appeal for the elements on which the Council's refusal had been made. While the Council is guided not to issue split decisions for such application types, this is an option open to the Inspectorate.

7) Allowed the appeal by Mr Littlewood against the refusal of planning permission for a first floor side extension over existing extension to provide bedroom with en-suite – re-submission of 16/00438/F. Otmoor House, High Street, Charlton On Otmoor, OX5 2UG. 17/00138/F (Delegated).

The appeal related to the refusal of an application for a first floor extension, to a large stone built dwelling within a village location washed over by the Oxford Green Belt.

The Inspector identified the main issue to be whether the proposed development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework and development plan policy.

The Inspector noted that paragraph 89 of the Framework states that the construction of new buildings within the Green Belt should be regarded as inappropriate subject to certain exceptions, and that an extension or alteration of a building was one of those exceptions provided that it did not result in disproportionate additions over and above the size of the original building. The Inspector noted that the Framework does not provide a numerical threshold to define what constitutes a disproportionate addition, and indicated that in the absence of further guidance it is a matter of judgment.

The Inspector found it “difficult to conclude with any certainty” as to the size of both the original house and associated outbuildings in 1948, and indicated that since the Framework does not differentiate between dwellings and other buildings there was no need to consider conclude whether the buildings which existed in 1948 should be treated as extensions or outbuildings. This is unfortunate because the question as to what was present in 1948, as part of the dwelling or as an outbuilding, goes to the heart of whether the proposals are disproportionate additions to the original dwelling (and the Inspector appears not to recognise that extensions are mentioned in the Framework as an exception but that outbuildings are not).

The Inspector merely found that “the footprint of the property and associated buildings had been quite sizeable”. She noted the lack of detailed planning guidance within the Local Plan.

Despite not having concluded as to what the original house constituted in 1948, the Inspector concluded that the appeal proposal would not result in a disproportionate addition to that dwelling. Indeed she based her assessment on the scale of the addition over and above “the buildings that were on site in 1948” rather than simply the dwelling as required by policy. The Inspector concluded that there would be some impact on openness but that it would be minor and not materially harmful.

The Inspector indicated that matters relating to potential fall back positions, reference to other extensions allowed within the district, permitted development rights, or other district’s planning policies have not been determinative in her consideration of the appeal.

8) Dismissed the appeal by Mr and Mrs Worrall against the refusal of planning permission for a single storey rear extension. Fareway, Brill Road, Horton Cum Studley, OX33 1BX. 17/00423/F (Delegated).

The appeal related to the refusal of an application for a single storey rear extension.

The site falls within the Oxford Green Belt and the Inspector identified the main issues to be whether the proposal would be inappropriate development within the Green Belt; the effect of the proposal on the openness of the Green Belt, and if the proposal is inappropriate development whether the harm by reason of inappropriateness, and any other harm, was clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

The Inspector noted that paragraphs 89 and 90 of the Framework state that the construction of new buildings in the Green Belt should be regarded as inappropriate subject to certain exceptions, and that an extension or alteration of a building was one of those exceptions provided that it did not result in disproportionate additions over and above the size of the original building. The Inspector noted that the Framework does not provide a numerical threshold to define what constitutes a disproportionate addition, but neither does it preclude local planning authorities from doing so.

The Inspector noted that the appellant did not disagree with the Council that the original dwelling, i.e. prior to 1 July 1948, was 123 square metres (sq m) and that the proposed extension along with the previous post-1948 extensions would be 238 sq m, thus resulting in a 194% increase in floor space over that of the original dwelling. The Inspector noted the appellant’s contention that the appeal proposal would represent only a 10% increase on the floor space of the original dwelling, but held that the proposal needed to be considered in combination with the previous extensions.

The Inspector concluded that the proposal represented a disproportionate addition over and above the size of the original building and thus would be inappropriate development in the Green Belt and that, although the proposed extension would be of a modest scale, it would result in some built development where none previously existed and that the proposal would cause harm to the openness and purpose of the Green Belt, contrary to CLP Policy ESD14.

Paragraph 88 of the Framework guides that substantial weight is given to any harm to the Green Belt, and that 'very special circumstances' will not exist unless the potential harm by reason of inappropriateness and any other harm are clearly outweighed by other considerations. The Inspector found no very special circumstances to justify what would be inappropriate development in the Green Belt.

3.0 Consultation

None

4.0 Alternative Options and Reasons for Rejection

4.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To accept the position statement.

Option 2: Not to accept the position statement. This is not recommended as the report is submitted for Members' information only.

5.0 Implications

Financial and Resource Implications

5.1 The cost of defending appeals can normally be met from within existing budgets. Where this is not possible a separate report is made to the Executive to consider the need for a supplementary estimate.

Comments checked by:

Denise Taylor, Group Accountant, 01295 221982,
Denise.Taylor@cherwellandsouthnorthants.gov.uk

Legal Implications

5.2 There are no additional legal implications arising for the Council from accepting this recommendation as this is a monitoring report.

Comments checked by:

Nigel Bell, Team Leader – Planning, Law and Governance, 01295 221687,
nigel.bell@cherwellandsouthnorthants.gov.uk

Risk Management

- 5.3 This is a monitoring report where no additional action is proposed. As such there are no risks arising from accepting the recommendation.

Comments checked by:

Nigel Bell, Team Leader – Planning, Law and Governance, 01295 221687,
nigel.bell@cherwellandsouthnorthants.gov.uk

6.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

A district of opportunity

Lead Councillor

None

Document Information

Appendix No	Title
None	
Background Papers	
None	
Report Author	Tom Plant, Appeals Administrator, Development Directorate
Contact Information	01295 221811 tom.plant@cherwell-dc.gov.uk