

# **Cherwell District Council**

## **Planning Committee**

**2 December 2021**

### **Appeal Progress Report**

#### **Report of Assistant Director - Planning and Development**

This report is public

#### **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.

#### **1.0 Recommendations**

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

#### **2.0 Introduction**

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

#### **3.0 Report Details**

##### **3.1 New Appeals**

##### **a) 21/01387/F – 3 Bryony Road, Bicester, OX26 3WY**

Increase dropped kerb outside of residential property (6 kerb stones to be replaced)

Officer recommendation - Refused (Delegated)  
Method of determination: Written Representations  
Start Date: 25.10.2021  
Statement Due: 29.11.2021  
Decision: Awaited  
Appeal reference – 21/00034/REF

##### **b) 21/02075/F – 50 Spruce Drive, Bicester, OX26 3YN**

First floor extension and partial garage conversion

Officer recommendation - Refused (Delegated)  
Method of determination: Householder (Fast Track)  
Start Date: 25.10.2021  
Statement Due: N/A  
Decision: Awaited  
Appeal reference – 21/00035/REF

### 3.2 **New Enforcement Appeals**

None

### 3.3 **Appeals in Progress**

#### **a) 20/01122/F - OS Parcel 9635 North East of HMP Bullingdon Prison, Widnell Lane, Piddington**

Material Change of Use of land to use as a residential caravan site for 12no. gypsy / traveller families, each with two caravans, including improvement of access, laying of hardstanding and installation of package sewage treatment plant.

Officer recommendation – Refused (Committee)

Method of determination: Hearing (Date not arranged)

Start Date: 08.10.2021

Statement Due: 26.11.2021

Decision: Awaited

Appeal reference – 21/00033/REF

#### **b) 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

#### **c) 20/02826/F - Southcroft House, Southrop Road, Hook Norton, OX15 5PP**

Erection of gates, pillars and boundary wall with railings above.

Officer recommendation – No decision. Appeal against non-determination

Method of determination: Written Representations

Start Date: 01.10.2021

Statement Due: 05.11.2021

Decision: Awaited

Appeal reference – 21/00030/NON

#### **d) 21/01199/HPA – 43 Kingsway, Banbury, OX16 9NX**

Proposed demolition of existing extension and rebuild extension with a dual pitched roof - height to eaves 2.75m, overall height 3.79m, length 4.1m.

Officer recommendation - Refused (Delegated)

Method of determination: Householder (Fast Track)

Start Date: 01.10.2021

Statement Due: N/A

Decision: Awaited  
Appeal reference – 21/00032/REF

**e) 21/01756/F – 25 Broad Close, Barford St Michael, OX15 0RW**

Single storey side and rear extension including demolition of existing conservatory.

Officer recommendation - Refused (Delegated)  
Method of determination: Householder (Fast Track)  
Start Date: 01.10.2021  
Statement Due: N/A  
Decision: Awaited  
Appeal reference – 21/00031/REF

**3.4 Enforcement Appeals in Progress**

**a) 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 16 November 2021  
Hearing venue: The Pavilion, Banbury Cricket Club, White Post Road, Bodicote, OX15 4BN  
Appeal reference: 21/00008/ENF

**3.5 Forthcoming Public Inquiries and Hearings between 3<sup>rd</sup> December 2021 and 12<sup>th</sup> January 2022**

None

**3.6 Appeal Results**

Inspectors appointed by the Secretary of State have issued the following decisions:

**a) 20/00871/F – Dismissed the appeal by W Potters & Sons Ltd against the refusal of planning permission for Erection of a free range egg production unit and gatehouse including all associated works - re-submission of 19/00644/F. (Please note the appellant withdrew the agricultural dwelling from the appeal proposal.). OS Parcel 3300 North Of Railway Line Adjoining Palmer Avenue, Lower Arncott**

Officer recommendation – Refused (Committee)  
Method of determination: Written Representations  
Appeal reference – 21/00007/REF

The Inspector noted that unlike the refused application the appeal proposal did not include the proposed agricultural workers dwelling and that therefore the Council's first refusal reason fell away. In addition, the Inspector noted that the EA and the LLFA had withdrawn their objections and that the Council was therefore no longer defending the fifth refusal reason.

The Inspector considered the main issues to be the proposal's effect on (a) the character and appearance of the area; and (b) biodiversity including pollution.

The Inspector found that most views of the proposals would be relatively localised but that views from nearby public rights of way would be affected, and that the amount of built form proposed was significant. The Inspector concluded that the proposals would be a very noticeable addition to the landscape even in the context of pylons that traverse the area, and that the impact would be materially harmful, the proposal being 'visually incongruous in the wider landscape'. The Inspector held that the proposed mitigation would provide 'no meaningful relief' and that landscaping attempting to screen the development cannot make it acceptable. The Inspector considered that the proposal would erode a significant proportion of the field pattern and broad landscape causing material harm in terms of landscape effects.

The Inspector noted the number of hens, the amount of faecal matter to which this would lead and the resultant potential for pollution, noting the objections in this regard from CDC and from BBOWT and, despite the LLFA having withdrawn its objection, the Inspector was not convinced drainage would not remain an issue. The Inspector held that the appellant had not demonstrated how the proposed biodiversity measures would suffice nor that species rich grassland and 'shallow scrapes' would be viable in the context of the identified flooding and pollution from faecal matter. The Inspector found that given the lack of confidence in the proposed measures re biodiversity, flooding and pollution it would not be appropriate to secure outstanding details by means of conditions.

The Inspector concluded the proposals failed to accord with Policies ESD8, ESD10, ESD11, ESD13 and ESD15 of the 2015 Local Plan and Policies AG2, AG4, C8, C29 and ENV1 of the 1996 Local Plan (but not AG3 of the 1996 Plan). The Inspector was not convinced of the proposal's benefits in terms of egg production or economic growth and on the basis of the identified harm he dismissed the appeal.

**b) 21/01057/F – Dismissed the appeal by Compass Foods Ltd against refusal of planning permission for 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. 177 Warwick Road, Banbury, OX16 1AS.**

Officer recommendation – Refusal (Delegated)  
Method of determination: Written Representations  
Appeal reference – 21/00022/REF

The Inspector identified two main issues as the proposal's effect on the character and appearance of the area and on the living conditions of nearby residents.

The Inspector found that the proposed extended duration of the activities related

with the commercial use would result in the commercial character of the area becoming unduly dominant in a somewhat large residential area.

In respect of the effect on the living conditions of nearby residents, the Inspector found that varying the opening hours later in the evenings and on Sundays would likely increase the noise and disturbance. She concluded that the effect of varying the opening times as proposed would not provide sufficient control on the existing use so as to safeguard against residents suffering undue noise and disturbance.

The Inspector noted the proposal would have economic benefits but that these would be outweighed by the harm to visual amenity and nearby residents' living conditions, and concluded the appeal should be dismissed.

- c) 21/01083/F – Dismissed the appeal by Mr S Cook against refusal of planning permission for 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. Wykham House, Wykham Lane, Broughton, OX15 5DS.**

Officer recommendation – Refusal (Delegated)  
Method of determination: Written Representations  
Appeal reference – 21/00023/REF

The Inspector identified the main issue as the effect of the proposed development on highway safety.

At the time of the Inspector's visit several cars passed the site from both directions along Wykham Lane. The Inspector considered it reasonable to conclude that the levels of traffic would increase at peak hours. The Inspector found that the visibility splays of the proposed development would be 'considerably reduced' compared to the existing access and that while the existing access is substandard for visibility it is better than that proposed in this appeal. She observed that no evidence had been supplied to justify a reduction from the expected standards. The Inspector had regard to the appellant's personal circumstances but considered this not a factor sufficient to outweigh the harm identified and considered any benefits to pedestrian safety to be small and to not overcome the harm identified.

The Inspector concluded that the proposed works would be detrimental to highway safety and therefore dismissed the appeal.

- d) 20/03327/F – Allowed the appeal by G Clark against refusal of planning permission for Development of a detached dwelling with new access onto Howes Lane - Resubmission of 20/00138/F. Land SW of Coleridge Close and Rear 6 Chaucer Close, Bicester, OX26 2XB.**

Officer recommendation – Refusal (Delegated)  
Method of determination: Written Representations  
Appeal reference – 21/00021/REF

The Inspector considered the main issues to be the proposal's effect on (i) the character and appearance of the area, and (ii) highway safety in terms of visibility from the proposed access.

In respect of visual amenity, the Inspector found that the proposed dwelling, a bungalow, would not be prominent in Chaucer Close, and placed weight on the existing use of the site as residential garden. The Council did not disagree with the foregoing but had contended the proposal would be out of keeping in Howes Lane as it would be the only dwelling accessed from Howes Lane and would change its character. The Inspector disagreed, concluding the dwelling would not appear isolated and would integrate with its context.

The Inspector disagreed with CDC and OCC that Howes Lane should be classified as a trunk road and (rather than the Design Manual for Roads and Bridges) instead applied Manual for Streets. The Inspector held that drivers leaving the site would be able to see traffic coming from the left for a similar distance to that stipulated by the Council and highway authority. In respect of the signalised junction, the Inspector found that stationary vehicles at the signals would only affect visibility for short periods and would not prejudice highway safety.

The Inspector concluded that Howes Lane was sufficiently safe (human error deemed the primary reason for accidents) and the appeal proposal would not increase any risk and would therefore be acceptable in terms of highway safety. Accordingly the appeal was allowed, subject to various conditions (materials, finishes, landscaping, hardstanding, parking, visibility splays).

**e) 20/00789/CLUE – Allowed the appeal by Mr B Cummings for 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. Belmont, 8 Foxglove Road, Begbroke, OX5 1SB**

Officer recommendation – Refusal (Delegated)  
Method of determination: Written Representations  
Appeal reference – 20/00035/REF

The Inspector deemed the main issue to be whether the existing use of the site as a domestic garden and the existing fence and hedge were lawful on 16 March 2020.

The Inspector had sympathy for the Council's view that the evidence did not unambiguously show ten years of continuous garden use, however she stated that there was less evidence of 'amenity land' ever being the lawful or actual use of the site.

The Inspector considered that the conditions from 1971 when the house was built relating to the retention of boundary fences and planting and the removal of permitted development rights for land to the front of the dwellings did not affect or restrict the use of the land and that on the balance of probabilities, the 1971 permission authorised the use of site in question as a domestic garden and that this use remains authorised and lawful. As such it does not matter whether the appellant demonstrated that the use might be immune from enforcement action. The fence was considered to be lawful given the passage of time.

The appeal was allowed but the appellant's application for costs against the Council for maintaining its objection was dismissed on the grounds that the circumstances of the case were complex and unusual, and it was not unreasonable of the Council to find that the appellant had not demonstrated that the use was

immune to enforcement on the balance of probabilities.

- f) 20/03419/F – Dismissed the appeal by Ms Tamsin Graham on behalf of Mrs Rebecca Lowe against the refusal of planning permission for RETROSPECTIVE - uPVC rear conservatory. 18 Boxhedge Road, Banbury, OX16 0BP.**

Officer recommendation - Refused (Delegated)  
Method of determination: Written Representations  
Appeal reference – 21/00028/REF

The Inspector identified the main issue as being whether the conservatory preserves the special architectural and historical interest of the Grade II listed application property, and whether the conservatory preserves or enhances the character or appearance of the Banbury Conservation Area.

The Inspector found that the conservatory had little in common with the original dwelling and conflicted with the simple design, plan form and materials of the listed building and therefore detracts from the architectural and historical interest of the building as well as the character and appearance of the Banbury Conservation Area.

The harm was found to be “less than substantial” and as there were no public benefits which outweighed the harm identified, the appeal was dismissed.

- g) 20/03420/LB – Dismissed the appeal by Ms Tamsin Graham on behalf of Mrs Rebecca Lowe against the refusal of listed building consent for RETROSPECTIVE - uPVC rear conservatory. 18 Boxhedge Road, Banbury, OX16 0BP.**

Officer recommendation - Refused (Delegated)  
Method of determination: Written Representations  
Appeal reference – 21/00029/REF

The Inspector identified the main issue as being whether the conservatory preserves the special architectural and historical interest of the Grade II listed application property, and whether the conservatory preserves or enhances the character or appearance of the Banbury Conservation Area.

The Inspector found that the conservatory had little in common with the original dwelling and conflicted with the simple design, plan form and materials of the listed building and therefore detracts from the architectural and historical interest of the building as well as the character and appearance of the Banbury Conservation Area.

The harm was found to be “less than substantial” and as there were no public benefits which outweighed the harm identified, the appeal was dismissed.

## **4.0 Conclusion and Reasons for Recommendations**

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

## **5.0 Consultation**

5.1 None.

## **6.0 Alternative Options and Reasons for Rejection**

6.1 None. The report is presented for information.

## **7.0 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:

Janet Du Preez, Service Accountant, 01295 221606

[janet.du-preez@cherwell-dc.gov.uk](mailto:janet.du-preez@cherwell-dc.gov.uk)

### **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

[matthew.barrett@cherwell-dc.gov.uk](mailto:matthew.barrett@cherwell-dc.gov.uk)

### **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:

Louise Tustian, Head of Insight and Corporate Programmes,  
01295 221786

[louise.tustian@cherwell-dc.gov.uk](mailto:louise.tustian@cherwell-dc.gov.uk)

### **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:

Emily Schofield, Acting Head of Strategy,  
07881 311707

[Emily.Schofield@oxfordshire.gov.uk](mailto:Emily.Schofield@oxfordshire.gov.uk)

## **8.0 Decision Information**

### **Key Decision:**

Financial Threshold Met	No
Community Impact Threshold Met	No

### **Wards Affected**



All

## **Links to Corporate Plan and Policy Framework**

Business Plan Priorities 2021-2022:

- 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

## **Report Author and contact details**

Matthew Swinford, Appeals Administrator  
Matthew.Swinford@cherwell-DC.gov.uk

Alex Chrusciak, Interim Senior Manager, Development Management  
[Alex.Chrusciak@cherwell-dc.gov.uk](mailto:Alex.Chrusciak@cherwell-dc.gov.uk)