

Planning Appeal Decisions

Committee: Eastern Area Planning Committee on 11th March 2020

Officer: Bob Dray, Team Leader (Development Control)

Recommendation: Note contents of this report

1. This reports summaries recent appeal decisions in the table below, and provides feedback on some of the key findings. The appeal decisions and associated documents can be viewed by searching by the application reference number on the Council's Public Access website: <https://publicaccess.westberks.gov.uk/online-applications/>

Application / Appeal	Site	LPA Decision	Appeal Decision	Decision Date
19/00778/OUTD Bradfield Appeal: 3232761 Written Reps	Burford, Stanford Road, Bradfield Southend Construction of a one and a half storey dwelling with a detached garage at land to the rear of Burford Cottage (in outline with access and layout to be considered).	Delegated refusal	Dismissed	18/12/19
19/00518/HOUSE 19/00519/LBC2 Appeals: 3230985 3230982 Written Reps	Old Thatch, Crookham Common Road, Brimpton Demolition of a 1960's single storey extension and erection of a single storey extension to rear of property (planning and listed building consent).	Delegated refusal	Both appeals dismissed	18/12/19
19/01084/FULD Appeal: 3237061 Written Reps	60-62 Brook House, Northbrook Street, Newbury Erection of a mansard style roof extension to facilitate the provision of 4no. self-contained dwelling houses comprising 2no. 1-bed flats and 2no. studios.	Delegated refusal	Dismissed – costs application against Council refused	19/12/19
18/03268/FULD Appeal: 3234841 Written Reps	Clairewood, Hampstead Norreys Road, Hermitage, Thatcham Demolition of the existing single storey dwelling and garage and its replacement with two semi-detached dwellings. Included within the proposals are works to lift and thin the crown of TPO within the garden.	EAPC refusal (recommended for approval)	Allowed – costs application against the Council refused	02/01/20
19/00061/FUL Appeal: 3236501 Written Reps	Keepers Cottage, Mill Lane, Tidmarsh Change of use of detached residential annexe to dwellinghouse and associated accommodation works.	Delegated refusal	Dismissed	03/01/20

18/02964/OUTD Appeal: 3232623 Written Reps	Wisteria Cottage, Bath Road, Midgham Erection of two detached dwellings on brownfield garden land surplus to requirements and less than half a hectare in size (in outline with access and scale to be considered).	Delegated refusal	Dismissed	08/01/20
18/02205/FUL Appeal: 3229421 Written Reps	21 Woodside, Newbury Change of use of a House in Multiple Occupation (Use Class C4) to a 7-bedroom Large House in Multiple Occupation (Sui Generis).	Delegated refusal	Allowed – costs awarded against Council	17/01/20
19/01436/ADV 19/01435/LBC2 Appeals: 3237766 3237764 Written Reps	7-11 Northbrook Street (Camp Hopson), Newbury New signage to rear elevation of store, including pvc hoarding and vinyl fascia signs (advertisement and listed building consents).	Delegated refusal	Both appeals dismissed	24/01/20
19/02116/FULD Appeal: 3239494 Written Reps	7 Bradwell Road, Tilehurst Erection of a new two storey 3-bed dwelling after demolition of rear and side single story extension and garage of the existing semi detached dwelling-house.	Delegated refusal	Dismissed	28/01/20
18/03014/OUTMAJ Appeal: 3234882 Public Inquiry	Land at junction of Clayhill Road and Sulhamstead Road, Burghfield The erection of 40 dwellings (24 market and 16 affordable), together with access (both vehicular and pedestrian) to Clayhill Road, provision of open space and landscaping (in outline with access to be considered).	Delegated refusal	Dismissed	05/02/20
Appeal against an Enforcement Notice 3228080 (Associated application 18/02087/FUL) Written Reps	Land at 15 Battle Road, Newbury Alleged breach: change of use from residential to mixed use of residential and use of land and outbuildings to hair and nail salon and beauty treatment rooms.	Delegated enforcement notice	Dismissed – enforcement notice upheld	05/02/20
19/00723/FULD Appeal: 3242051 Written Reps	54 Victoria Arms, Victoria Road, Mortimer Common Construction of new two-bedroom dwelling to the rear of 54 Victoria Road, Mortimer Common (Victoria Arms Public House).	Delegated refusal	Dismissed	18/02/20
19/01134/HOUSE Appeal: 3238006 Written Reps	26 Clayhill Road, Burghfield Common First and ground floor rear extension.	Delegated refusal	Dismissed	25/02/20

Major housing developments

2. The **Clayhill Road** appeal is the latest appeal decision for a major housing site that is contrary to the Council's strategy for the location of new houses set out in the statutory development plan. This appeal decision follows a series of similar dismissed appeal decisions and reaffirms many of the points that have been made previously. This is a robust decision that fully supports the Council's continued position on housing provision. Headline points include:
 - a) Whilst the figure of 10,500 is out of date, this does not mean that the associated policies are out of date, as the figure was prefaced by the phrase "at least", building flexibility into the relevant policies. Moreover, even with a higher objectively assessed need figure of 665 dwellings per annum, policies for the supply of housing have been found up to date in previous appeals. In the context of a healthy five year housing land supply, the policies are not out of date.
 - b) Policy C1 of the Housing Site Allocations (HSA) DPD controls housing in the countryside and makes provision for exceptions. As such, it does not constitute blanket protection from development (and is thus not inconsistent with the NPPF).
 - c) Policies CS17 (Biodiversity) and CS19 (Landscape/Heritage) are consistent with the NPPF and not out of date.
 - d) The most important policies for determining this application are not out of date and paragraph 11(d) of the NPPF – the "tilted balance" was not engaged.
 - e) Burghfield Village and Burghfield Common are discreet settlements being separated by a significant distance and expanse of countryside. Moreover, Burghfield Common is characterised by estate-style built form whereas Burghfield Village sits in open countryside and has a linear settlement pattern. The proposal would have eroded the gap between settlements and cause significant harm to the character and appearance of the area.
 - f) Even if a site is not regarded as a 'valued landscape' for the purposes of paragraph 170(a) of the NPPF, paragraph 170(b) seeks that planning decisions should recognise the intrinsic character and beauty of the countryside. Whilst a site may be 'ordinary' countryside which may not justify the same level of protection as designated areas, this does not mean it is removed from protection altogether.
 - g) A traditional orchard comprising 'priority habitat' was felled in January 2016 prior to the submission of the planning application. In this context the Inspector concluded that at contribution toward off-site biodiversity improvements would be compensation and not a benefit of the scheme.

Policies for housing in the countryside (infill and conversions)

3. The **Burford** and **Wisteria Cottage** decisions are further cases where the housing supply policies of the development plan, and in particular Policy C1 of the HSA DPD, have been strictly applied to individual developments. In **Burford** the appellant sought to use a nearby development (Poltava) as precedent to justify an exception, but the Inspector identified material differences as this other scheme was part of a linear pattern of development (compliant with Policy C1). In **Wisteria Cottage** the Inspector similarly dismissed precedents suggested by the appellant, as well as the site being previously developed land, focusing instead on the conflict with the criteria of Policy C1; the appeal was dismissed despite no harm to the character and appearance of the area.

4. The Inspector in the **Keepers Cottage** decision, also dismissed the appeal in part for not complying with the criteria of Policy C1. This proposed conversion of an annexe to a separate house was also dismissed for not being redundant for the purposes of Policy C4 of the HSA DPD – the barn was largely used for domestic storage, and in this respect still served a purpose.

Statutory duties for listed buildings and conservation areas

5. The **Old Thatch**, **Wisteria Cottage** and **Camp Hopson** appeals all serve as reminders regarding the statutory duties imposed by the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended when considering proposals for planning permission and listed building consent:
 - Section 66(1) requires that special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
 - Section 16(2) has the same requirement for proposals for listed building consent.
 - Section 72 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
6. The failure of the *Old Thatch* proposals, in particular, to comply with these statutory duties was expressly central to the dismissal of the appeals. Even though the harm was judged to be “less than substantial”, it nevertheless “carried considerable weight”.

Committee overturns

7. The **Clairewood** costs decision is an example of how a planning committee may overturn an officer recommendation for approval, and avoid an award of costs, by giving a reasoned justification with clear reasons. In this case, although the Inspector allowed the appeal based on their own judgement, they refused an application for costs and in doing so had regard to the following points:
 - Members are entitled to make a judgement based upon their own consideration of a development proposal.
 - The members had a detailed officer report setting out the main issues, representations, and development plan policies.
 - The Committee undertook a visit to the site where members would have been able to make their own assessment of the impact of the proposal.
 - Matters such as a proposal’s impact on the character and appearance of the area is largely a subjective matter.
 - The Council substantiated its concern about the proposal setting out, amongst other matters, the relationship of the new dwelling to its neighbours, in terms of its height and its appearance and effect on the character and appearance of the area.
 - The reasons for refusal were not vague, inaccurate, generalised or inaccurate assertions about the proposal’s impact, unsupported by any objective analysis. They were clear and unambiguous, so it was clear what the Council’s concerns were in respect of the proposal.

Consistency of decisions

8. The **Brook House** appeal and costs decisions demonstrate how a council may occasionally come to a different conclusion to that reached under a previous application or appeal. In this case, new information regarding a car club (partly relied upon by the appellants to compensate for insufficient parking provision) was available that was not

before the previous Inspector. The Inspector was satisfied that this new evidence represented a material change in circumstances since the previous appeal, which in turn reasonably led the Council to come to a different conclusion than the previous Inspector on the effect on parking provision.

Parking provision and highway safety

9. The **21 Woodside** appeal and costs decisions highlight the need to carry out an individual assessment of every application. The Council judged the parking requirement for 7 potential bedrooms within an House of Multiple Occupation (HMO) based on the parking standard for 7 one-bedroom flats. However, in the absence of any adopted parking standards for HMOs and any clear evidence of a local parking issue, the Inspector found against the Council. In the associated costs decision, applying the adopted parking standards, where there were none for HMOs, was considered unreasonable.
10. However, by contrast, the **Victoria Arms** decision is a case where site-specific evidence led an inspector to conclude that the loss of parking for a public house to facilitate a residential development would be likely to, at times, displace vehicles onto the surrounding road network. This posed a significant concern as the surrounding area features parking restrictions, bus stops and a substantial number of dropped kerbs, such that the ability of the surrounding road network to absorb the additional demand would be significantly diminished. In turn the Inspector found that this may encourage unsafe parking practices (parking on corners, junctions and within visibility splays), and so have an adverse effect on highway safety