

# Planning Appeal Decisions

**Committee:** Western Area Planning Committee on 22<sup>nd</sup> July 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
19/01153/FUL Newbury  Appeal: 3239183  Written Reps	<b>31 Bone Lane, Newbury</b> Erection of two detached B1(c)/B8 commercial units with ancillary B1(a) accommodation and parking.	Delegated refusal	Allowed	03/04/20
19/01322/FULD Newbury  Appeal: 3240786  Written Reps	<b>2 Worlds End, Beedon, Newbury</b> Construct a 2 bedroom detached house with associated access and car parking on vacant garden land to the north of the existing house.	Delegated refusal	Allowed	03/04/20
19/01222/FULD Enborne  Appeal: 3238217  Written Reps	<b>The Paddocks Cottage, Enborne Street, Enborne, Newbury</b> Replace the existing landscaping business buildings with a three bedroom detached dwelling.	Delegated refusal	Dismissed	03/04/20
19/00787/FULD Leckhampstead  Appeal: 3241355  Written Reps	<b>Windmill Place, Hillgreen, Leckhampstead</b> Section 73 application to vary approved plans of a detached garage with granny flat over (18/00730/FULD). The design changes involve the replacement of three roof light windows with dormer windows, and the insertion of two new rooflights. A number of internal alterations to the layout of the building are also proposed.	Delegated	Allowed	08/04/20
19/02060/FULD Padworth  Appeal: 3242412  Written Reps	<b>The Warren, Reading Road, Padworth</b> Erection of 1 dwelling following removal of an existing garage and change of use of land to residential.	Delegated refusal	Dismissed	27/04/20

19/01883/FULD Newbury  Appeal: 3243640  Written Reps	<b>1 Kennet Road, Newbury</b> Partial demolition and refurbishment of 1 Kennet Road and the delivery of three new dwellings with associated parking and gardens.	Delegated refusal	Dismissed – costs application against the Council refused	29/04/20
18/03209/FULEXT Theale  Appeal: 3243107  Written Reps	<b>19 and 19a High Street, Theale</b> Demolition of existing building and construction of 15 dwellings, 2 retail units (use class A1/A2/A3), associated access, parking and landscaping.	EAPC refusal (recommended for approval)	Allowed – costs application against the Council refused	11/05/20

### Infill development within the countryside

- Several recent decisions have related to infill development under Policy C1, contributing to the appeal precedent that helps interpret these policies.
- In **2 Worlds End**, it was a matter of dispute whether the proposal complied with criteria ii and iv of Policy C1. Criterion (ii) states “*the scale of development consists of infilling a small undeveloped plot commensurate with the scale and character of existing dwellings within an otherwise built up frontage*” and criterion (iv) specifies “*the plot size and spacing between dwellings is similar to adjacent properties and respects the rural character and street scene of the locality*”. In this case the Inspector identified that the gap between nos. 2 and 59 Worlds End, at some 28m, is considerably greater than gaps between other dwellings in the row on this side of the road. With the construction of the dwelling, the Inspector concluded that it would retain gaps of some 7 and 16 metres either side, and thus in their view the spacing between dwellings proposed would respect the rural character and street scene of the locality. These judgements are specific to this particular proposal; each case must be assessed on its own merits.
- In **The Paddocks Cottage** it was sought to redevelop a site (outlined in blue below) with an existing commercial building with a new detached dwelling. A number of dwellings identified by the appellant as fronting onto Enborne Street was not judged by the Inspector to constitute a “closely knit group”. The Inspector commented that ‘whilst the term “closely knit”, may often be a sociological term, in this context it is appropriate to apply it to the degree of physical separation between dwellings.’ The Inspector questioned whether the second criterion could even apply to this proposal given its location, but this clearly contributed to their conclusion that the proposal was not strictly “infill development” as allowed for by the policy.



5. Overall, the Inspector concluded that the proposal would also be contrary to related policies in the local development plan and in the National Planning Policy Framework that seek to direct new dwellings to more sustainable locations and to exercise restraint in the countryside. Whilst not disagreeing with the appellant that the dwelling's mass would not be significantly larger than that of the existing building, they concluded that the proposal would nevertheless still conflict with local and national planning policies on the location of dwellings in the countryside. This decision will help interpret "closely knit group" in future cases, reaffirming that the above example was not considered to qualify.
6. A proposed dwelling at **The Warren, Reading Road, Padworth** (outlined in blue below), which involved the demolition of an existing building in B8 commercial use, was dismissed when assessed against the four tests set out in Policy C1.
7. There is existing ribbon development along the north-western side of Reading Road, which follows the linear pattern of the road. The appeal site was located to the rear of these existing dwellings. Whilst the plot size would be similar to surrounding properties, there were no residential developments immediately either side of the appeal site, therefore the proposal did not constitute "*infill development within an otherwise built-up frontage*". The Inspector concluded the proposal conflicts with Policy C1. The appellant sought to justify the decision based on the nearby decision at *Silvertrees* (bottom left on map below), but the Inspector noted that this was based on a different policy context (*Silvertrees* was deemed a replacement dwelling).



8. The Inspector also recognised that the site lies within a relatively remote location. Notwithstanding the presence of a nearby bus stops, the Inspector commented that only one was accessed off a pavement, and that there was a lack of street lighting along the road. Overall, the Inspector concluded that the location was not one that would encourage future residents to use alternative modes of transport. It would therefore be likely that future residents would need to rely upon private vehicles to access local services and facilities. This decision reinforces the interpretation that back land or tandem development will not *typically* constitute "infill development" for the purposes of Policy C1.

## Garden sizes

9. Two recent appeal decisions have tacked proposals where the proposed outdoor amenity space fell short of the minimum sizes expected by the Council's Quality Design SPD. Whilst conclusions on individual cases will depend on the merits of that proposal, it is noteworthy that both cases considered the quality of the proposed spaces as well as their size.
10. In **1 Kennet Road** the proposal included a garden for a retained dwelling that would fall slightly below the stated threshold in the SPD. However, the Inspector commented that both gardens were of rational and regular shape and would be of significant benefit to future occupiers. Furthermore, both would gain a reasonable degree of privacy and generally meet the aspirations of the Council's SPD to deliver good quality and private garden areas. Consequently, despite the minor deficiency of private space available for the retained dwelling, overall the proposal would achieve a quality design. Furthermore, as it would generally follow the scale and design of local development it would not appear as a cramped form of development. The Inspector concluded that the proposal complied with the Quality Design SPD.
11. In **19 and 19a High Street, Theale** a high density residential development was proposed within Theale town centre. The proposal would provide pockets of grassed external space (which the Inspector recognised would be impeded by the proximity of cars and general traffic movement), around a third of the proposed flats would have access to private balconies, and a communal terrace above the retail units would provide external space for a further three flats. The Inspector acknowledged the size guidelines in the Quality Design SPD, but also that it states that approaches to the provision of outdoor space would vary according to the location and character of the proposal. They considered that the proposal would provide for a significant proportion of the requirement, and that most flats would have direct access to reasonable areas of external space. Accordingly, the Inspector concluded that overall the proposed development would provide "good quality outdoor space" subject to effective landscaping to delineate external spaces close to parking areas. Moreover, they considered that the accommodation would be likely to provide non-family accommodation where a need for extensive external space would be lessened. Accordingly, they concluded that the benefits of the proposal in regard to its proximity to public transport and high street services would outweigh the reduced provision of external space.

### **Flood risk sequential test**

12. The appeal site for **1 Kennet Road** was located within flood zone 3. Notwithstanding the flood protection measures in the area, it was therefore necessary for the proposal to pass the sequential test. Whilst there was no objection from the Lead Local Flood Authority, passing the sequential test was necessary to consider the issue of alternative sites or community benefits that might satisfy the requirements of the policy. The aim of the sequential test is to steer development to areas with the lowest probability of flooding.
13. The appellant's Flood Risk Assessment (FRA) considers the sequential test, concluding that it is not possible to relocate the development to a lesser zone as the entire site is within flood zone 3, and that there are no reasonably available sites in flood zones 1 or 2. However, the Inspector noted that the sequential test should not be constrained by land ownership or to the site itself. They found that limited evidence was provided to illustrate the reasons for not considering alternative sites or to explain why the development could not be located on a site with a reduced risk of flooding. The Inspector therefore concluded that the FRA did not satisfy the sequential test and dismissed the appeal according.

14. This appeal decision highlights the need for a proposal to pass the flood risk sequential test (as a matter of planning policy) irrespective of whether there are any technical flooding objections.

#### **Under-provision of affordable housing where viability demonstrated**

15. The **19 and 19a High Street** decision highlights that where it is demonstrated that a proposal would be unviable with affordable housing, it is still capable of complying with Core Strategy Policy CS6. This is because the expected levels of provision set out in the policy are expressed as being “subject to the economics of provision”.

#### **Whether there should be a requirement to retain the employment use of a site**

16. The new dwelling at **The Paddocks Cottage** sought to replace an existing commercial building. The Inspector cited Core Strategy Policy CS10 which states that existing small and medium sized enterprises within rural areas will be supported in order to provide local job opportunities and that proposals seeking the loss of such facilities must demonstrate that the proposal does not negatively impact upon the local economy.
17. The Inspector recognised that the lawful use of the site as a landscape contractor’s depot appears to be at a low ebb given the appearance of the site, but the appellant’s information is that the use has not ceased. The proposal would result in the loss of the business.
18. The Inspector commented that whilst the appellant may wish to retire and has submitted figures to indicate that the business’s loss would have a negligible impact on the rural economy, there was no evidence before them to indicate that the business could not be taken up by others or that the site could not be used for an alternative suitable employment use. Such options would provide local job opportunities and help to maintain the vitality of smaller rural settlements in accordance with Policy CS10. The Inspector concluded that there should be a requirement to retain the employment use of the site, and that the proposal would be contrary to Policy CS10.

#### **Insufficient ecology information**

19. In **The Warren, Reading Road, Padworth** the Inspector recognised that the appeal site was located within a Biodiversity Opportunity Area, and that Core Strategy Policy CS17 identifies that habitats which are designated as being important for biodiversity, or which support protected, rare or endangered species, shall be protected and enhanced.
20. No supporting ecology study was submitted with either the appeal application or the appeal submission to assess the impacts of the proposal upon the Policy designation. On the basis of the lack of evidence, the Inspector was unable to conclude that significant harm to biodiversity resulting from the development can be avoided. The Inspector was not convinced that this matter could be addressed by condition. This is consistent long-standing government policy that ecological surveys should normally be provided upfront before any permission can be granted.