

Planning Appeal Decisions

Committee: Eastern Area Planning Committee on 26th August 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
19/01070/HOUSE Appeal: 3242638 Written Reps	22 Sedgefield Road, Newbury Erection of single storey rear extension.	Delegated refusal	Allowed	02/03/20
19/01646/FULD Appeal: 3243683 Written Reps	Redwood, Burnt Hill, Yattendon Revised application for demolition of existing house, garage and outbuildings, erection of one new house.	Delegated refusal	Dismissed	18/06/20
19/01837/FULD Appeal: 3244084 Written Reps	Nightingale Farm, Wantage Road, Leckhampstead Construction of replacement dwelling, driveway and associated landscaping.	Delegated refusal	Dismissed	30/06/20
19/00637/FULD Appeal: 3240289 Written Reps	The Malt Shovel rear car park, Upper Lambourn New 4 bedroom house with off street parking	Appeal against non-determination – would have been refused.	Dismissed	07/07/20
19/01308/FULD Appeal: 3244597 Written Reps	1 Burghfield Bridge Close, Reading Erection of a new dwelling.	Delegated refusal	Dismissed – Council's application for full costs against appellant refused.	10/07/20
19/03055/PACOU Appeal: 3246991 Written Reps	The Elmwood Building, South End Road, Bradfield Southend Change of use of offices (Class B1a) to form 5 apartments.	Delegated refusal	Dismissed	13/07/20
19/00713/COMIND Appeal: 3244528 Written Reps	Bere Court Farm Bungalow, Tidmarsh Lane, Pangbourne Vary/delete conditions 1, 2 and 7 on planning permission 16/01419/COMIND which relates to a stable block. Appeal against imposed conditions.	EAPC approval	Allowed in part	17/07/20

19/02196/COMIND Appeal: 3244360 Written Reps	Bere Court Farm Bungalow, Tidmarsh Lane, Pangbourne	Delegated refusal	Dismissed	17/07/20
19/02792/FUL Appeal: 3245698 Written Reps	25 Abbots Road, Burghfield Common Extension to existing front, side and rear boundary to the property, include open space involving a change of use to garden amenity space and erection of new fence with landscaping to form new boundary.	Delegated refusal	Dismissed	20/07/20
19/02266/FUL Appeal: 3244815 Written Reps	Chantry House, Hill Green, Leckhampstead Construction of a storage barn and apron together with highway access and landscaping.	Delegated refusal	Dismissed	28/07/20

Housing in the countryside

- The **Malt Shovel** is a further appeal that has been dismissed for a proposal that is contrary to the Council's policies for housing in the countryside. These policies give a presumption against new residential development in the countryside with some exceptions, one of which is limited infill development that complies with Policy C1 in the HSA DPD. In assessing the proposal against C1, the Inspector stated that the Malt Shovel and buildings opposite together form a clear end to the close-knit area of built development of the settlement, with fields and scattered developments beyond. The Malt Shovel and neighbouring cottages form a close-knit cluster of dwellings, however the retention of the car park and the sizeable gardens of the cottages would leave a considerable gap between that cluster and the proposed dwelling. Therefore, the proposed dwelling would not be within a cluster of existing dwellings or within an otherwise built-up frontage, and would extend built development significantly further along Malt Shovel Lane. The proposed plot size and spacing would not be similar to adjacent properties or respect the rural character and street scene of the locality, and the scale and character of the proposed development would not be commensurate with those of existing dwellings. It was therefore found to conflict with Policy C1, and by extension the other housing policies. This appeal decision is consistent with the Council's continued interpretation of being within a closely knit cluster.



3. In dismissing the appeal, the Inspector also highlighted the unsustainable location of the site, and considered that the proposal would cause “less than substantial harm” to the conservation area.

Replacement dwellings in the countryside

4. The proposal at **Redwood**, sought a large replacement dwelling, which was considered under Policy C7. A key issue was whether the proposal complied with the requirement for the replacement dwelling to be proportionate in size and scale. The Inspector recognised that the key components in determining whether a proposal is proportionate are scale, massing, height and layout of a development. They compared the footprint, floor area and height of the existing and proposed dwellings and concluded that the substantial additional floor area and volume could not reasonably be said to be proportionate in terms of Policy C7, notwithstanding the proposed reduced ground level. The Inspector also gave great weight to the conservation and enhancement of the AONB, and identified that the proposal would cause significant harm to the street scene through the introduction of a substantial new dwelling. Whilst there are no “rules” in terms of percentage increases, this assessment demonstrates how these measurements are still important indicators of the size, scale and massing of any proposal.
5. The proposal at **Nightingale Farm** sought to replace a relatively modest bungalow with a new larger dwelling on higher land set away from the road. Similarly, in considering whether the proposal is proportionate to the existing dwelling, this appeal decision recognises that the key components of the assessment are the scale, massing, height and layout of a development. In this case, it was recognised that by comparison to the existing dwelling, where the footprint is dispersed, that of the proposed dwelling would be greater and concentrated into a single, larger building. It would therefore be of a greater scale, bulk and massing than the property to be replaced. The additional height and rising ground levels meant that it would be more visible in the landscape than the existing dwelling, and thus harm the AONB landscape.

Domestic outbuildings in the countryside

6. The proposal at **Chantry House** was for a substantial building for personal storage of a helicopter, classic car collection and other domestic paraphernalia. It was suggested that this building was required close to the appellants’ property for security, which as a Grade II listed building meant that such a building had to be outside the existing residential curtilage. The Inspector found this justification unsubstantiated, with no specific evidence before them to demonstrate how alternatives had been explored and subsequently discounted. The proposal amounted to an extension of residential curtilage into the countryside. As a residential outbuilding, the size of the building was considered substantial and as a result, it would not appear subservient to the main dwelling on the site. Whilst the design of the building would be similar to those which make up the existing Chapel Farm complex and, from public viewpoints, it would be viewed against the backdrop of the existing agricultural buildings, the introduction of a large, residential outbuilding within the countryside would appear as an incongruous feature within the AONB. Moreover, the proposed access route and apron would introduce a significant amount of hardstanding into what are currently open agricultural fields.

Flood risk sequential test

7. The decision at **1 Burghfield Bridge Close** is another example of a new residential development failing the flood risk sequential test within Flood Zone 2. The NPPF and PPG indicate that residential development should be directed away from medium and

high flood risk areas, that is, away from Flood Zones 2 and 3 and into Flood Zone 1, the area of lowest flood risk. The PPG indicates that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. It is only where the appellant can demonstrate, by undertaking a sequential test, that there are no reasonably available sites in Flood Zone 1, that decision makers should take into account the flood risk vulnerability of a proposal and consider reasonably available sites in Flood Zones 2 or 3. In this case, the appellant had not submitted a Flood Risk Assessment (FRA) or sequential test to show that there are no reasonably available site for development in Flood Zone 1. The Inspector therefore dismissed the appeal, in part, on this basis.

8. The **Malt Shovel** falls within Flood Zones 2 and 3. Although the application was accompanied by a FRA, the appellant had not specified a search area and no case was being made that the dwelling would meet an identified local need. Therefore, the Inspector stated, the starting point for the search area is the whole District. The Inspector identified that the Core Strategy and HSA DPD identify various settlements and sites suitable for development in the District and as such, in all likelihood there are other sites at lower flood risk that could accommodate one dwelling. The Council advised during the appeal process that sufficient housing is being provided outside flood risk zones and there was no substantive evidence before the Inspector from the appellant to demonstrate otherwise. Therefore, the proposal failed the sequential test.

Neighbouring amenity

9. The decision at **22 Sedgefield Road** demonstrates the need to exercise planning judgement in applying supplementary planning guidance on neighbouring amenity. In this case a single storey extension would infringe the 60 degree line measured from the nearest ground floor habitable window, but the Inspector stated “there is always an element of judgement required in applying such a test taking into account the context of the development.” They identified that the extension would only be 0.6m higher than the existing boundary fence, which could be increased in height to 2m under permitted development, and that the ridge of 3.6m height would be around 3m away from the boundary. In context, they concluded that any additional loss of sunlight or outlook would not be significant, and thus allowed the appeal.
10. The decision at **1 Burghfield Bridge Close** considered a relationship where the rear wall of a new 1.5 storey house would be sited in close proximity to the boundary with a neighbouring property with a ridge height just shy of 7m. Here it would be sited almost directly opposite, and within around 10m of, the side wall of the neighbouring property, which contains several windows and double doors leading onto a small paved area, beyond which there is a lawned area of garden. The rear wall of the proposed dwelling would have the highest eaves of the building and would extend to around double the height of the existing rear boundary fence. The Inspector found that the combination of the length and height of solid wall, together with the roof above it, and its close proximity to the side boundary, garden and side wall of the neighbour, would result in an overbearing impact on the outlook from the rear windows and doors of the neighbour and from the side garden of that property. This was considered harmful to neighbouring outlook despite no material loss of light.

Amenity land in housing estates

11. The decision at **25 Abbots Road** highlights the value of undeveloped amenity land that often forms part of the landscaping of housing estates. In this case the proposal was to enclose the open area so that it would be within the garden of 25 Abbots Road, by erecting a 1.8m high close boarded fence with trellis. The Inspector stated that the effect

of the fence, including the trellis, on top of the additional height of the ground level would be harmfully intrusive into the street scene both from Abbots Road and Woodman's Lane and would significantly reduce the generally open aspect in the area. It would extend the enclosed area materially to the side of the property closer to the road, harmfully enclosing it when generally these areas are open. The provision of landscaping would not be sufficient to mitigate these harms.

Office to residential conversions

12. The proposal to convert **The Elmwood Building** to apartments under permitted development failed because it was not demonstrated that the existing building fell within the qualifying office use (i.e. solely within Use Class B1a) given valuation records of the property comprising warehousing as well as offices. This demonstrates the need to verify that the existing use when considering prior approval applications for a change of use.

Bere Court Farm Bungalow

13. This site and development has a complex planning history but, in essence, the scheme is for the erection of a new stable block and farm machinery store. Such a scheme was permitted under application 16/01419/COMIND to replace a former ramshackle stable building.
14. Essentially the two appeals sought to make changes to the permitted scheme, and the main issue was the effect on the character and appearance of the area. The building, as constructed, varied materially in multiple respects from the permitted scheme, and this also varied from the submitted drawings in both appeals. The Inspector made clear, that it is the submitted drawings in both appeals that are to be considered rather than what had been built.
15. The first appeal relates to conditions that were imposed on the planning permission approved by EAPC for a revised scheme. This appeal was allowed in part, but only in terms of the requirement to complete works (changing the design of the building) within 6 months. The other variations/deletions were dismissed as the conditions remained necessary.
16. The second appeal related to a further alternative design that was refused under delegated authority. The Inspector recognised that although the actual differences in size were minor, the loss of the overhang to the stable section diminished some of the equestrian character of the building shown in the permitted scheme. They also expressed concern with the degree of glazing in the main gable of the front elevation, together with extensive roof lights and chimney, which gave the stable and machinery building more of a domestic character. Whilst small individually, taken together these changes would result in a building which is materially different in design and form to the permitted scheme. This was considered harmful in the rural AONB location.