

# Planning Appeal Decisions

**Committee:** Eastern Area Planning Committee on 21<sup>st</sup> April 2021

**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	Costs
20/00933/HOUSE Appeal: 3257638 Written reps	<b>68 Horseshoe Road, Pangbourne</b> First floor rear extension and rear dormer window (s73 to alter fenestration and enlarge dormer)	Delegated refusal	Allowed 19/01/2021	N/A
20/01631/PACOU Appeal: 3260788 Written Reps	<b>Elmwood Building, Southend Road, Bradfield Southend</b> Prior Notification requirement under Part O of the GDPO for the change of use of offices (Class B1a) to form 3 apartments	Delegated refusal	Dismissed 19/01/2021	N/A
20/00661/COND2 Appeal: 3261063 Written Reps	<b>Land to the rear of The Rising Sun, Bath Road, Woolhampton</b> Refusal of details reserved by condition 4 (boundary treatment) of planning permission 18/02501/FULD, which granted permission for 4 dwellings.	Delegated refusal	Dismissed 11/01/2021	N/A
20/00835/FULD Appeal: 3259156 Written Reps	<b>The Old Golf House, Rectory Road, Streatley</b> Subdivision of The Old Golf House an annex into two separate residential dwellings.	Delegated refusal	Allowed 27/01/2021	N/A
20/00144/FULD Appeal: 3251044 Written Reps	<b>200 Lower Way, Thatcham</b> Retrospective use of existing building on site as a two bedroom dwelling.	Delegated refusal	Dismissed 29/01/2021	N/A
20/00169/FULD Appeal: 3250812 Written Reps	<b>Oakdene, Andover Drove, Wash Common, Newbury</b> Two storey pitched roof dwelling in the garden of Oakdene. Demolition of existing garage and extension of existing driveway at Oakdene.	Delegated refusal	Dismissed 29/01/2021	N/A

19/01855/FULEXT Appeal: 3251653 Writte Reps	<b>12-16 Chapel Street, Thatcham</b> Demolition of existing dwellings (3no.) and construction of 17 no. one and two bedroom apartments, including parking and stores	Delegated refusal	Dismissed 04/02/2021	N/A
20/00737/COMIND Appeal: 3259595 Written Reps	<b>Shalford Farm, Shalford Hill, Aldermaston</b> Conversion and redevelopment of existing land and buildings to create a mixed use development comprising restaurant, estate farm shop, overnight accommodation, bakery, fermentary, cookery school and event space (local food production and ancillary education facility) and a biomass boiler together with associated works including the demolition of the existing garages and workshop building.	Recommended for refusal  EAPC refusal	Dismissed 08/02/2021	N/A
19/03188/FULD Appeal: 3260721 Written Reps	<b>Foxhold Kennels, Crookham Common</b> Residential conversion to form a pair of semi-detached dwellings and detached annex, following demolition of managers office and attached store.	Delegated refusal	Allowed 08/02/2021	N/A
19/02880/OUTD Appeal: 3247966 Written Reps	<b>Varchfold, Bethesda Street, Upper Basildon</b> Outline application for the demolition of existing dwelling and erection of 3 new contemporary dwellings. Matters to be considered: Access, Layout, Appearance and Scale.	Delegated refusal	Dismissed 15/02/2021	N/A
19/02676/HOUSE Appeal: 3247180 Written Reps	<b>37A Russell Road, Newbury</b> Section 73 application relating to conditions 2 (approved plans) and 3 (materials) of 18/00541/HOUSE to demolish single-storey garage and rear conservatory. Proposed two-storey side and rear extensions and loft conversion, to create large family home. Widen existing dropped kerb access to provide four off road parking spaces.	Recommended for approval  WAPC refusal	Dismissed 18/02/2021	N/A
20/01263/HOUSE Appeal: 3263163 Written Reps	<b>1087 Oxford Road, Tilehurst</b> Demolition of existing car port, second storey side and single storey front extensions and garage conversion.	Delegated refusal	Allowed 23/02/2021	N/A

20/00014/FULD Appeal: 3256178 Written Reps	<b>11 Pond Close, Newbury</b> Removal of derelict garages and erection of 2 no dwellings and 4 no flats, together with associated landscaping and parking	Delegated refusal	Dismissed 23/02/2021	Application against the Council refused
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### Housing in the countryside – limited infill development (Policy C1)

2. The dismissed appeal at **200 Lower Way** considered the criteria of Policy C1 for limited infill in settlements in the countryside. The appeal site is adjacent to, but outside of the settlement boundary of Thatcham, and therefore within the open countryside. This is another appeal where the Inspector agreed with the Council's position that all criteria must be met: *“My interpretation of the wording of this policy is such that the insertion of the word “and” after each criterion does, in my view, require that the proposal would need to comply with all these criteria.”* The Inspector agreed with the Council that whilst there are a number of dwellings nearby, these do not form a coherent “closely knit cluster of 10 or more dwellings.” The Inspector acknowledges that development on the south side of Lower Way differs substantially from that on the opposite side of Lower Way, where there is more intensive residential development forming the settlement boundary of Thatcham. Consequently, the proposal fails to meet with criteria i) of this policy.



3. The Inspector also agreed that the proposal failed to meet criteria ii) and iii), as the appeal site is located behind an existing dwelling on Lower Way, so does not form part of an existing frontage, and is not undeveloped due to the presence of a building which does not benefit from planning permission. The Inspector concluded that the proposal is not an appropriate location for new housing development in accordance with the development plan. The Inspector also found the proposals would harm the character and appearance of the area as it would introduce a dwelling which is neither of a scale nor a design commensurate with the adjacent dwellings.

### Housing in the countryside – residential conversions (Policy C4)

4. At **Foxhold Kennels** a main issue was whether the conversion of buildings to residential use was acceptable in its countryside location, having regard to Policy C4 (residential conversions). The Council considered the scheme conflicted with a number of the policy's criteria. The Inspector disagreed with the Council, concluding that the proposal complied with Policy C4 for the following reasons:

- a) The Inspector disagreed with the Council as he considered that the necessary strengthening of roof structures, the replacement of roof coverings, and the enclosure of the covered yard were a reasonable part of the conversion and did not amount to “substantial rebuilding, extension or alteration”, thus concluding the proposals complied with the first criteria.
  - b) The conversion would replace the corrugated sheeting on the buildings with flat roofs with sedum green roofs. The Inspector considered this preferable both from a visual and ecological viewpoint to replacing them with similar corrugated sheeting. He commented that the existing sheeting is not an essential part of the character of the buildings or locality, and its replacement with a more environmentally friendly roof covering is an improvement to the existing structures.
5. For similar reasons the Inspector concluded that the conversion would not be harmful on the rural character and appearance of the area. Given he found the development acceptable on planning grounds, and with the benefit of a bat survey report that provided adequate mitigation measures, the Inspector concluded that there was no reason in principle why a licence would not be granted by Natural England. The appeal was allowed.
  6. In ***The Old Golf House***, the Inspector considered the conversion of a substantial residential annexe to a separate dwelling. The Inspector recognised that the proposal for a separate residential dwelling in this location would not accord with the Council's spatial strategy, but commented that the conflict with Policy C1 would be limited since the annexe building is already in residential use, albeit linked to the Old Golf House. The Inspector recognised the likely high dependency of future occupiers on private motor vehicles, but similarly commented that it would not, in their opinion, be significantly different to the permitted arrangement.
  7. With respect to Policy C4, the Inspector comments that the policy places explicitly the onus on applicants to provide evidence that the building is genuinely redundant. Although redundancy is not clearly defined by Policy C4, the supporting text nevertheless explains that for a building to be considered redundant, it is important that the original use of the building for that purpose no longer exists. The Inspector commented that, although the appellants may not have any use for the Old Golf House presently, it nevertheless has an authorised use and is capable of being used as such. Accordingly, and in the absence of substantive evidence to the contrary, they agreed with the Council that the appeal premises cannot be regarded as redundant or disused for the purposes of Policy C4.
  8. Overall, the Inspector concluded that there would be some conflict with Policies ADPP1, ADPP5 and C1, but ultimately concluded that the appeal site would, in this particular instance, constitute an appropriate location for the appeal scheme, as they found there were sufficient considerations in favour of the proposal which justify taking a decision other than in accordance with the development plan.

### **Economic development within the countryside**

9. The application for mixed use commercial development at ***Shalford Farm*** was refused by EAPC in line with officer's recommendation. EAPC gave careful consideration to this balanced application which had significant economic benefits and was regarded as an improvement on a previous scheme, but ultimately concluded that the location and scale of the development rendered the application unacceptable.

10. The Inspector acknowledged the site's relative isolation, and the narrow, unlit roads with no footways. He agreed that the lawful use of the site could generate in the region of 150 daily vehicle trips. The Appellant and Council predicted the proposed use would generate around 470 and 482 vehicle trips respectively. The restaurant would account for around 76% of all daily trips. The Inspector considered that, even allowing for 150 daily weekday vehicle trips estimated by the Appellant, a net figure of around 300 net additional vehicle trips for each weekday could be assumed. The Inspector identified shortcomings in the Appellant's framework travel plan, which undermined its value in mitigating the predicted traffic increase.
11. The Inspector shared the Council's concerns with the significant additional trips by private transport given national policies of restraint and the priorities included in the Council's Local Transport Plan and adopted policies. The Inspector also acknowledged that the Council adopted a Climate Change Strategy which advocates for restraint on the use of private vehicles to reduce carbon emissions. He commented that there is a consistent thread regarding the need for choice of transport modes running through the Council's adopted policies, predicated on reducing reliance on private transport, required to reduce transport related carbon emissions and improving air quality. The settlement strategy included in the Core Strategy 2006-2026 requires a concentration of new development in the main centres in the district. Policy ADDP1 identifies that intensification of uses in areas which lack sufficient supporting infrastructure including public transport should be avoided. The theme was also highlighted in Policies CS9 (economy and employment). Overall, the Inspector concluded that the proposals would result in a significant intensification of the number of vehicle trips to and from the appeal site.
12. With respect to the sequential test for main town centre uses and any need for a retail impact assessment, the Inspector disagreed with the Council that the fact the proposal was a "major application", meant that these should be applied in this particular case, highlighting the need to take a proportionate approach to the development of town centre uses. There was agreement that, if disaggregated, the farm shop and fermentary would not be appropriate for a town centre location, and that a bakery could be located both within and outside town centres. The Inspector agreed with the Council that both the event space, restaurant and classroom are town centre uses which could displace similar uses location in centres and which could occupy vacant units. However, he ultimately concluded that, given their size, their development as part of the appeal scheme would be unlikely to result in a retail impact of sufficient scale to have significant adverse impacts on local consumer choice and trade.
13. Finally, the Inspector agreed with the additional reason for refusal added by EAPC in relation to the failure of the scheme to achieve a BREEAM "Excellent" rating, as required by Policy CS15. The Inspector commented that this is primarily due to the appeal site's location which involves a considerable amount of vehicle trips generated by private transport. Further, that the application of Policy CS15, in these circumstances, serves only to reinforce the Council's arguments advanced under the first main issue in this appeal.
14. In the planning balance, the Inspector acknowledged that the appeal scheme would result in benefits for the rural economy, the development of previously developed land and the re-use of two non-designated heritage assets. However, these matters were not sufficient to outweigh the harm which would result from the carbon emissions derived from the increase in vehicle trips resulting from this proposal.

## Redevelopment within settlement

15. The dismissed appeal at **12-16 Chapel Street** for a redevelopment proposal within Thatcham agreed with the Council's position on a multitude of reasons. The Inspector also agreed with the Council's procedural challenge that amended plans submitted as part of the appeal should not be accepted, but that a new planning application should be made in accordance with the procedural guidance. The proposal amounted to a substantial redevelopment of the site, with a replacement frontage building, and a central building that would consist of three three-storey elements linked at ground floor level, positioned against the western boundary with a residential care home. The number of concerns raised led the Council to conclude that the proposals would be harmful in several respects and overdevelop the site. The Inspector concluded as follows:
- a) The Inspector agreed with the Council that the proposed replacement building along the site frontage would not achieve such a positive contribution to the street scene as the existing terrace of housing, nor would its design complement the character and appearance of the area.
  - b) The Inspector agreed with the Council that the amount of building and hard surfacing within the site would make it appear overdeveloped and out of character with its surroundings. Unlike other surrounding development in depth, the proposals would not be subservient in height, and would have very little soft landscaping. The building dominated space would fail to respect the character or appearance of the area.
  - c) The Appellant considered that the scheme is unable to provide any element of affordable housing contribution on viability grounds. Viability appraisals carried out on behalf of the Appellant and Council agreed that viability is a limiting factor but disagreed on the degree to which it would prevent any element of affordable housing being provided. The Inspector was more persuaded by the Council's evidence on benchmark land values, but by the Appellant's evidence on gross development value. However, overall, the Inspector agreed with the Council that there is a small, positive viability surplus that could make a contribution to affordable housing.
  - d) The Inspector agreed with the Council that as a result of the proximity and height of the central building, and the position of windows in the rear building, the development would harm the living conditions of occupants of the care home by reason of appearing overbearing, and causing a loss of outlook and privacy.
  - e) The Inspector agreed with the Council that as a result of poor outlook and light to some of the flats, and the lack of outdoor amenity space, the development would harm the living conditions of future occupants.
  - f) While the scheme would provide adequate parking, the Inspector agreed with the Council that due to the inadequate width of the proposed access the development would have an adverse effect on highway safety.
  - g) The Lead Local Flood Authority raised concern at the lack of information to demonstrate that surface water flooding would not be a problem and that surface water drainage could be adequately achieved on the site. A flood risk assessment submitted with the appeal concluded that surface water flood risk is low, but the LLFA remained concerned. However, the Inspector was satisfied that the development would not be at an unacceptable risk of flooding, nor would it be likely to cause surface water flooding to neighbouring land, subject to conditions.

16. In a rural village setting, **Varchfold** was a proposal to demolish an existing backland dwelling within Upper Basildon, and erect three new contemporary dwellings. The Inspector commented that the appeal site is located in a verdant residential area within the AONB, at the end of a private drive off Bethesda Street. They recognised that the properties along Bethesda Street and Henwood Copse are generally detached dwellings of varying but traditional styles with a common materials palette which includes red brick, red wall tiles, brown roof tiles and pitched roofs. Whilst the design of local properties is varied, overly modern features such as flat roofs and extensive levels of glazing are not prominent. To this end, the Inspector concluded that the use of these features in the proposed development would appear stark and obvious, jarring awkwardly with the traditional feel of built form in the area.
17. Whilst the appeal site is relatively well screened, the Inspector commented that the proposed development would be visible from a number of areas due to the local topography. The Inspector also commented that the appeal site was transitional in terms of where built form gives way to the open and undeveloped countryside. Consequently, they agreed with the Council that it was quite sensitive to change, and that a substantial departure from the existing architectural style would not therefore sit comfortably. This is a good example of how proposals should seek to reinforce local distinctiveness.

### **Affordable housing on minor developments**

18. The main issue in **11 Pond Close** was whether it is necessary for a minor residential development to provide affordable housing in line with Core Strategy Policy CS6, which was disputed by the appellant because paragraph 63 of the NPPF states the "*Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer)*". The Council has maintained a position since the introduction of this national policy that the development plan policy should take precedent owing to the high local need for affordable housing (that is being addressed by Policy CS6) and local affordability ratios that are higher than the national average. This position has been consistently supported by Inspectors at appeal.
19. The Inspector agreed that the evidence put forward by the Council demonstrates that there is a significant unmet need for affordable housing in West Berkshire, and, that the importance of small sites, which includes non-major development, such as the appeal proposal, in contributing to the provision of such affordable housing through on-site delivery, is part of the Council's plan-led strategy to meet unmet demand. As such, he considered that the exceptional local need for affordable housing outweighs national policy set out in the Framework. This is the third appeal decision where this issue has been directly challenged and Inspector's agreed with the Council's position.
20. In the associated costs decision, the Inspector agreed with the Council's assessment and found that, despite the inconsistency with the NPPF, the circumstances in the case warranted determining the appeal based on the affordable housing approach set out in the development plan. Therefore, he concluded the Council had acted reasonably.

### **Appropriate landscaping**

21. The dismissed appeal at **The Rising Sun** supported the Council's position on the importance of appropriate landscaping at a residential development along the A4. The proposals sought tall fencing along the frontage of the site. The Council had approved alternative details with a 1 metre high fence to the site frontage, but the Inspector agreed with the Council that this would result in a relatively low boundary treatment in the prominent frontage locations along Bath Road and railside, and would thus satisfactorily

assimilate with the area. The Inspector agreed with the Council that an additional 800mm in height to this fencing in the most visually prominent parts of the site would be out of keeping with the character and appearance of the area.

22. The appellant proposed the planting of a Laurel hedge on the outside edge of the proposed fence; the Inspector afforded this some weight, but commented that landscaping cannot be considered a permanent feature and should not therefore be used to justify development that would be otherwise unacceptable. The Inspector was not swayed by examples of close boarded fencing some distance from the site, and found little evidence to support assertions that the proposals would improve security and safety at the site.

### **Intensification of access use and highway safety**

23. The **Varchfold** appeal decision was also dismissed on highway safety grounds. The appeal site is served by a private drive (Henwood Copse) which links the site to Bethesda Street and serves the existing dwelling and 3 neighbouring dwellings. The crux of the dispute was the visibility at the proposed access (the point where Henwood Copse meets Bethesda Street). The Council required visibility splays of 31.5m to the south and 32.2m to the north with a 2.4m set back. The appellants' indicate that achievable visibility splays are just over 18m to the south and just under 17m to the north, with a 2m set back. Bethesda Street has a 30mph speed limit. There are no segregated footways. Survey data indicates average speeds below 30mph and notes that the lack of footways would also limit pedestrian activity. However, during their visit the Inspector observed a number of cars bypassing the junction which indicates it is well used.
24. The Inspector concluded that visibility from the proposed access (Henwood Copse) was substandard in both directions when assessed against the Council's requirements. They commented that in the southerly direction, road conditions are such that the achievable splays, with a two metre set back, should not give rise to a significant problem. In the case of the northerly direction however, views for exiting vehicles would be restricted by a hedgeline bordering the property known as High Trees which would exacerbate the effect of the already limited visibility available. The Inspector noted evidence regarding a lack of accidents at the junction, but this did not alter their ultimate conclusion that the intensification of use of this junction without acceptable visibility would cause harm to highway safety.

### **Insufficient ecology information**

25. The Inspector in the **Varchfold** appeal decision also agreed with the Council that bat surveys were required. They noted that the site fell on the boundary of a Biodiversity Opportunity Area, and was bordered by significant tree cover. They agreed with the Council that with this woodland setting and lack of streetlighting, the presence of bats could not be discounted. They also observed that the existing dwelling is an older property with gaps in the roof tiles. Overall, they agreed it was not unreasonable to consider the site had potential for protected species. The Inspector referred to Circular 06/2005 which makes clear that where there is a reasonable likelihood of protected species being present on site and in order to understand the extent species may be affected then surveys should be carried out before a planning permission is granted. The appeal was also dismissed on this basis.

### **Qualifying use for prior approval applications**

26. The **Elmwood Building** appeal concerned a prior approval application for the change of use of offices to form 3 apartments. Under Article 3(1) and Schedule 2, Part 3, Class O



of the GPDO, planning permission is granted for change of use subject to limitations and conditions. Paragraph O.1 of the GPDO sets out the situations whereby development would not be permitted including, as referred to by the Council, O.1.b that the building was not used for a use falling within Class B1(a) (Offices) of the Schedule to the Use Class Order on (i) 29 May 2013, or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use.

27. In this case, the Council raised no objections in terms of the relevant considerations: transport and highway impacts; contamination risks; flooding risks; and impacts of noise from commercial premises. However, the application was refused because the available evidence indicated that the existing building was not within the qualifying office use class; rather the evidence indicated that the building was most likely within mixed use offices and storage/distribution, which is *Sui Generis*. The Council's position was consistent with a previous appeal at the site, and no new evidence was provided by the applicant to indicate otherwise. The Inspector agreed with the Council's full case. The detailed narrative in the decision letter is of assistance for considering similar future applications.

### **Scope of Section 73 applications**

28. The planning permission for revised extension at **37A Russell Road** was refused on amenity grounds. However, the Inspector's decision to dismiss the appeal was due to their view that the scale of amendments went beyond the lawful scope of Section 73.

29. A Section 73 application enables those seeking planning permission the opportunity to amend specific conditions and for new planning permission with the amended conditions to be granted without altering anything else but the condition(s) in question. The section is mainly intended to allow flexibility in the planning system by allowing conditions to a planning permission to be changed without risking the entirety of the consented scheme. The Government encourages the use of this process to consider "minor material amendments" to previously permitted development.

30. Recent case law in *Finney v Welsh Ministers & Others [2019] EWCA Civ 1868* has clarified the scope of the powers contained within Section 73. In particular, it clarifies that fundamental alterations to the original proposal, including varying the description of the development, remains outside the remit of Section 73. Such fundamental changes therefore require a full new planning application.

31. In this case, whilst the Inspector was satisfied that the description of development remained sufficiently accurate, they did conclude that new conditions sought would fundamentally alter the original proposal for which permitted had been granted. They referred to the various design changes, which taken together were considered to substantially change the proposal from the scheme that has been approved. This conclusion was reached despite a reduced scale from the original proposals.

32. Given their findings that the proposal was outside the scope of Section 73, the Inspector did not entertain or pass comment on the planning merits of the proposal. This decision will provide a useful guide for considering future cases.

### **Other decisions**

33. The following decisions have also been received and are listed in the table above, but do not raise any issues of general interest:

- a) **68 Horseshoe Road** – The Inspector disagreed with the Council that an enlarged dormer would dominate the roof and harm the character of the area based site specific considerations.
- b) **Oakdene** – In dismissing the appeal, the Inspector agreed with the Council that a new backland house would undermine the clear character and identity of the existing large spacious plots. However, they disagreed with the Council concerns regarding loss of sunlight and privacy to a neighbouring property owing to the separation distance involved and the use of obscure glazing.
- c) **1087 Oxford Road** – The appeal was dismissed as the Inspector disagreed with the Council that the proposal would harm neighbouring living conditions having regard to the site-specific relationships involved.