

**List of Current Planning and Enforcement Appeals
March 2020**

Public Inquiries

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Date of Inquiry	Current Position

Informal Hearings

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Date of Hearing	Current Position

Redetermined Appeal

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Current Position
W/18/1550	West Hill, Westhill Road, Cublington	Erection of a Garage	Emma Booker	N/A	Redetermined Appeal Dismissed

This decision supersedes that issued on 18 April 2019. That decision on the appeal was quashed by order of the High Court after WDC challenged the Inspector's decision.

The crux of the matter is whether or not the proposed garage would be considered to be an extension or alteration to a building. The Inspector noted that whilst the use of the garage would be ancillary to the dwelling, it would be some distance from it, positioned on the opposite side of the driveway/turning area, which would act as a physical barrier between the two buildings. As such, although located within its curtilage, given its distance from the dwelling and its separation by the driveway/turning area, the garage would clearly be read as a detached building, separate from the dwelling. Therefore, it would amount to the erection of a new building rather than an extension or alteration of an existing building.

The Inspector acknowledged the appellant's argument that the proposed siting of the garage would be logical in terms of the layout of the overall site. However, he considered that whether or not it would be a logical site for a garage has no bearing on whether or not it would be inappropriate development in the Green Belt.

The Inspector also found that the erosion of three-dimensional space arising from the overall size of the building would in itself result in an erosion of openness. The solid construction of the building would result in it having a significantly greater bulk than the tennis court and consequently it would reduce the openness of the Green Belt.

The Inspector noted that there is an extant certificate of lawful development (CLD) for a garage building to be erected to the rear of the dwelling. This garage would be larger than the current proposed garage and would be sited on what is currently an undeveloped part of the garden of the dwelling. Therefore, it would have a greater impact on the openness of the Green Belt than the proposed garage.

The Inspector made it clear that the consideration of a fall-back position, including extant planning permissions and what could be erected under permitted development rights, is a well-established principle. In this instance, the appellant has made the effort of applying for a CLD and a planning application, followed by the lodging of this subsequent appeal, for a garage. The Inspector therefore considered it clear that the appellant wishes to erect a garage and in the event of the appeal being dismissed he considered there to be a reasonable likelihood that the CLD would be implemented and therefore he attributed it significant weight as a fall-back position.

However, were he minded to allow the appeal, he noted that there would be the possibility that the CLD garage could be constructed and then the approved garage constructed afterwards. The two garages would be on separate parts of the site and the construction of one would not prohibit the construction of the other. The construction of the two garages would have an even greater overall impact on the Green Belt.

The appellant suggested a condition that would remove permitted development rights pertaining to outbuildings. However, this would be attached to the planning permission and would only come into effect once that permission had been implemented. It would not prevent the

construction of the CLD garage before the implementation of the planning permission. Therefore, such a condition would be ineffective.

Written Representations

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Current Position
W/18/0986	Ivy Cottage, Barracks Lane, Beausale	One and two Storey Extensions Committee Decision in accordance with Officer Recommendation	Rebecca Compton	Questionnaire: 23/10/18 Statement: 14/11/18	Ongoing
W/19/0091	21 Northumberland Road, Leamington	Erection of Railings and Gates Delegated	Emma Booker	Questionnaire: 17/6/19 Statement: 9/7/19 Comments: -	Ongoing
W/18/2177	Four Brothers Farm, Five Ways Road, Shrewley, Warwick	Notification for Prior Approval for a Proposed Change of Use of Agricultural Building to 3no. Dwelling Houses (Use Class C3) together with associated works to facilitate the conversion. Delegated	Rebecca Compton	Questionnaire: 03/09/19 Statement: 01/10/19	Ongoing
W/19/0737	The Limes, 21 Beauchamp Avenue, Leamington	Front Boundary Wall and Railings Delegated	Emma Booker	Questionnaire: 6/11/19 Statement: 4/12/19	Appeal Dismissed

The proposed development seeks to pave over the front garden of No 21 Beauchamp Avenue and to widen an existing gateway on the left hand

side to allow car parking to the front of the building. As part of the scheme the existing boundary treatment would be altered to a wall and railings. The proposed boundary treatment would consist of a red brick wall topped with ashlar coping some 600mm tall. Taller columns up to around 1.6m tall would be sited at either end of the wall with a central column. Between the columns would be set cast iron railings with arrowhead tops. At present the boundary treatment consists of a very low wall with hedge, although there is evidence of some previous railings around the centre of the wall, drilled directly into the coping stones.

The Inspector considered that the proposed boundary treatment would differ from the previous boundary, as well as from the treatment to the front of the adjacent church. Boundary treatments to the houses to the right of the Limes up to the junction with Kenilworth Road consist of medium height painted/rendered walls which are also significantly different to that proposed.

The Inspector considered that the combined height and nature of the proposed boundary treatment, at nearly 1.6m would present a significantly different boundary to the Limes to the existing hedge and low wall, to the detriment of the setting of the heritage asset. While the proposed brick wall elements may well match the house, this would clash with the painted stucco façade of the building and the adjoining walls to the east.

The appellant submitted various details of other boundary treatments in the area. While the Inspector appreciated that other boundary treatments along Binswood Avenue, Clarendon Square and further to the east of Beauchamp Avenue may be of a similar height and or design to that proposed, he felt that these are not set in the same visual stretch of road as the proposal and are not generally seen in the same street scene.

W/19/0329	12 Old Milverton Road, Old Milverton.	Erection of Dwelling Delegated	Helena Obremski	Questionnaire: 9/10/19 Statement: 6/11/19	Appeal Dismissed
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The appeal site consists of a parcel of land and is within Old Milverton, which is identified within policy as a limited infill village. It is separated from No.12 Old Milverton Road and enclosed by fencing.

The proposed development would be for a self-build two storey detached three- bedroom dwelling with a single storey detached garage with alterations to the existing access. The Inspector considered it would therefore fall within the principal location definition of Policy H11 being within a limited infill village and it would satisfy criterion (a) in regard to the number of dwellings.

In terms of criterion (b), the Inspector observed that the appeal site is a substantially wide plot particularly towards the front facing Old Milverton Road. Although it sits between existing residential development the gaps within the immediate vicinity are mainly characterised by much narrower plots for residential development, of which, emphasises the overall size of the gap at the appeal site itself and therefore is not

comparative to being 'small'.

The residential development which runs along Old Milverton Road adjacent to the appeal site, consists of seven dwellings. These represent a cluster of properties, but each are set back considerably from the road frontage itself. There is no consistent building line to those properties and the spacing between each property changes considerably due to their layout, scale and position within each plot, this essentially interrupts the built-up frontage. As such, the Inspector disagreed with the appellant's assessment that the houses in the row line up following the curve of the street or that this part of Old Milverton has the most linear and regular development.

Furthermore, given that the properties in the immediate street scene have staggered frontages and are set back from the highway, the layout and position of the proposed development would be at odds with the frontages and would appear visually disconnected from those properties at No.10 and No.13 Old Milverton Road.

In terms of criterion (c) and whether the loss of the site for the proposed development would have a harmful impact on the character and distinctiveness of the area; The Inspector considered that the appeal site is of a rural nature and the current appearance of the site creates a spacious setting to the cluster of dwellings which positively contributes to the area. The proposed development would significantly reduce the gap between those properties along the street scene, thus creating a more suburban form of development harming the predominantly rural and open nature of the character of the area.

The appeal site is situated between houses at No.12 and No.13 Old Milverton Road and comprises of a parcel of land which is not occupied by any built form. The erection of a sizeable two storey detached dwelling and detached garage would therefore have an adverse impact on openness.

Whilst the appeal site is located within a cluster of residential properties these are modest in size and there are variations, the Inspector considered that that the proposed dwelling would have a substantially larger footprint than those, particularly to the north of the site. Its excessive width would fill the majority of the site and the cumulative impact of both a large detached dwelling and detached garage would represent overdevelopment within the site, reducing the characteristic gap and openness of the site to the detriment of the street scene.

Furthermore, it would result in a development being of a cramped and incongruous form, particularly as it would be positioned near to the side boundaries filling the whole of the plot width. This would be in contrast to other properties in the street scene which have space around them and do not fill the entire plot width. The excessive width combined with the extensive rear projection at two storey height would create large gables that would appear dominant and alien when viewed from along Old Milverton Road. Despite the proposed materials being acceptable, it would not harmonise with or fit with the rhythm of the nearby Victorian properties or enhance the existing settlement. Moreover, it would add a suburban appearance which would be at odds with the rural context of the immediate site and its surroundings detracting from the character of the area.

W/19/0350	Barn at Little Manor Farm, Manor Lane, Pinley Green.	Change of Use of Building to Dwelling Delegated	Dan Charles	Questionnaire: 15/11/19 Statement: 13/12/19	Ongoing
W/19/1299	19 Camberwell Terrace, Leamington Spa.	Change of Use to HMO Delegated	Dan Charles	Questionnaire: 26/11/19 Statement: 24/12/19	Ongoing
W/19/1183	8 Savages Close, Bishops Tachbrook	Erection of Single storey dwelling Committee Decision in accordance with Officer Recommendation	Rebecca Compton	Questionnaire: 26/11/19 Statement: 24/12/19	Appeal Dismissed

Policy BE3 of the LP states that development would not be permitted that does not provide an acceptable standard of amenity for future users and occupiers of the development. The explanatory text to Policy BE3 lists a number of disturbances and intrusions. However, these are clearly described as examples and therefore it is not an exhaustive list. The Inspector noted that it is a well-established principle that outlook is an integral aspect of residential amenity. The Inspector noted that the proposed carer/guest bedroom would be served by two high level windows, which would be obscure glazed. As a result of the obscure glazing, the windows would not afford any outlook from this room. He acknowledged that the bedroom would also be served by a high-level internal window and would receive adequate natural light. However, the only outlook from this would be of the internal corridor of the dwelling and not of any outdoor aspect. He concluded that the lack of any meaningful outlook from the room would create an oppressively confined form of accommodation that would be detrimental to the well-being of the occupants of the dwelling.

Policy H1 states that new housing in the open countryside where, amongst other things, the site is adjacent to an Urban Area or a Growth Village and there is an identified housing need to which the development would contribute could be acceptable.

Bishops Tachbrook is identified as a Growth Village and a clearly defined settlement boundary demarcates the village confines in the LP Proposals Map. The appeal site is outside of the defined settlement boundary for Bishops Tachbrook. Therefore, for the purposes of the development plan, the site falls within the open countryside.

The Inspector acknowledged the appellant's argument that the NPPF does not define open countryside and that case law establishes that planning policies ought never to be over-interpreted. However, he considered that the LP definition of open countryside is clear and straightforward, with little scope to interpret it in any other way than it is intended. Development is either within the defined built-up areas or Limited Infill Villages, and therefore not within the open countryside, or, outside these areas and therefore within the open countryside. For the purposes of the development plan, the appeal site can only reasonably be interpreted as being within the open countryside. To consider it as such is not an 'over interpretation' but rather the correct and only reasonable interpretation.

The crux of the matter is whether the proposal satisfies criterion ii of Policy H1(d) of the LP. i.e. that there is an identified housing need to which the proposed development can contribute.

There was no dispute between the main parties that the Housing Needs Survey (HNS) carried out by Bishops Tachbrook Parish Council in July 2019 identifies a need for three owner occupier bungalows. However, the HNS does not take into consideration that within the Parish there are three housing allocations, one for 1605 houses, one for 900 houses and one for 50 houses. In addition, planning permission has been granted for 150 dwellings off Oakley Wood Road. The Council considered that the need for three bungalows has already been met in the planning permissions granted for the allocated sites, with more likely to be provided on the allocated sites that have yet to come forward. However, the Inspector did not agree that dormer bungalows would meet the need for the identified need for three bungalows. interpretation.

The HNS makes reference to both dormer bungalows and bungalows, indicating that there is a clear distinction between the two. Furthermore, the appellant makes a compelling case that the Ministry of Housing, Communities and Local Government's English Housing Survey defines a bungalow as 'a house with all of the habitable accommodation on one floor'. The approved dormer bungalows have habitable accommodation across both the first floor and the ground floor. The Inspector considered that a reasonable approach was to consider these properties as being houses, rather than bungalows, particularly bearing in mind that bungalows are typically required by people who have accessibility needs and may struggle to utilise first floor accommodation.

Therefore, based on the evidence the Inspector was not satisfied that the approved 'bungalows' referred to by the Council are in fact bungalows that would meet the need identified in the HNS. Furthermore, he felt there is was no evidence that the allocated sites yet to come forward would indeed fulfil this need. Accordingly, as the proposal would provide a dwelling with all of its habitable accommodation on the ground floor, and therefore would truly be a bungalow, it would make a positive contribution to the identified need for three bungalows.

W/19/0547	4 Beauchamp Hill, Leamington	Erection of 4 bed HMO Delegated	George Whitehouse	Questionnaire: 26/11/19 Statement: 24/12/19	Appeal Dismissed and Costs Claim Refused
<p>The appellant suggested that the lack of a painted stucco finish and windows on the west elevation of No 6 suggests that the original intention was for a building to be erected on the site, therefore negating the need to finish this elevation the same as the others as it would not be readily visible. However, the Inspector considered that there is no evidence to confirm that this is the case. Furthermore, there are other examples of rear gardens side onto a road within the locality. The Inspector therefore considered that the gap between properties that the appeal site creates is not uncharacteristic of the area and is not read as an unnatural break in the street scene. Indeed, he felt that the openness of the site contributes to the overall spaciousness of the road and helps to emphasise the dominance of Nos 4 and 6 within the street scene, which is an important characteristic of these listed buildings and the CA. The Inspector concluded that the gap does not detract from the settings of the adjacent listed buildings but rather the contrary that it makes a positive contribution towards them.</p> <p>The proposed building would be located adjacent to No 6. Although it would have a narrower depth and width than No 6, it would have similar architectural detailing, including a projecting gable in the roof and fenestration proportions. Moreover, the height of the building would be 2 and 3 storeys, and although it would be below that of No 6 it would nevertheless be similar. The Inspector considered that as a result of its design and height, the proposed building would compete with, rather than complement, No 6. In an attempt to replicate the architectural detailing of No 6, whilst at the same time create a smaller, subservient building, the proposal would appear as an inconsistent pastiche that would detract from the setting of the listed building and the CA. Moreover, the proximity of the building to No 6 would result in the listed building being largely screened from view on approach from the west, therefore diminishing its dominance within the streetscene.</p> <p>In addition, he considered that the introduction of such a large building within this gap would create a much tighter form of development, which would be in marked contrast to the more spacious setting of other properties on this stretch of Beauchamp Hill and therefore would appear cramped and overdeveloped. Whilst it would screen much of the views of the rear properties on Upper Grove Street and Warwick Terrace, this did not justify the overall harm to the setting of the listed building and the CA.</p> <p>The Inspector noted that given the lack of retained amenity space for No 4, and in the absence of any evidence to the contrary, there is a reasonable prospect that the proposal would lead to bins being stored on the highway, which would have a significantly harmful effect on the streetscene and the CA as a whole.</p> <p>The appellant argued that as the proposal is not for a dwelling and that 4 Beauchamp Hill is a House in Multiple Occupancy (HMO) the Council's Distance Separation requirements were not applicable. The Inspector acknowledged that the occupancy of a HMO is generally transient and that its occupants, in particular students, may vacate the premises outside term time. However, he considered that the proposal would nevertheless serve as a form of residential accommodation which its occupants would use as their primary residence. Therefore, they should be</p>					

afforded the same standard of living accommodation as occupants of a single home dwelling. Therefore, although the SPD does not refer to HMO's or student accommodation, it is reasonable to use it as a benchmark for providing adequate living conditions for such properties.

The SPD does not provide guidance on the distance between side to side elevations. The appellant suggested using the guidance of 16m separation distance. However, the Inspector noted that this is with regard to a windowed elevation facing a blank elevation. The west elevation of the proposed building and the east elevation of No 4 both have habitable room windows. As such, he considered that it would be reasonable to apply the guidance in respect of back to back properties with habitable windows, which between two and three storey properties should be 27m. Windows at No.4 would be almost in direct line with the windows in the west elevation of the proposal at a distance of approximately 15.5m, far below the guidance distance of 27m. Due to the proximity of these windows, the Inspector considered that there would be a high degree of inter-visibility between the rooms they serve, to such an extent that it would have a significantly detrimental effect on the living conditions of the occupants of No 4 and would fail to provide adequate levels of privacy for future occupiers of the development. The appellant suggested that slatted blinds could be fitted to the offending windows. However, it would not be reasonably possible to ensure that residents do not open the blinds, enabling direct views through the opposing windows in No 4. Furthermore, the installation of obscure glazing in the proposed bedroom would unduly diminish the outlook from the room and therefore would be detrimental to the living conditions of its occupant.

The Inspector noted that the proposal would occupy much of the outdoor private amenity space associated with No 4, leaving very limited space for its residents. This remaining space would be largely occupied by car parking provision. Therefore, there would be no usable outdoor amenity space for the occupants of No 4 to utilise for activities such as sitting outside or drying clothes. He noted that there is a public park opposite No 4, which its occupants could use. However, it would not be suitable for activities that are typically carried out in more private settings, such as drying clothes or sunbathing. Whilst he acknowledged that the current outdoor amenity space is not readily utilised by the occupants of No 4, that is not to say that there should not be any available to them should they choose to use it. Overall he felt that the lack of usable outdoor amenity space that would be retained for No 4 would have an unacceptably detrimental effect on the living conditions of its occupants.

The Inspector considered that as a result of the insufficient on-site parking provision, there is a realistic possibility that the proposal would place increased pressure on on-street parking provision within the locality, which, at the time of his site visit already appeared to be in high demand. Whilst this was only a snapshot in time, there is no evidence to indicate that it is not representative of the existing circumstances. Therefore, an increase in demand for on-street parking could lead to inconsiderate parking, such as close to a road junction or parking on the footway, which would represent an unacceptable risk to highway safety. The Inspector had regard to the appellant's argument that a condition could be imposed that would restrict the occupants of No 4 from owning a car. However, based on the suggested wording of the condition, he was not satisfied that it would meet the six tests set out in the Framework, with particular regard to reasonableness.

COSTS:

The Inspector considered that the reasons for refusal set out in the decision notice are complete, precise, specific and relevant to the application. They also clearly state that the proposal would conflict with the relevant policies of the development plan. Whilst the Council did not submit a statement of case as part of the appeal process, these reasons for refusal were adequately substantiated by the Council in its Officer's Report, which demonstrates how the proposal would be harmful to the Royal Leamington Spa Conservation Area; the adjacent listed buildings; the living conditions of the neighbouring occupants and future occupants; and, highway safety. The Council were not unreasonable in coming to that decision and there is no evidence to suggest that they have unreasonably prevented or delayed the development.

The Inspector noted that the Council did not address the conditions suggested by the applicant that they considered would address the concerns they had raised. However, he considered that that this is not unreasonable.

The Inspector acknowledged the applicant's frustration that they feel they were not given the opportunity to amend the proposal to something that the Council would find acceptable during the course of the planning application. However, amendments were made prior to the Council's determination of the application and the Council provided feedback to the appellant and it was open to them to withdraw the application and submit a further scheme or continue to determination. Whilst the Council have a duty to work constructively with an applicant to address concerns raised, this must be within reason. It would be unreasonable to expect the Council to entertain the submission of numerous iterations of a scheme. He therefore found that the Council did work constructively with the applicant in the instance.

W/19/0111	2 Mill End, Kenilworth	New Dwelling Delegated	Helena Obremski	Questionnaire: 18/11/19 Statement: 16/12/19	Ongoing
W/19/1265	21 Elizabeth Road, Queensway, Leamington.	Change of use to HMO Delegated	Dan Charles	Questionnaire: 25/12/19 Statement: 22/1/20	Ongoing
W/18/1034	Ewe Green, Hockley Road, Hatton	Certificate of Lawfulness for Conversion of Outbuilding into Granny Annexe Delegated	Helena Obremski	Questionnaire: 7/1/20 Statement:	Ongoing

				4/2/20	
W/19/1164	24 Church Hill	Replacement of Sash Windows and Doors Delegated	Jonathan Gentry	Questionnaire: 20/12/20 Statement: 17/1/20	Ongoing
W/18/2453	Mulberry Cottage, Warwick Road, Leek Wooton	Conversion of Redundant Barn into Holiday Accommodation – revised scheme. Delegated	Rebecca Compton	Questionnaire: 19/12/19 Statement: 16/1/20	Ongoing
W/19/0925	Sunnyside Old Warwick Road, Lapworth	Erection of a Dwelling Delegated	Andrew Tew	Questionnaire: 28/1/20 Statement: 25/2/20	Ongoing
W/19/1055 and 1056/LB	The Limes, 21 Beauchamp Avenue, Leamington	Various alterations and extensions Delegated	Emma Booker	Questionnaire: 17/1/20 Statement: 14/2/20	Ongoing
W/19/1658	1, The Stables, Vicarage Lane, Sherbourne	Replacement windows; doors and roof. Delegated	George Whitehouse	Questionnaire: 21/1/20 Statement: 20/2/20	Ongoing
New W/19/1347	20 Hatton Terrace, Hatton	Two Storey Extensions Delegated	Ankit Dhakal	Questionnaire: 7/2/20 Statement:	Ongoing

				2/3/20	
New W/19/1224	Meadow Croft, High Cross Lane, Rowington	Agricultural Building, Fencing and Hardstanding Delegated	Helena Obremski	Questionnaire: 18/2/20 Statement: 17/3/20	Ongoing
New W/19/1104	107 Mallory Road, Bishop's Tachbrook	Two storey Extensions and Porch Delegated	Jonathan Gentry	Questionnaire: 17/2/20 Statement: 10/3/20	Ongoing
New W/19/1124	Northbound Services, A46 Warwick Bypass	Internally Illuminated Totem Pole Delegated	Rebecca Compton	Questionnaire: 14/2/20 Statement: 9/3/20	Ongoing
New W/19/1512	2A St Fremund Way, Whitnash	First Floor Side Extension Delegated	Thomas Fojit	Questionnaire: 25/2/20 Statement: 18/3/20	Ongoing

Enforcement Appeals

Reference	Address	Issue	Officer	Key Deadlines	Date of Hearing/Inquiry	Current Position
ACT 450/08	Meadow Cottage, Hill Wootton	Construction of Outbuilding	RR	Start date 04/06/19 Statements 22/11/19	Public inquiry 1 DAY	The inquiry has been held in abeyance

Act/063/19	19 Camberwell Terrace	Change of use to HMO- only Ground G period of compliance is being appealed (as there is a planning appeal W/19/1299 -see above)	RR	Start date 24/12/19 Statements due 04/02/19	Written reps	Initial questionnaire completed and submitted and interested parties notified

Tree Appeals

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Date of Hearing/Inquiry	Current Position