

**List of Current Planning and Enforcement Appeals
February 2021**

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

Written Representations

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Current Position
W/19/1973	Wooton Grange Farm House, Warwick Road, Kenilworth	Extensions and Alterations Delegated	Jonathan Gentry	Questionnaire: 23/4/20 Statement: 15/5/20	Ongoing
W/19/0860	6 Phillipps Road, Warwick	Change of use to Garden and Erection of Fencing	Emma Booker	Questionnaire: 22/7/20	Ongoing

		Committee Decision in accordance with Officer Recommendation		Statement: 13/8/20	
W/19/1604	17 Pears Close, Kenilworth	First and Ground Floor Extensions Delegated	George Whitehouse	Questionnaire: 19/6/20 Statement: N/A	Ongoing
W/19/1558	Land rear of 14 – 16 Randall Road, Kenilworth	Detached Bungalow Delegated	Helena Obremski	Questionnaire: 26/6/20 Statement: 24/7/20	Appeal Dismissed
<p>The Inspector noted that the access track is narrow due to the proximity of existing structures and boundary treatments, making it particularly constrained for regular vehicular traffic associated with a modest family dwelling, including visitors and deliveries, which could include larger vehicles. Furthermore, in parts, landscaping overhangs this track and there is limited natural surveillance. For these reasons, he considered that the track would be uninviting as a daily access, particularly at night as there is no lighting along it. Additionally, he found the lack of a footpath along the commercial car park offers poor legibility and access for pedestrians and this would increase the likelihood of conflict with vehicles, which is likely to be exacerbated outside of daylight hours. Despite the lack of objection from the Council's Highways Officer, he concluded that the access arrangement for the new dwelling would be unappealing and unsafe and therefore unsuitable contrary to Policy TR1.</p> <p>The Inspector noted that the distance from the proposed dwelling to the nearest Council's kerbside waste and recycling collection points, significantly exceeds the British Standards requirements as set out in BS 5906:2005 'Waste management in buildings – Code of practice' as referenced within the Council's Warwick District Council Design Guide Residential, May 2018 (Design Guide). Consequently, while the future occupiers could keep waste and recycling containers near the proposed dwelling, they would still be required to move these over an excessive distance. This type of arrangement would be particularly inconvenient for occupants when moving full containers and could lead to the waste and recycling containers being left for extended periods of time near the highway, thus having a detrimental impact on visual amenity.</p>					
W/19/1572		2 Dwellings			

	Land off Birmingham Road and A46, Warwick	Delegated	Helena Obremski	Questionnaire: 26/6/20 Statement: 24/7/20	Appeal Dismissed
<p>The Inspector noted that appeal site forms part of a wooded area with mature, mixed broadleaved and coniferous trees, which is covered by a TPO. This wooded area is prominent due to its location adjacent to the highway and it makes a positive contribution to the landscape character and visual amenity of the area and forms part of a soft edge to the urban area into Warwick.</p> <p>In contrast, and irrespective of some attention to design, he found considered that the proposal would introduce two sizeable dwellings on a site which is free of any significant built development. As a consequence of the proposed layout the rear elevations of the new dwellings would face the A425, providing a strong built form close to this road. This would be inconsistent with the prevailing arrangement of development, where buildings generally have frontages facing the A425 and are set-back from it, and in certain cases are screened by landscaping. In particular, the proposal would result in the permanent loss of a substantial number of protected trees at the centre of the site. The proposal would introduce an incongruous form of development which would not be in keeping with the prevailing pattern of development. The incongruity of the proposed development would be exacerbated by its prominent location.</p> <p>In the absence of any appropriate mitigation against air quality exposure impacts, the Inspector said that he cannot be certain that future residents of the development would not be exposed to air pollutants above the national objective levels. It has also not been clearly shown that the occupiers of the proposed development would not be exposed to undue noise disturbance. Given the proximity of the highway network to the appeal site, high levels of local traffic and the sensitive nature of the proposed use (residential), matters relating to living conditions are significant and cannot be left to conditions. For these reasons, he concluded that the proposal would fail to provide satisfactory living conditions for future occupants of the proposed development.</p> <p>The Inspector considered that it has not been substantiated the proposal would not result in a net biodiversity loss. Although additional planting could be secured by condition, he could not be certain that the suggested enhancements would bring a net gain in biodiversity. While the appellant also suggested that an offsetting payment can be made to compensate for any biodiversity loss, in the absence of any legal agreement between the parties in respect of this, he was unable to attach any weight to this suggestion.</p>					
W/19/1963 and W/19/1964/LB	Rectory Cottage, Church Lane, Lapworth	Demolition of Garage Block and erection of Sun Room Delegated	George Whitehouse	Questionnaire: 19/8/20 Statement: 16/9/20	Ongoing

W/20/0097	10 Wasperton Road, Wasperton	Change of Use of Store Room to Dog Grooming Salon Delegated	Rebecca Compton	Questionnaire: 19/8/20 Statement: 16/9/20	Ongoing
W/19/1197	89 Shrubland Street, Leamington	Change of Use to HMO Appeal against Non- Determination	Rebecca Compton	Questionnaire: 1/9/20 Statement: 29/9/20	Appeal Dismissed and Costs Application Refused.

The Inspector noted that the appeal property appears well maintained and evidence of a reduction in community cohesion attributable to its use as an HMO has not been presented. However, he considered that Policy H6 is concerned with the cumulative effect of HMOs within a given area and it is unlikely that any HMO would have an appreciable effect on community cohesion alone.

An exception to criterion a) can be made for an HMO on a main thoroughfare in a mixed-use area. However, he noted that apart from Brunswick Street, which leads towards the town centre and carries bus routes, the roads in the immediate vicinity of the appeal site are relatively quiet and do not have the appearance of main thoroughfares. A number of nearby non-residential uses have been identified, which he saw on his visit. These include Shrubland Street Primary School, diagonally opposite the appeal site, and the Brunswick Hub, a community facility further west on Shrubland Street, across Brunswick Street as well as the Jet Public House and a convenience store on the corner of Brunswick Street and Shrubland Street. However, he considered that these non-residential uses are secondary to, and clearly exist to support, housing in the local area, which has a predominantly residential character. Accordingly, he concluded that it has not been demonstrated that the appeal site is on a main thoroughfare or within a mixed use area to which the exception to criterion a) applies.

Compliance with the first requirement of the enforcement notice, to cease the HMO use and any other multi occupation use, would resolve the breach of planning control alleged in the notice. However desirable it may be, the second requirement, to reinstate the land to its former use as a single dwellinghouse, seeks a further step to be taken and is therefore excessive. Varying the notice to delete the second requirement would allow the breach of planning control to be resolved without injustice to the appellant.

In the Hearing it was agreed between the parties that varying the period for compliance with the requirements of the notice to align with the end of the current academic year at the end of June 2021 would minimise disruption to the current occupiers. As this variation would not shorten the period for compliance, it can be made without injustice.

W/20/0980	9 Camberwell Terrace, Leamington	Front Lightwells Delegated	Emma Booker	Questionnaire: 25/9/20 Statement: 19/10/20	Ongoing
W/20/0271	The Hay Barn, Packwood Lane	Replacement Garage Delegated	Jonathan Gentry	Questionnaire: 8/9/20 Statement: 30/9/20	Appeal Dismissed and Costs Application Refused.

The matter of dispute between the Council and the appellant relates to whether the proposal is 'materially larger'. The Inspector noted that neither the Council's policies nor the Framework provide a definition for what would be considered a materially larger replacement building. Following an appeal decision the Council applies an approach that an increase of up to approximately 5% may be held as not materially larger. The parties agree that the replacement double garage would have a floor area of approximately 58 square metres, which would represent an increase in footprint of approximately 26% when compared with the existing structure. Therefore, the Council considers, in this instance, it would be materially larger. However, the Inspector considered that an assessment of whether a building is 'materially larger' is a matter of planning judgement. Whilst floorspace and/or volume calculations can be used to determine whether or not a proposal would be materially larger than an existing building, in his view, it is also important to consider the visual increase, taking into account any increase in the overall scale, bulk, mass, and height in comparison with the existing building. The site-specific circumstances and siting of buildings also need to be taken into account.

The existing building is formed of 3 elements, which vary in terms of roof style and height. The storage areas located to the south and east are significantly lower in height than the main part that includes the garage. The proposal would consist of one rectangular structure, which, in addition to the larger footprint, would also exceed the highest part of the existing building. Thus, the replacement building would have a much greater visual bulk and mass. Accordingly, due to its greater footprint, height, bulk, and mass, the proposed garage would be materially larger than the existing structure.

It was also put to the Inspector by the appellant that the development should also be considered as limited infilling or partial/complete redevelopment of previously developed land. Previously developed land is defined in the Framework as land which is or was occupied by a permanent structure. However, under the provision of paragraph 145 (g) of the NPPF the proposal would be required to have no greater impact on the openness of the Green Belt than the existing development. Due to the increased size, mass and height of the proposed garage, it would be more prominent in views from the footpath through the vegetation and trees than the existing buildings. As a result, both in spatial and visual terms, the openness of the Green Belt would be reduced, and consequently the proposal would have a greater impact on openness than the existing development and therefore the proposal would not comply with paragraph 145 (g) of the Framework.

COSTS:

The key arguments are that the Council has demonstrated unreasonable behaviour due to its arbitrary adoption of threshold to determine what is 'materially larger' and because the Council refused to allow the appellant reasonable time to advance a full justification. The Inspector considered that the threshold figure of 5% used by the Council is justified only by reference to a previous appeal decision where the Inspector considered that an increase in floorspace of development 9% was inappropriate. However, it is also apparent that the Inspector in that case considered factors other than solely the floor space to reach a conclusion that the development would evidently result in a building of increased scale and massing on the appeal site and that it would be materially larger than the existing dwelling it would replace. Furthermore, notwithstanding the Council's intention of providing a level of consistency, there is no meaningful justification for the use of the figure of 5% rather than 9% in the appeal decision. Therefore, in the absence of it being adopted policy, and instead only informal guidance, while a material consideration, the weight afforded to it is limited. Furthermore, whilst the planning officer report concluded that the proposal would be inappropriate development due to an increase of 26% in floor area, its reliance solely on this one material consideration, without showing consideration to the evidence submitted by the applicant is unreasonable. However, the Inspector concluded that whilst reliance solely on the informal guidance was unreasonable, it was not unreasonable, for the reasons set out in the appeal decision for the application to have been refused. Accordingly, there has been no wasted expenditure by the appellant due to the Council's unreasonable behaviour.

As a result of this appeal decision officers have been advised to ensure that 'materially larger' is not assessed only by reference to floor area but also with regard to other relevant factors. The Policy team have also been recommended to provide a definition in the next Local Plan.

W/20/0170	Eversleigh Nursing Home, 2-4 Clarendon Place, Leamington	Car parking and Landscaping Delegated	Helena Obremski	Questionnaire: 13/10/20 Statement: 10/11/20	Appeal Dismissed
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The Inspector noted that the setting of the property is enhanced by the presence of an area of garden which lies between the crescent and the main road, providing an oasis of green in a street that is otherwise almost devoid of green space until one reaches the large green space at Clarendon Square to the north. The garden makes a valuable contribution to the CA, providing relief from the predominantly built environment nearby and a soft buffer between the busy street and the buildings. Its rarity in the immediate area adds to its importance.

Existing car parking serving the nursing home comprises three spaces immediately to the front of the building and five angled spaces close to the boundary with Bethany House to the north. Owing to their positioning and the scale of the buildings he considered that these have a limited effect on the character and appearance of the CA or the setting of Bethany House whose own frontage is entirely given over to car parking.

The proposed car parking spaces would cut into the existing garden area to the front of the appeal building to provide five angled spaces accessed from the crescent. He considered that although a grassed area would remain at either end of the garden and between the car parking spaces and the boundary wall this would be significantly diminished and fragmented. Despite landscaping on the boundary with the main road, the character and appearance of the site would change from an open green space to predominantly a car park with peripheral grass and planting. Surfacing of the parking spaces would be with Grasscrete. The appellant suggests that Grasscrete would minimise the impact on the CA when the car parking spaces were vacant. However, the Inspector said that this would have no effect when the spaces were in use which, given the appellant's evidence regarding the need for them, would be expected to be much of the time, including overnight. Moreover, he felt was of the opinion that Grasscrete often results in patchy vegetation, especially when driven over frequently, which has a scruffy appearance, out of keeping with the neat and well maintained character of the existing green space. This harm to the significance of the listed building would be less than substantial and placed at the lower end of that scale.

In terms of the CA, he considered the effect would be greater owing to the significant incursion into the existing garden to the front of Eversleigh House. This would be clearly visible from the main road as well as from the crescent and from windows in the appeal property. The effect would be to erode significantly the openness and tranquillity of the green space and detract from the setting of the appeal property and others on the crescent through intrusive and discordant development within close proximity. He considered that the harm to the significance of the CA would be less than substantial, but at or above the mid-point on that scale.

W/20/0285	Pool Peace Bungalow Five Ways Road, Shrewley	Appeal against the refusal of a Certificate of Lawfulness for the Continued Occupation of a Dwelling without complying with an Agricultural Occupancy Condition. Delegated	Andrew Tew	Questionnaire: 26/11/20 Statement: 24/12/20	Ongoing
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W/20/0331	The White House, Five Ways Road, Shrewley	Replacement Dwelling Delegated	Andrew Tew	Questionnaire: 13/11/20 Statement: 11/12/20	Ongoing
W/20/0420	2 Penns Close	Decking and Steps Delegated	George Whitehouse	Questionnaire: 18/11/20 Statement: 10/12/20	Appeal Allowed and Costs Application Refused.

The main issue in this case is the effect of the proposal on the living conditions of the occupiers of No 3 Penns Close having particular regard to its effect on privacy. The Inspector noted that users of the decked area would be able to see into part of the rear garden of No 3, but considered that such views would however be limited given the presence of a tall boundary fence, and the existing building at No 3 on the boundary with the host property, which provides a degree of screening to the garden. Moreover, he considered that the views that could be obtained from this area would be very similar to that which is achieved from the existing fenestration on the rear of the host property. Furthermore, he felt that given the limited depth of the decked area and the presence of doors opening out on to it, there would be a high probability that the area would primarily be used for access purposes as opposed to sitting out on or being used for outdoor dining or entertaining. As such it would be unlikely that users of the deck would be using the area for long periods of time such that the occupiers of No 3 would consider that the privacy of their rear garden was being compromised. Given the oblique angle from the landing decked area towards the rear of No 1, he found that views into the master bedroom would be unlikely and the privacy of the occupiers of No 1 would not be harmed by the proposal. Furthermore, views from the area into the rear garden of No 1 would be limited because the existing fencing on the common boundary would provide a degree of screening.

COSTS:

The Inspector was satisfied that with the benefit of the scaled plans, and having stood on the existing decking, the Planning Officer would have been in a position to assess the impact of the proposed development on neighbouring residents. Moreover, having identified a concern about the potential overlooking of No 3 from this area, the Council provided the applicants with an opportunity to amend the scheme. Such an approach was entirely reasonable in the Inspector's mind. Although the Inspector found differently to the Council in terms of the effect of the scheme on the living conditions of the neighbouring occupiers, he was satisfied that it

substantiated its reason for refusing the application, providing an objective analysis in its report including making reference to the difference in levels between the host property and No 3, the impact of the proposal on the privacy to neighbouring occupiers and making reference to development plan policy. Whilst the lack of precision and clarity in the drafting the decision notice cannot be condoned, it is clear that the decision related to a refusal of planning permission of the proposed development on the grounds set out in the decision notice. Consequently, he found that the error has not led to any additional expense being incurred by the applicant.

W/20/0992	6 Tithe Barn Close	2 storey rear extension Delegated	George Whitehouse		Appeal Dismissed
<p>The Inspector noted that the neighbouring property at No.4 has a side window facing the side elevation of the appeal property and that this window serves a bedroom and is the only window serving the room. At present, the side bedroom window in No 4 faces directly onto the two storey side elevation of the appeal dwelling but, at a slight angle, it has an open outlook over the existing single storey rear projection. The Inspector assessed that the proposed first floor extension would block this outlook, replacing it with a blank wall that would lie some 2m away and considered that this would result in an oppressive and overbearing effect. In addition, the extension would materially reduce the level of daylight reaching the side window which would make the room gloomy and uninviting. However, due to the north facing aspect of the window the effect on sunlight would be limited. He concluded that the proposal would have a materially harmful effect on the living conditions of occupiers of 4 Tithe Barn Close with respect to outlook and daylight and the lack of objection would not alter that.</p> <p>The appellant refers to the 45 degree rule. The Council's delegated report makes clear that this is not breached in this case and the Guideline explains that it does not apply at the side of a dwelling. Nevertheless, this did not alter or outweigh the Inspector's findings regarding the harm to the living conditions of neighbours.</p>					
W/20/0940	Glenthorne, Five Ways Road, Shrewley	Appeal against a Certificate of Lawfulness for the use of a Building as a Dwelling. Delegated	Helena Obremski	Questionnaire: 14/12/20 Statement: 4/1/21	Ongoing
W/20/1091	Terets Lodge, Rising Lane, Lapworth	Single Storey Rear Extension Delegated	Jonathan Gentry	Questionnaire: 14/12/20 Statement: 4/1/21	Ongoing

W/20/0483	17 Gaveston Road, Leamington	Appeal against the refusal of a Lawful Development Certificate for the Use of the Property. Delegated	Andrew Tew	Questionnaire: 3/12/20 Statement: 31/12/20	Ongoing
W/20/1167	Great Pinley Barns, Nunhold Road, Shrewley	Removal of Condition Restricting Permitted Development Rights Delegated	Andrew Tew	Questionnaire: 14/12/20 Statement: 25/1/21	Ongoing
W/20/1055	Hobournes, Upper Spring Lane, Kenilworth	Two Detached Dwellings Committee Decision contrary to Officer Recommendation	Helena Obremski	Questionnaire: 14/12/20 Statement: 25/1/21	Ongoing
W/20/1275	River Studio, Old Milverton Lane, Old Milverton	Removal of Condition Restricting Permitted Development Rights Delegated	Helena Obremski	Questionnaire: 21/12/20 Statement: 1/2/21	Ongoing
W/20/0774	1 Beaurevoir Way, Warwick	Erection of a Dwelling Delegated	Rebecca Compton	Questionnaire: 21/12/20 Statement: 1/2/21	Ongoing
New W/20/1264	The Lodge, Wattcote Farm, Manor Lane, Wroxall	Change of Use to Pilates Studio	Andrew Tew	Questionnaire: 19/1/21 Statement:	Ongoing

		Committee Decision in Accordance with officer Recommendation		16/2/21	
New W/20/0987	Grist Mill, Chesterton Drive, Leamington	Change of use of first Floor to HMO Delegated	Dan Charles	Questionnaire: 18/1/21 Statement: 15/2/21	Ongoing
New W/20/0974	1 Edmondes Close, Woodloes Park, Warwick	Revisions to previously granted planning permission for domestic extensions Delegated	George Whitehouse	Questionnaire: 8/1/21 Statement: 1/2/21	Ongoing
New W/20/1170	2 Adelaide Road, Leamington	Infill of Service Wing Roof Delegated	Rebecca Compton	Questionnaire: 8/1/21 Statement: 1/2/21	Ongoing
New W/20/1321 and 1337	39 Northumberland Road, Leamington	i. Rear stair Tower and ii. One and two storey Extensions Delegated	Thomas Fojut	Questionnaire: 25/1/21 Statement: 16/2/21	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	Statement: 22/11/19	Public inquiry 1 Day	The inquiry has been held in abeyance
ACT 097/17	2 Satchwell Place, Leamington Spa	Construction of Fence	RR	Statement: 23/6/20	Written Representations	Ongoing

Grounds of Appeal

The steps to comply with the notice are excessive
The Notice compliance period is too short.

ACT/565/18	41 Clemens Street, Leamington	Erection of structures/fencing to the front of the premises	RR	Statement Due: 5/11/20	Written Representations	Appeal Dismissed. Enforcement Notice Upheld with revisions
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Grounds of Appeal

That the alleged works haven't taken place.
That the alleged works (if they occurred) do not constitute a breach of planning control.

That the steps to comply with the notice are excessive.

ACT/386/19	89 Shrubland Street, Leamington	Change of use to a 7 bed HMO.	RC	Statement Due: 11/09/20	Written Representations	Appeal Dismissed and Costs Application Refused.
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Grounds of Appeal

Planning permission ought to be granted.

See above for commentary on the related planning application.

ACT/354/20	Old Folly Barn, Kites Nest Lane, Beausale, Warwick	Erection of detached car port.	GW	Statement Due: 5/8/20	Written Representations	Ongoing
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Tree Appeals

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