

APPEALS AND ENFORCEMENT SECTION - MONTHLY REPORT

NOVEMBER / DECEMBER 2003

PART 1 - PLANNING APPEALS RECEIVED FROM THE PLANNING INSPECTORATE

WRITTEN REPRESENTATIONS

The Barn, Red Lane, Kenilworth – *Erection of side extension with living accommodation* (W20030291)

5 Ashfield Road, Kenilworth – *Felling of an Oak Tree (subject of a provisional TPO)*

18 Clarendon Avenue, Leamington Spa – *Conversion of basement to flat with front light wells and front railings* (W20030388)

HEARING

1a Highland Road, Kenilworth – *Erection of two storey side and rear extensions* (W20031164)

Rear of 5 & 6 Inchbrook Road, Kenilworth – *Erection of five dwellings and associated works following demolition of 7 Inchbrook Road* (W20030149)

Pools Cottages, Crackley Lane, Stoneleigh – ENFORCEMENT NOTICE APPEAL – Erection of timber sports pavilion

PUBLIC INQUIRY

Spinney Farm, Banbury Road, Bishops Tachbrook – Erection of an agricultural barn (W20030428)

Five Ways Nurseries, Five Ways, Haseley – Certificate of lawfulness for the use of land for the stationing of a mobile home for residential purposes (W20031010)

Magpie Hall, Rouncil Lane, Kenilworth – ENFORCEMENT NOTICE APPEALS – Change of use of land for the storage of cars and use of land for the storage of tree surgeons vehicles

PART 2 - PLANNING APPEAL DECISIONS

1ST FLOOR BUSINESS USE – DIVERSITY & VITALITY OF LEAMINGTON SPA TOWN CENTRE

1. Retention of change of use from flat to design studio, 12 Station Approach, Leamington Spa (W20021752)

- Delegated Decision 23 December 2002
Erosion of residential uses on Station Approach – harm to diversity & vitality of town centre – contrary to policy (LTC) H3 of WDLP (Protection of upper floor residential uses)
- Appeal DISMISSED 29 October 2003

The Inspector considered the main issues to be the effect on the diversity and vitality of the town centre regarding the provision of housing and whether the change of use preserved or enhanced the character and appearance of the Leamington Spa Conservation Area.

Diversity and Vitality of town centre: He noted that Station Approach comprised a number of different uses, and although there was a limited amount of residential accommodation along the whole road, the uses of properties nearest to the junction with Avenue Road, including the appeal property was distinct from the rest of the road. Therefore the residential uses on the first floor of the appeal site would be compatible with the other uses in this part of Station Approach. He considered that whilst the first floor may never have been used as a dwelling, by reason of its proximity to the station and to Warwickshire College and the other residential dwellings in the vicinity, there would be a demand for a residential flat in this location.

Furthermore, he considered that the loss of residential accommodation had diminished the mixed use nature of properties near the junction with Avenue Road. He considered that this resulted in the loss of diversity and the introduction of a dead frontage facing the public open space opposite and a loss of vitality, especially in the evening when the majority of business uses had closed. He said '*Whilst national planning policy encourages continued economic development, this cannot be at the expense of the diversity and vitality of town centres. 'On balance ...the business needs of the appellant do not justify the harm the change of use would have on Leamington Spa Town Centre.* Therefore the use of the 1st floor was contrary to the objectives of Local Plan Policy (LTC) H3.

Character and Appearance of Conservation Area: He considered that the change of use, itself, had not resulted in structural alterations to the building, he noted that air conditioning units have been installed on the flat roof portion of the property and security grills over the first floor windows. Whilst these look incongruous, he considered that they were not directly related to the change of use, since the air conditioning serves the ground floor as well as the first and the security grills may remain after the use ceases. Therefore, he considered that change of use itself would have a neutral impact on the Conservation Area and there would be no harm to conflict with Local Plan policy ENV 6.

COMMENTS

This is a good decision that supports the protection of residential uses on upper floors, notwithstanding that the property is only within the fringes of the residential parts of the town centre and has numerous different business uses in the close vicinity. It has parallels with a previous appeal decision in respect of no. 6 Augusta Place in 2001, and it has again been concluded that the effect on diversity and vitality of the town centre is more important than maximizing economic activity or the perceived difficulties in finding a residential user.

RESIDENTIAL FRONT EXTENSION – IMPACT UPON THE NEIGHBOURS

2. Erection of a two storey extension to front of house and double garage, 'White Gables' Hill Wootton Road, Leek Wootton (W20021809)

- Committee Decision 17 February 2003 (contrary to officers recommendation)
Injurious to the visual amenities of the area, and unneighbourly form of development due to height and overbearing dominance – contrary to WDLP Policy (DW) ENV3 (Development principles)
- Appeal DISMISSED 31 October 2003

The Inspector considered that the two issues were the effect of the proposal upon the character and appearance of the area; and the effect upon the living conditions of neighbouring residents by reason of visual impact.

Impact upon character – The Inspector noted the change of ground levels in the area and commented that the front extension would be 1.75 metres below the ground level of the main house and that the garage would be set into the slope of the land. The position of the garage element was acceptable.

The front cylindrical extension was considered to represent “bold architecture” and to be of a high standard of design. Its visual impact upon the street scene was not considered to be great, and therefore did not adversely affect the character of the surrounding area or that of adjacent buildings.

Neighbours living conditions – It was noted that there was a significant difference in levels between the appeal site and the neighbouring property at Firlea and that the existing property already dominated the views from the rear garden of Firlea. The proposed extension although lower than the main house would, as the Inspector commented “... *would occupy a space or gap which presently provides some welcome relief for the occupiers of Firlea, providing longer distance views towards the imposing cedar tree in the grounds of The Lodge, and the sky.*”

The area of concern was that of sense of enclosure for the occupiers of Firlea, rather than loss of light, overlooking or loss of privacy. The Inspector commented that the impression would be of a continuous line of built development, and be “overbearing” for the neighbours. It therefore represented unneighbourly development harmful to the living conditions of the occupiers of Firlea to an unacceptable degree. The opportunity for landscaping to address the harm was not considered adequate because of the limited width of the space available.

COMMENTS

The decision illustrates that the Inspectorate remain concerned to ensure that residential amenity considerations are protected, and this includes the enjoyment of a rear garden even when the issues of overlooking or loss of daylight/sunlight have been addressed. In this case the Inspector appears to have taken into account the elements which contribute to the character of the area and then assessed whether the front extension enhanced or harmed these elements.

DOMESTIC GARDEN SHED – IMPACT UPON STONELEIGH ABBEY PARK

3. Erection of a garden shed, ‘Holly Lodge’, 2 The Cunnery, Stoneleigh Park, Kenilworth (W20030168)

- Delegated decision 28 March 2003
- Distinctive residential development in highly sensitive location - shed detrimental to the character of the area, inappropriate use of materials, contrary to WDLP Policy (DW) ENV3 (Development principles)
- Appeal DISMISSED 6 November 2003

The Inspector considered that the main issue was the impact of the development on the character and appearance of the area, particularly the adjoining residential development and Stoneleigh Abbey Park.

The Inspector considered that the shed was in a very prominent and highly conspicuous position adjacent to the Abbey drive at the entrance to The Cunnery. He noted that the shed had the appearance of a typical wooden garden shed, but with a green metal tile-effect roof.

The Inspector judged that the nature, height and position of the shed meant that it represented a most uncharacteristic feature at the entrance to the residential development, and that it significantly detracts from the established character and appearance of the residential development and the surrounding parkland. He considered that the green metal tile-effect roof was out of keeping with the more traditional materials on adjoining buildings.

The Inspector noted that planning permission was granted for this residential development on the basis of very special circumstances relating to the restoration of the Abbey and that considerable care had been taken to ensure that the development achieved a high standard of design and layout appropriate to the sensitive and historic location. He considered that the shed detracts from the distinctive qualities and character of the residential development and that it has begun to erode the character and appearance of the surrounding parkland.

The Inspector agreed with the Council that this type of garden shed would be wholly acceptable in most residential areas, but that this is a high quality development in a very sensitive location in Stoneleigh Abbey Park where such development is unacceptable.

COMMENTS

The Inspector fully supported the Council's decision in this case. The key concern of the Council was that this is a high quality development in an extremely sensitive location. Therefore, a shed that would normally raise no concerns in most residential areas is not appropriate in such a prominent position in this location. In view of this decision it is hoped that the property owner will remove the shed from its current location without the need to take enforcement action.

HIGH DENSITY RESIDENTIAL DEVELOPMENT ON URBAN 'BROWN FIELD SITE' – CHARACTER AND APPEARANCE OF AREA & EFFECT OF LIVING CONDITIONS & OTHER ISSUES

4. Construction of 61 no. 2 bed flats, parking and associated roads & sewers. Land at former Whitemoor Engineering Works, Pipers Lane, Kenilworth.

- Committee decision – 16th January 2003 (*contrary to officers recommendation*)
- Scale, form, design not harmonising with surroundings & overbearing for neighbouring properties – conflict with WDLP (DW) ENV 3. Excessive density /inadequate amenity space– conflict with WDLP (DW) H22
- Public Inquiry on 30th Sep, 1st Oct, & 6th Oct 2003
- Appeal ALLOWED 6 November 2003: permission granted subject to 20 conditions.
- Cost application by WDC against applicant failed
- Cost applications by appellants against WDC, allowed in part

The Inspector considered that there were 3 main issues; first the effect on the character and appearance of the local area; secondly, the effect on living conditions of occupiers of nearby dwellings particularly privacy and outlook; and thirdly, whether reasonable living conditions for future occupants would be provided, particularly the provision of amenity space.

Character & Appearance:

He considered that this previously developed site seriously detracted from the character and appearance of this part of Kenilworth and its redevelopment with an appropriate residential scheme would be of considerable visual benefit to the area. He accepted that the proposed density of 85 dwellings per hectare would be higher than most existing development in the area. He said *'However, the site is within the built up part of town, close to bus routes, not far from the town centre, and near to a wide range of facilities, including shops, schools and open space. In addition, to the jobs provided in the town centre there is also an employment area nearby. Consequently, given the good accessibility and opportunity to move about by means other than the car, it is my view that the site is one that local and government policy favours for increased density provided it is sensitively designed'*.

He considered that the proposed development was sensitively designed with a mixture of 2, 2½, and 3 storey buildings with a variety of set backs to the buildings harmonising with the variety of sizes and types of dwellings and other buildings in the area. He thought that the use of perimeter blocks with parking provision within courts reflected the general pattern of development in the area and found that the orientation of some main elevations away from Pipers Lane was acceptable given the unsightly appearance of the civic amenity site.

He did not consider the 19% coverage by buildings to be excessive. Whilst accepting the loss of the existing vegetation including the species rich hedgerow along Pipers Lane was regrettable, he considered that the proposed boundary treatment and landscaping would enhance the overall appearance of the scheme. Therefore he concluded on this issue, *'the proposals would enhance the character of the local area and make a positive contribution to its appearance'*, and that it accorded with the relevant Structure and Local Plan Policies.

Neighbours Living Conditions:

He considered that the distances between the proposed and existing properties would generally accord with the Council's Supplementary Planning Guidance – 'Distance Separation' to which he attached substantial weight. He agreed with the Council that there were a few cases that fell short of the required distance but considered that by virtue of existing planting, future landscaping, oblique orientation this would not result in excessive overlooking or dominance. He thought that the noise generated by the proposed development would be far less than that generated by the previous use of the site.

Future Occupiers' Living Conditions:

He accepted the Council's argument that the restored landfill site to the north east of the appeal site, notwithstanding its designation in the WDLP, was not actually public open space. Also, he noted that the development made no provision for an on-site recreational space in accordance with policy (DW) RL5 of the WDLP or for an off site contribution towards recreational provision. However, he considered that for high density schemes, such as this, that are attractive to single people or couples, it was not always necessary to provide on-site open space. Also, he thought that the considerable number of areas, both around the edges and within the site that would be given over to tree and shrub planting and or turfing would help to provide an acceptable environment for future residents. Regarding the adequacy of existing recreational facilities in the area, in the absence of evidence of local deficiencies, he was unable to conclude that the proposed development should make an on site or contribute to off site recreational provision. Indeed, he considered that the public open space called 'Black Pad', 250 metres to the south, was an attractive and conveniently located open space.

Other Considerations:

Disabled parking: Whilst he considered that 6 oversized disabled spaces were required he did not agree this would lead to an overall reduction in other parking spaces, because of the scope to locate spaces to overlap footways without undue safety problems and a slightly lower demand for conventional spaces. Also, he considered that the small size of the units, the provision of social housing and the accessibility of the site were factors that pointed to lower car ownership levels than other schemes. Mindful of that the ratio off street parking spaces to dwelling was well in excess of 1 per dwelling, even if disabled parking was not included, he did not agree it was necessary to increase parking provision. He considered that the scheme would not be likely to increase the level of on-street parking in the area to any significant degree. Also, he considered that since the provision of parking spaces for disabled people was such a minor revision that did not change the substance of the scheme, it could be addressed by a suitably worded condition without prejudicing the interested parties.

Highway safety: Addressing the concerns of local people about highway matters, taking account of the fact that the scheme was the subject of a Stage 1 Road Safety Audit and that the Highway Authority did not object, he considered that there were insufficient highway safety grounds to find against the proposal. In particular, he considered that visibility splays to be provided on Pipers Lane would make the potential conflict between the traffic from civic amenity traffic and the proposed development acceptable. Also, given the past and potential future industrial use of the site, with the proposed improvements to signage and road surfacing, he thought that the use of the substandard junction of Whitemoor Road and Pipers Lane was acceptable.

Flooding, drainage and land contamination: He said '*I am satisfied that the appellant has thoroughly examined all these matters and where necessary, has indicated solutions that would satisfactorily address these concerns. The attachment of Grampian-style conditions, in line with those recommended by Severn Trent Water and the Environment Agency would ensure that details of such works are finalised before development commences*'.

Unilateral Planning Undertaking:

He considered that the submitted Section 106 Unilateral Undertaking covering matters relating to social housing (provisions of 18 units), education, public transport and off-site highway, was necessary, taking account of the prior agreement between the principal parties.

Overall Conclusions:

He concluded, '*the proposal would enhance the character of the local area and make a positive*

contribution to its appearance, would not be unduly prejudicial to the living conditions of the occupiers of nearby dwellings and would provide reasonable living conditions for future occupiers. These conclusions constitute compelling grounds for allowing the appeal. None of the other matters raised outweigh the considerations that have led to my conclusions'. Therefore he allowed the appeal and granted planning permission subject to conditions.

Conditions:

He considered that most of the conditions suggested or accepted by the Council were appropriate, apart from the need to submit a working method statement, which he found too onerous. There are 20 conditions imposed, including 13 that require schemes and/or works to be agreed/ implemented before works commence. The conditions cover a range of issues including landscaping, contaminated land, disabled parking for 6 spaces, drainage works, and hours of operation of construction works.

COSTS DECISIONS:

Application by WDC against Persimmon Homes South Mids:

Whilst accepting that both the provision of adequate disabled parking and public open space were legitimate planning considerations he considered their emergence very late in the proceedings justified the appellant's right to continue with the Inquiry and deal with all concerns raised by the Council.

Application by Persimmon Homes South Mids against WDC;

Density: The Inspector said *'I am satisfied that the evidence produced by the Council was substantial and constituted a material consideration... '* and that it demonstrated their relevance *'...by reference to development plan policy and national guidance'*. He accepted that the use of various density calculations by the appellant were a useful tool but he agreed with the Council that it is also important to make a visual assessment of the design of the proposed development and the existing area to assess compatibility. Whilst he did not share the Council's view on this impact this was essentially based on his professional judgment and therefore considered that it had not acted unreasonably.

Disabled parking & open space: The Inspector did not deal with these grounds of costs because the appellant did wish to pursue them if the appeal was allowed.

3rd day of Inquiry: He considered that the issue of the lack of disabled parking only became apparent as a result of the Council's letter issued 2 weeks before the Inquiry and that this constituted a new reason for refusal introduced at a late stage in the proceedings contrary to one of the requirements of the Costs circular 8/93. He considered that this was *'completely at odds with the procedure rules for inquiries, which are designed to ensure that everyone has adequate time to prepare properly'*. *'Furthermore .. the consideration of the disabled parking issue significantly prolonged the length of the Inquiry and made it necessary to sit on the afternoon of 6th October 2003. Consequently the appellant incurred unnecessary costs by having to be represented on that afternoon'*. Therefore a partial award of cost was justified in this respect.

COMMENTS

The Inspector clearly was of the view that there was little fundamentally wrong with the appeal proposal that had been subject of improvements during the application process. It indicates that it is difficult to sustain refusals for residential developments with a variety of scales and appearance where the surrounding area has a variety that is not significantly dissimilar. It, also, is indicative of central government policy that promotes high density development relative to the surrounding area, particularly on sustainable sites, relatively close to the town centres, which would improve the character and appearance of an unsightly 'brown field' site.

Although the Inspector accepted that the effect on living conditions of both neighbours and future occupants were main issues it is interesting that limited weight was placed on the deficiencies of the scheme in terms of some of the distance separation associated with some of the units and absence of recreational space/ provision, contrary to the objectives contained in Policy RL5 of the local plan.

Regarding the other issues raised by local residents, it has to be acknowledged that there were no firm objections to the final application proposals from the Highway Authority, the Council's Environmental Health Unit and Severn Trent Water. In these circumstances the Council had no option but to place before the Inspector evidence solely based on reasons for refusal as set out in the decision notice.

RESIDENTIAL REDEVELOPMENT – EFFECT ON CONSERVATION AREA AND ADJACENT LISTED BUILDINGS

5. Demolition of existing building and erection of two three storey dwellings with garaging under, land at 2 Gerrard Street, Warwick (W20011231)

- Committee Decision 11 September 2003 (*contrary to officer recommendation*)
- Cramped and over-intensive layout, incongruous design out of character with existing buildings in the street, detrimental to character and appearance of conservation area; raising in height of boundary wall seriously detrimental to living conditions of 10 Smith Street.
- Public Inquiry held 28 October 2003
Appeal DISMISSED 20 November 2003

The Inspector considered that the main issues in this appeal were: (i) the effect of the proposal on the character and appearance of the Conservation Area and the setting of nearby listed buildings; and (ii) the effect on the living conditions in adjoining residential properties in terms of daylight and outlook.

Effect on conservation area and listed buildings

The Inspector noted that the Grade II listed timber-framed cottages at 4-6 Gerrard Street are elevated above the road at about the same height as the existing building on the appeal site. He considered that the topography of the appeal site makes an important contribution to the setting of the listed buildings. Furthermore, he considered that the walls in front of the cottages and the wall along the front of the appeal site provide a degree of visual continuity in the street scene. The Inspector concluded that removing the wall and embankment altogether would have a severe impact on the setting of the cottages.

The Inspector did not accept that the proposed excavations in close proximity to 4 Gerrard Street would cause undue risk to the stability of that listed building.

The Inspector noted that 4-6 Gerrard Street are presently a prominent feature in the street scene and that the gable end of No. 4 is clearly visible from the road because the present building on the appeal site is set back from the road. The proposed houses would be set much further forward and would be very close to that gable, largely obscuring it from view. The Inspector judged that this would harm the setting of the listed buildings and the street scene.

The Inspector distinguished between the character of the east side of Gerrard Street, which takes the form of a relatively continuous terrace, and that of the appeal site side, which is comprised of a series of distinct groups of buildings separated by gaps. The proposed dwellings would occupy the full width of the site, and would be set much further forward than the existing building, creating the impression of more continuous development. The Inspector considered that this, combined with the mass of the proposed buildings, would detract from the established character of the street.

The Inspector considered that the design of the proposed houses, including the provision of garages and the projection of the upper floors in front of the ground floor, was not inappropriate in this location. He did agree that the fenestration of the more southerly of the two houses appears visually unsettling. However, he was not persuaded that this shortcoming in the design would be enough, on its own, to justify withholding planning permission.

Living conditions in adjoining properties

The Inspector noted that the proposal to raise the height of the boundary wall was introduced at the request of the occupants of the affected property. He did not agree that the raising in height of the wall would have an undue impact on living conditions in 10 Smith Street in terms of either outlook or daylight levels within the house.

COMMENTS

A revised scheme on this site was refused planning permission in September 2003, prior to this public inquiry. An appeal against that refusal was to be the subject of a further public inquiry in May 2004. That proposal would not have addressed the concerns raised by the Inspector in his decision letter and the appeal has subsequently been withdrawn.

In view of this appeal decision, an acceptable redevelopment of this site will require a significant change in approach. To take account of this Inspector's comments, any revised scheme should respect the setting of 4-6 Gerrard Street and the character of this side of the street. In particular, a significant part of the embankment should be retained and any building on the site should be designed and positioned so that it does not obscure the gable end of 4 Gerrard Street.

EXTENSION TO CONSERVATORY – BREACH OF 45 DEGREE GUIDELINE BY EXISTING STRUCTURE

6. Extension to an existing conservatory, 24 Mill House Close, Leamington Spa (W20021905)

- Committee Decision 17 February 2003 (*contrary to officer's recommendation*).
- Overbearing impact upon the neighbours, breach the 45 degree SPG.
- Appeal ALLOWED 27 November 2003.

The Inspector considered that the main issue was the effect on the visual amenities of adjoining occupiers.

The Inspector noted that the existing conservatory had been erected under permitted development rights. He judged that, as the original conservatory was lawfully constructed, the starting point for the consideration of the scheme must be the dwelling plus the conservatory. The extension would be on the side farthest from the adjoining dwelling and would be almost completely shielded by the mass of the existing conservatory. The Inspector concluded that it would make no material difference to the outlook from the neighbouring property.

COMMENTS

This proposal may have been seen as an attempt to circumvent planning controls by erecting the harmful part of the conservatory under permitted development rights before submitting a planning application for the remaining part of the desired development. This decision confirms that such issues should not be taken into account. Where an existing development is lawful, the starting point for the consideration of subsequent schemes should be the existing situation.

ERECTION OF DWELLINGS WITHIN THE GREEN BELT – INAPPROPRIATE DEVELOPMENT

7. Erection of five terraced houses, land adjoining Hill Top House, Budbrooke (W20030855)

- Delegated Decision 7 July 2003
- Inappropriate development within the Green Belt, contrary to Local Plan (DW)ENV1; detrimental to Special Landscape Area, contrary to Policy (DW)C8.
- Appeal DISMISSED 4 December 2003

The Inspector considered the main issues to be whether the proposal constitutes inappropriate development within the Green Belt and, if so, whether there are any very special circumstances sufficient to outweigh the presumption against such development.

The Inspector noted that the appellant did not dispute that the erection of houses constitutes inappropriate development in the Green Belt. The Inspector observed that the site is presently unused land which is now a narrow copse of rather scrubby trees. However, he found no great merit in the argument that it would be better to use this low value unused land for housing.

With regard to a suggestion that the proposal would provide smaller homes for the local rural community at affordable prices, the Inspector noted that there is no evidence of local need and that, even if there were, development plan policies seek to locate such housing in or adjacent to towns and villages.

The Inspector concluded that the matters raised by the appellant did not constitute very special circumstances sufficient to outweigh the presumption against inappropriate development in the Green Belt.

COMMENTS

This was latest in a number of similar applications by this particular agent for new residential development in the Green Belt. All have been dismissed at appeal.

PART 3 - APPEAL PERFORMANCE: YEAR April 2003 - March 2004

Total number of Planning decisions (incl adverts) = 44

Dismissed = 37

Allowed = 7

FORTHCOMING HEARINGS & PUBLIC INQUIRIES - YEAR 2004

HEARING – ENFORCEMENT NOTICE APPEAL

13 Jan Erection of timber pavilion, rear of Pools Cottages, Crackley Lane, Stoneleigh

PUBLIC INQUIRY – CERTIFICATE OF LAWFULNESS APPEAL

20 Jan Use of land for the storage of vehicles, machinery and other equipment and the storage of hay and straw at Field 3335, Five Ways Road, Shrewley (W20021580)

HEARING

2 Mar Erection of first floor and 2 storey side and front extension; 53 Arras Boulevard, Hampton Magna, Budbrooke.

HEARING

9 Mar Erection of new dwelling and garage after demolition of existing house, 3 car garage with flat above stables; Eastfield, Old Warwick Road, Rowington.

PUBLIC INQUIRY – ENFORCEMENT NOTICE APPEALS

23 Mar Use of land for the storage, Magpie Hall Farm, Rouncil Lane, Kenilworth

PUBLIC INQUIRY – CERTIFICATE OF LAWFULNESS APPEAL

30 Mar Use of land for the stationing of a mobile home for use for residential purposes, Five Ways Nurseries, Five Ways, Haseley