

APPEALS AND ENFORCEMENT SECTION - MONTHLY REPORT

FEBRUARY 2004

PART 1 - PLANNING APPEALS RECEIVED FROM THE PLANNING INSPECTORATE

WRITTEN REPRESENTATIONS

41 Dunblane Drive, Cubbington, Leamington Spa – *Extension and loft conversion* (W20030852)

37 Dunblane Drive, Cubbington, Leamington Spa – *Loft conversion* (W20030721)

Quince Cottage, 4 The Bank, Stoneleigh – *Erection of first floor rear extension* (W20030791/0729LB)

The Dell Guest House, 8 Warwick Place, Leamington Spa – *Display of internally illuminated projecting box sign* (W20031431)

Leamington & County Golf Club, Golf Lane, Whitnash – *Demolition of former green keeper's shed/workshop and erection of a single detached dwelling* (W20030973)

141 Whitemoor Road, Kenilworth – *Erection of 2 storey side extension, single storey rear extension and rear conservatory* (W20031356)

Campbells Farm, Weston Lane, Weston Under Wetherley – *Alteration of existing vehicular field access to form new access for new dwelling*. (W20031444)

Lock House, Birmingham Road, Hatton – *Erection of two storey side extension* (W20031603/1718LB)

HEARING

PART 2 - PLANNING APPEAL DECISIONS

RESIDENTIAL BARN EXTENSION IN THE GREEN BELT – INAPPROPRIATE DEVELOPMENT

1. Erection of side extension with living accommodation in roofspace, The Barn, Red Lane, Kenilworth (W20030291)

- Delegated Decision 17 April 2003
- Detrimental to the design and character of the converted barn by reason of its size, bulk and design - contrary to WDLP Policy (DW) C3 (Rural buildings)
- Appeal DISMISSED 15 January 2004

The Inspector considered that there were two main issues. Firstly, whether the proposal amounted to inappropriate development in the Green Belt, and if so, whether there were any special circumstances which would outweigh the presumption against such development. Secondly, the effect upon the character and appearance of the existing building and the surrounding area.

Green Belt: Given an increase in floor space of 45%, he considered the proposal would entail a very sizable addition to the existing dwelling which could not reasonably be described as a modest extension.

He considered the proposal would significantly increase the mass of the existing dwelling and substantially alter its scale and felt the development would conflict with LP objectives for protecting the Green Belt.

He felt the proposal comprised a disproportionate addition over and above the size of the original dwelling and would therefore be inappropriate development within the Green Belt and by definition cause harm.

In his opinion, although it would not be prominent within the landscape and only have a limited effect on the openness of the area, the proposal would conflict with established national and local planning policies that protect the Green Belt. He did not consider the additional accommodation provided and the argument concerning the more efficient use of land to amount to very special circumstances to outweigh the harm identified.

Character & Appearance: He considered that the proposal would significantly increase the bulk and mass of the dwelling. In addition he felt the design of the extension would confuse the form and appearance of the original building. In his opinion the extended property would appear as a modern dwelling rather than a traditional rural building and seriously harm the integrity of the building, reducing its contribution to the rural area. It would also fail to accord with the relevant policies and the council's supplementary planning guidance with regard to rural buildings.

COMMENT

This is a good decision that supports the protection of the Green Belt notwithstanding that the proposal was not prominent in the landscape. A strong emphasis was placed upon the significant increase in size and mass and indicates the strong emphasis given in national guidance and local planning policies for restricting additional development in the Green Belt.

NEW DWELLING IN A RURAL VILLAGE – AMENITY AND SUSTAINABILITY ISSUES

2. Erection of a dwelling, land adjacent to St Mary's Church, Church Lane, Stoneleigh (W20030167)

- Delegated Decision 18 March 2003
- Contrary to Structure Plan policies GD3, GD5 and RA1, and also WDLP policy (DW)H8, detrimental to the character of the Conservation Area, contrary to WDLP Policy (DW) ENV6 and (DW) ENV8, adverse impact upon the setting of nearby listed buildings contrary to policy (DW) ENV12.
- Appeal DISMISSED 19 January 2004

The Inspector considered that there were two main issues. Firstly, the effect of the proposed house on the character and appearance of the Conservation Area and setting of the Listed Building and, secondly, whether it would constitute a sustainable form of development.

Impact upon the Conservation Area & Listed Building: He did not accept the appellants' conclusion that since the appeal site was not specifically identified by the Local Plan Proposals Map as a protected open space that the proposal therefore complied with LP policy H8 which designates Stoneleigh as a Limited Infill Village. He was of the view that proposals to develop non-designated open spaces should be considered on their merits and in the context of the contribution that they make to the character and appearance of the Conservation Area.

He considered that the openness of this particular area added to the character of the area and also served a useful purpose in providing views within the Conservation Area. He considered that the appeal proposal would erode the current open character of this particular area and would also intrude on the views and thereby detract from the setting of this important Grade I Listed Building and from the character and appearance of the Conservation Area.

He considered it not to have any architectural merit and that it would not make a positive contribution to the area that might be set against the harm caused by the loss of open space.

Sustainability: Although he accepted the appellant's argument that this was previously developed land and that its reuse would therefore accord with Government policy, taking into account Structure Plan policies and para 31 of PPG3 he considered that this was not in itself a good reason for developing in rural areas.

He agreed with the appellants' argument that major employment centres were within cycling distance but he did not regard walking along the unlit country roads around Stoneleigh as a safe or convenient alternative to the car. He felt that there was very little in the way of employment, shops or other services within walking distance of the appeal site and only a limited bus service. He therefore considered that the occupants of the proposed house would have to rely on the use of the private car to meet their everyday needs, contrary to the aims of PPG3 and the Structure Plan.

He considered that the Council had put forward compelling arguments to show that it had made more than adequate provision for rural housing in the District. Consequently he did not consider the appellants' comment that there was a shortfall in the overall level of housing completions in the District as a whole as a good argument for further development away from the major urban areas.

COMMENT

This highlights that all undeveloped land within a rural village may make a valuable contribution to the character and appearance of the village, especially if designated as a Conservation Area even if the land is not designated specifically as an open space worthy of retention. Interestingly the Inspector gave some weight to the Structure Plan policy of directing new housing to urban areas and the need to providing housing in locations which do not rely solely on the use of a car. The unacceptability of the proposal because it did not constitute a sustainable form of development may be increasingly a reason for an appeal to be dismissed.

LOSS OF RURAL EMPLOYMENT VERSES NEW RURAL HOUSING – PROMOTION OF SUSTAINABLE DEVELOPMENT

3. Erection of four dwellings and garages after demolition of workshops, The Forge, Hatton Green, Hatton (W20030346)

- Delegated Decision 16 April 2003
- Contrary to Structure Plan policies GD3, GD5 and RA1, and also WDLP policy (DW)H8, and WDC 2001 SPG on Limited Infill Villages with regard to the location of new housing development
- Appeal dealt with by Hearing 9 December 2003
- Appeal DISMISSED 19 January 2004

The Inspector considered that there were two main issues. Firstly, whether the loss of the existing employment use at the site would conflict with policies aimed at ensuring that local employment opportunities are retained, and, secondly, whether the site is an appropriate location for the proposed dwellings given policies aimed at promoting sustainable development.

Whether the loss of the existing employment use at the site would conflict with relevant planning policies: As the only employment site in the village and given that it employs 3 workers living within a mile of the site he considered that the loss of this use would result in an imbalance between housing and local employment opportunities within the village.

He did not consider the noise and disturbance generated by the existing use of the site or the risk to highway users from relatively higher volumes of traffic associated with the use to justify the loss of an employment use in this location. He felt that given the local nature of the associated traffic that a possible decrease would not justify the loss of the existing employment use.

Whether the site was an appropriate location for the proposed dwellings: He considered that due to the lack of shops and other facilities in the village and given its distance from the nearest town, services and facilities needed for day to day life were not available within walking distance and therefore someone living on the site would have no real alternative but to use a car. They would also have no other choice but to rely on their cars on a regular basis in order to commute to work.

Although taking into account the continual need for new housing in rural areas to sustain healthy economic activity, he considered that the cornerstone of Government Planning Policy to be sustainable development. In this case he did not consider that the proposed houses would be complemented by adequate local transport and other facilities to meet the appropriate objectives of sustainable development in a number of structure plan policies.

He considered the proposal to conform to LP policy H8 as it would protect the character, scale and environment of the settlement. However, he felt that the lack of evidence that the houses would meet the needs of the local population or that they would help to support the local community were material considerations which outweighed this.

Conclusion: He concluded that the appellant had failed to demonstrate that the site was an appropriate location for the proposed houses given policies aimed at promoting sustainable development. He felt that the proposal was contrary to the objectives of the relevant Structure Plan Policies and national policy guidance.

COMMENT

There was in the decision letter a strong emphasis placed upon encouraging sustainable development, and the need to support the rural community. The loss of the employment site and its replacement with 'normal' houses did not reflect this policy objective, and therefore could not be supported by the Inspector, notwithstanding that amenity terms there was not any objection. This decision is quite significant because the retention of an employment use at the site has been encouraged, even though it was acknowledged that over the years the present use has at times disturbed the occupants of surrounding houses.

RESIDENTIAL TWO STOREY SIDE EXTENSION – PROTECTION OF VISUAL GAP BETWEEN PROPERTIES

4. Erection of a two storey side extension, rear conservatory and front porch; 27 Lonsdale Road, Leamington Spa (W20030763)

- Delegated Decision 24 June 2003
- Detrimental to visual amenity, creation of terracing effect, contrary to WDLP Policy (DW) ENV3, undesirable precedent
- Appeal part DISMISSED (side extension)
Part ALLOWED (rear conservatory) 29 January 2004

The Inspector considered that as a design the side extension was well conceived, reflecting the style of the original dwelling. However, he felt that space between houses on this side of Lonsdale Road was at a premium and to allow this development would reduce the gap between the properties to an unacceptable level to the detriment of the character and appearance of the road.

Conclusion: He concluded that the side extension would be unacceptable because of the small distances involved and the fact that the proposal would reduce the gap between the appeal site and No. 29 even further. He considered the proposal for the new conservatory to be acceptable, provided the external materials used would complement those of the house. He therefore dismissed the proposal for the side extension but allowed the rear conservatory and granted planning permission, subject to 2 conditions.

COMMENT

Existing gaps between residential properties can make a significant contribution to the character and appearance of an area and should be maintained where appropriate. This is a good decision which is consistent with local plan Policy (DW) ENV3 and ensures that a precedent is not set for similar proposals in similar locations which the Council would find difficult to resist.

DETACHED CARPORT – IMPACT UPON NEIGHBOURS RESIDENTIAL AMENITY

5. Erection of a detached carport and garden store (amended location to W20030703); 38 High Street, Kenilworth (W20031029)

- Committee decision 19 August 2003 (*contrary to officers recommendation*)
- Unneighbourly form of development, excessive size and scale, adverse impact upon Conservation Area, contrary to WDLP Policy (DW) ENV3, and (DW)ENV6, (DW)ENV8
- Appeal DISMISSED 29 January 2004

Character & appearance of the Conservation Area: He considered that the materials proposed to be used as well as the location and scale of the car port and garden store would enable the appearance and character of the Conservation Area to be preserved. He therefore did not object to the proposed development on account of its location in the Conservation Area.

Effect on the residential amenities of No.6 Elmbank Road: With regard to the fact that the carport/ garden store would project above the boundary wall with No.6 Elmbank Road he considered that the outlook from the garden and rear ground floor windows of No.6 would be significantly dominated by the carport/ garden store. He did not consider, however, that the levels of light in habitable rooms in No.6 would be adversely affected, nor would the impact from the upper floors be harmful.

Conclusion: He concluded that the proposed development would be unacceptably overbearing and dominant when seen from the rear garden and ground floor rear windows of No.6 to the extent that the residential amenities of the property would be significantly harmed, thus conflicting with the relevant policies.

COMMENT

The decision illustrates that in certain circumstances when separation distances between properties is limited the Inspectorate is concerned to ensure that the neighbour's residential amenity considerations are adequately protected. On this occasion it was the dominant view of the carport roof above the boundary wall from the rear windows which was the deciding issue. Impact upon amenity therefore can go beyond whether or not the proposal has an adverse effect on daylight/overshadowing.

NEW DWELLING CREATED BY EXTENSION – IMPACT UPON FORM AND FUNCTION OF THE AREA

6. Erection of a single storey extension to provide a separate dwelling unit and new vehicular access onto Haddon Road; 78 Haddon Road, Leamington Spa (W20031070)

- Delegated Decision 6 August 2003
- Restricted cartilage, incompatible with the character of the area, contrary to local plan and national guidance, contrary to WDLP Policy (DW) ENV3
- Appeal DISMISSED 29 January 2004

The Inspector considered that the creation of such a small dwelling in this location would be alien to the surrounding residential area in terms of both form and function. He felt that this proposal did not have a degree of visual unity and harmony and conform to the overall design concept of the estate.

He considered it to be small for an individual dwelling with insufficient space outside for domestic paraphernalia. He felt the proposal to be in too close proximity to the adjoining property so as to produce a reduction in the amenities of the residents of both dwellings by reason of noise and lack of privacy. He also considered that such a small dwelling would diminish the character and appearance of this part of the estate.

COMMENT

With the increase in pressure to provide additional housing within the urban area, and the current demand for small units this decision is of particular interest because the creation of the self contained unit in this particular location is considered to be alien in terms of both form and function. The Inspector appears to

have taken into account the elements which contribute to the character of the area and assessed that the small size of the dwelling was a significant factor not in its favour, and the size of the plot and its relationship to its neighbours as all contributing to a potential lack of privacy and noise disturbance. There is likely to be reference to this decision letter in the future where a potential extension to a single dwelling in a residential estate situation to form a self contained residential unit is being considered.

TWO STOREY RESIDENTIAL EXTENSION – CLOSE PROXIMITY TO SITE BOUNDARY

7. Erection of a single storey extension to garage to provide store and first floor side extension, 6 Elmdene Close, Shrewley (W20030312)

- Delegated Decision 4 June 2003
- Two storey extension too close to plot boundary, adverse effect upon character of the area, contrary to WDLP Policy (DW) ENV3 and if allowed unacceptable precedent would be set.
- Appeal DISMISSED 6 February 2004

The inspector considered the main issue was the effect of the proposal on the character and appearance of the area.

He considered that although the gaps between existing properties and boundaries and neighbouring buildings varied, the general appearance of the area was characterized by houses set some distance apart from each other and from common boundaries.

He felt that by not leaving a gap at first floor level between the boundary and the extension the proposed massing along the front elevation would look cramped. He considered further that as the property was prominently located at the end of the cul-de-sac the closing of the gap between the appeal property and number 5 would look inharmonious with its surroundings – the proposal would therefore have a detrimental impact on the streetscene.

He felt that the broad similarity of the extension and the existing house was not sufficient to overcome the harm he considered the proposal would have on the character of the area.

Conclusion: He concluded that the proximity of the first floor extension would result in a cramped and inharmonious extension in a prominent location within the streetscene and was therefore contrary to the relevant policy of the Local Plan.

COMMENT

This decision shows that similar design to the existing dwelling is not the only consideration to be taken in assessing the impact of a proposed extension on the character & appearance of an area. A dangerous precedent has been prevented.

BASEMENT RESIDENTIAL CONVERSION – IMPACT UPON THE STREET SCENE

8. Conversion of basement to a flat including provision of lightwells to front and rear, new front bay window, rear access doors and front railings (after demolition of existing front boundary wall) 18 Clarendon Avenue, Leamington Spa (W20030388)

- Delegated Decision 28 May 2003
- Removal of front garden and provision of railings detrimental to character of the conservation Area, contrary to WDLP Policy (DW) ENV6 and (DW)ENV8.
- Appeal DISMISSED 23 February 2004

The inspector considered the main issue to be the effect of the proposed scheme on the character and appearance of the area.

He considered that this stretch of Clarendon Avenue to have a cohesive character and it was noted that none of the other properties in this vicinity had a light well in the form proposed here. He felt that the formation of the lightwell would change the fairly modest terraced house into a more obviously intensively used property. He considered that this would significantly alter the character and appearance of the property and would also detract from and unbalance the present general architectural unity of the terrace. Although he felt that railings were an established part of the streetscene here he did not consider this to override the main element of the scheme.

Conclusion: The proposal would detract from the character and appearance of the area and would not serve to preserve or enhance the character or appearance of the Leamington Spa Conservation area.

COMMENT:

This is a good decision which supports the view taken that within the Leamington Conservation Area that changes to the external appearance of a residential building can have an impact upon the perceived intensity of use of a house and therefore has a bearing on the character of the property and the appearance of the adjacent area.

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

Total number of Planning decisions (incl adverts)	= 60
Dismissed	= 47
Allowed	= 12
Part Dismissed/Part Allowed	= 1

PART 4 : ENFORCEMENT NOTICE APPEAL

- 1. Erection of a single storey pitched roof timber pavilion with associated timber decking – Pools Cottages, Crackley Lane, Kenilworth (ACT220/7/00)**
 - Enforcement action authorized by Committee March 2003
 - Delegated retrospective planning permission refused January 2003 (W20021623)
 - Inappropriate development in the Green Belt due to size of building, contrary to PPG2 guidance, contrary to WDLP Policy (DW) ENV1 (Green Belts)
 - Enforcement Notice issued 27 June 2003 to demolish the whole of the structure. Compliance period to be four months
 - Appeal on ground (c) that there had been no breach of planning control, ground (f) compliance requirements excessive, ground (g) compliance period too short, and ground (a) that planning permission should be granted
 - Appeal DISMISSED 28 January 2004, notice varied for compliance from 4 months to 6 months

The Inspector described the site as consisting of a large detached house with associated residential and commercial buildings in the Green Belt countryside near Kenilworth.

Ground (c) The appellant was of the view that there was already a planning permission for a large stable in the same location as the pavilion the Inspector considered that the pavilion was of fundamental different character raising quite different considerations in terms of appearance, use, activity, impact and planning policy. The erection of a timber pavilion for leisure purposes needed planning permission and therefore there had been a breach of planning control and the ground c appeal was dismissed.

Ground (a) The Inspector considered that the building was much larger than it needed to be to provide essential small changing rooms in association with the tennis court. The conclusion reached was that the pavilion was 'inappropriate development in the Green Belt', and that the appellant had not identified any very special circumstances to justify the grant of planning permission.

Ground (f) It was not considered that the requirements of the notice to remove the pavilion were excessive. The fitting of stable doors to the windows on the rear elevation was not sufficient to overcome the injury to the Green Belt caused by the loss of openness of the building of this size.

Ground (g) The Inspector was of the view that the appellants request to extend the compliance period to six months to enable the adjacent field to be used during the drier summer months for the removal of materials and to enable as appropriate discussions with the Council was reasonable, and therefore the compliance period was varied to six months.

FORTHCOMING HEARINGS & PUBLIC INQUIRIES

HEARING

2 Mar Erection of first floor and 2 storey side and front extension - 53 Arras Boulevard, Hampton Magna, Budbrooke (W20030588)

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 (W20030256)

PUBLIC INQUIRY – ENFORCEMENT NOTICE APPEALS

23 Mar Use of land for storage of tree surgeons vehicles, and (Area F) use of land for car repairs/storage - Magpie Hall Farm, Rouncil Lane, Kenilworth (ACT 67/9/02)

HEARING

25 May Erection of a dwelling and detached garage
5/5A Upper Rosemary Hill, Kenilworth (W20030655)

HEARING

8 June Erection of two storey side extension
1A Highland Road, Kenilworth (W20031164)

PUBLIC INQUIRY

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

HEARING

13 July Erection of five detached dwellings and associated works
Land at 5/7 Inchbrook Road, Kenilworth (W20030149)

HEARING

7 Sept Demolition of existing dwelling and erection of two storey dwelling
56 Russell Terrace, Leamington Spa (W20031096/W20031282CA)

HEARING

14 Sept Erection of a timber building in the rear garden
1 Overell Grove, Leamington Spa (W20031272)