

APPEALS AND ENFORCEMENT SECTION - MONTHLY REPORT

SEPTEMBER 2003

PART 1 - PLANNING APPEALS RECEIVED FROM THE PLANNING INSPECTORATE

WRITTEN REPRESENTATIONS - August

27 Lonsdale Road, Leamington Spa – Erection of two storey side extension, rear conservatory and porch (W20030763)

62 Brandon Parade, Holly Walk, Leamington spa – Extension to provide third floor accommodation (W20030624)

24 Mill House Close, Leamington Spa – Erection of rear conservatory (W20021905)

34 Castle Hill, Kenilworth – Erection of single storey rear extension (W20030773/774LB)

WRITTEN REPRESENTATIONS - September

Copper Beeches, Offchurch Lane, Radford Semele – Creation of vehicular access and hardstanding off Offchurch Lane (W20021877)

R/o 22 Clarendon Road, Kenilworth – Erection of two and three storey blocks and one dwelling after demolition of 24,26 Clarendon Road and industrial unit (W20021807)

2 The Barn, Manor Park Farm, Haywood Lane, Baddesley Clinton – Erection of single storey rear extension (W20030856)

Arborfield, Coventry Rd, Kenilworth – Substitution of house type and position on plot 5 of ppW20020552 (erection of 8 dwellings) (W20030790)

York Farm, Pagets Lane, Bubbenhall – Erection of building for a swimming pool (W20021605)

78 Haddon Road, Leamington spa – Erection of single storey side extension to provide a separate dwelling and new vehicular access (W20030855)

Land adj Hill Top House, Budbrooke – Erection of five terraced houses (W20030855)

White Barn Lodge, Stoneleigh road, Baginton – Erection of single storey extension (W20031120)

Adj St Marys Church, Church Lane, Stoneleigh – Erection of a dwelling (W20030167)

PART 2 - PLANNING APPEAL DECISIONS

RESIDENTIAL EXTENSION – IMPACT ON THE STREET SCENE

1. **Erection of a two storey side extension and single storey rear extension, 68 Braemar Road, Lillington, Leamington Spa (W20021883)**
 - Delegated Decisions 13 February 2003
 - Creation of terracing effect, detrimental to the character of the street scene, contrary to local plan policy (DW) ENV3
 - Appeal DISMISSED 28 August 2003

The Inspector considered that the row of semi-detached properties had a strong sense of rhythm and harmony, even although a number had been the subject of minor variations. Those that had been

extended on the side had been sited such that the rhythm was still in place.

With regard to the appeal proposal he considered that because of its size and position that it would be unduly prominent when viewed from both Braemar road and Helmsdale Road, and Melton Road opposite. The extension would affect the scale of no.68 and also disrupt the balance of the street and the role of the space between the properties. The conclusion reached was that it would appear as an incongruous and discordant feature.

The effect of the proposal on the living conditions of the neighbours was not considered unreasonable.

COMMENTS

The decision again illustrates that all residential areas have some character and that any side two storey extension has to reasonably respect its setting to obtain permission.

RURAL BARN EXTENSION – IMPACT UPON SETTING OF ADJACENT LISTED BUILDING

2. **Erection of a hay/straw barn adjoining tackroom and stables, The Dovecote, Wasperton (W20021926)**

- Delegated Decision 27 February 2003
- Detrimental upon the setting of the listed building contrary to local plan policy (DW) ENV12 and character of the adjacent countryside.
- Appeal ALLOWED 28 August 2003

The Inspector considered that the main issue was the effect of the proposed development on the character and appearance of the area, with particular reference to the setting of the Old Manor House, which is a Grade 11* Listed Building.

He considered that the proposed extension would be modest in scale and in its form it would reflect that of the existing building. Whilst the Council argued that use of timber framing would be out of character with the existing simple brick utilitarian building the inspector saw *'no reason to regard its use as inappropriate in this rural location'*. Also he did not agree that the enlarged building being some distance from Old Manor house and buildings within its farm complex would have a significant material impact. He considered that the extension to the building on a site that is outside but adjacent to the Wasperton Conservation Area would not have a material impact on its character and appearance. Furthermore he did not accept the Council's argument that it would create a suburban character that would erode the semi rural ambience of the irregular village outline.

Whilst taking account of the Council's concern that it might be difficult to resist future proposals to convert the building to a house he said *'it seems to me that the configuration and size of the extended building would not be well suited to such a conversion'*. Also he considered that such a proposal would have to be considered on its merits and in the light of national and local policies.

Therefore planning permission was granted subject to 2 conditions including the need for written approval of the samples of materials and its implementation in accordance with the approved details.

COMMENTS

Although the proposed development was a modest this was a disappointing decision given the evidence the Council presented about matters such as the close setting of the Grade 11* listed building, the landscape character, the proximity to the Conservation Area and previous attempts made by the applicant to get permission for a dwelling on the site. In contrast the appellant's evidence was returned for being out of time. Should the proposal lead on to further attempts to obtain permission for a dwelling, this time through conversion of what would be a building of uncharacteristically good construction for a stable, then the Council will have to remind the applicant of the Inspector's quotation above.

REPLACEMENT STORAGE BUILDING IN THE GREEN BELT – INAPPROPRIATE DEVELOPMENT

3. Erection of a barn for storage purposes (after former barn suffering wind damage), Bakers Barn, Bakers Lane, Lapworth (W20021318)

- Delegated decision 22 October 2002
- New building contrary to local plan policy (DW)ENV1, no very special circumstances sufficient to justify a departure; siting of new building harmful to character/appearance of the area, contrary to local plan policy (DW)C8
- Hearing held on 5 August 2003
- Appeal DISMISSED 1 September 2003

The Inspector considered that the main issues were the effect of the development on the character and appearance of the countryside, and whether there were very special circumstances sufficient to overcome the presumption against inappropriate development in the Green Belt.

It was noted that the previous barn had collapsed following the commencement of the conversion in 2000 and that since then rebuilding had commenced and consisted of foundations and a floor base. Aware that there had previously been a building of the same footprint on the site the Inspector commented:

“..the existence of a building previously would not in my opinion provide sufficient justification to allow a replacement. It is an argument that could be repeated often.”

The proposed development would consolidate development and detract from the rural setting of the area, and therefore was contrary to policy ER4 of the Structure Plan and local plan policies C1 and C8.

The Inspector considered that to demonstrate very special circumstances the applicant needed to demonstrate that there would be “substantial and overriding positive benefits.” The reasons put before the Inspector related to (1) history of the original barn; and (2) that the purposes of the Green Belt designation would not be affected.

The conclusion reached was that although he had some sympathy over the collapse of the former building it did not justify its replacement which would reduce the openness of the Green Belt. The benefit to the rural economy from the use of the new building was not convincing enough to outweigh the harm.

COMMENTS

A very interesting decision because the Inspectorate has taken a very strong line between the conversion of an existing building, and the erection of a new replacement building of the same proportions in the same location.

FISHING LAKE IN RIVER FLOOD PLAIN – CHARACTER & APPEARANCE OF COUNTRYSIDE.

4. Excavation of fishing lake for fishing and associated conservation, Land adjacent to River Avon at Wasperton

- Committee Decision 11th December 2002 (contrary to officers recommendation)
- Additional traffic – contrary to character of Wasperton Conservation Area - contrary to WDLP policies (DW) ENV 3 & 6, lack of information about archeology, and harm to character & appearance of countryside (DW) C1.
- Appeal DISMISSED 9TH September 2003.

Procedural matters & Main Issues: The Inspector accepted that the appeal should be determined on the basis that only one larger lake would be excavated and the small pond to the north east was no

longer part of the assessment. In respect of archaeology, subsequent to the decision, the appellant had a survey of the archaeological remains carried out, which on the confirmation of the WCC's Planning Archaeologist revealed no significant archaeological finds. Therefore, on behalf of the Council the archaeological objection was withdrawn and the Inspector agreed with this assessment. The main issues therefore were considered to be the effect on the character and appearance of the countryside, the effect of the conservation area and the living conditions of occupiers of dwellings in Wasperton.

Effect on Countryside: The Inspector considered that the open meadow land alongside and within the flood plain *'form an attractive, if unspectacular, river environment, the historic and traditional features of which are readily discernible...'*. He disagreed with the appellant that the proposed fishing lake would appear as a natural ox bow lake alongside the river stating *'it would be too convoluted to appear to be part of a river of this scale'*. He considered that it was an obvious man-made feature that would be harmful to the unspoilt traditional character of the river lowlands. Whilst isolated and small groups of trees are a feature of the meadowland he considered that screen planting around the proposed lake would need to be dense and extensive and this would itself obscure the traditional features of the river meadowland landscape.

He understood the Council's concerns that the proposal would change the nature of the use of the site to one more typical of other commercial fishing operations in the area and that the lack of conditions controlling the existing use of the river bank may make additional activities difficult to control. Whilst he thought there would be an inevitable increase in fishing activities and additional unattractive car parking in the meadow he did not consider that this, in itself would be so extensive and frequent to cause undue harm to landscape character and appearance. Also considered that the Council had not submitted evidence to support the view that the appellant did not have enough land in their ownership and control to be able to spread the material excavated as a 50mm layer to meet the Environment Agency's conditions for their 'no objections'.

Nevertheless on this first issue he concluded that since the design and layout of the lake would be harmful to the traditional character and appearance of the riverside meadow it would be contrary to Structure Plan Policies GD1, ER1, & ER4, Local Plan Policies (DW)ENV3 and (DW)C1 and the principles embodied in the Warwickshire Landscape Guidelines.

Effect on Conservation Area: Whilst recognising that the views out from the Conservation Area towards the river are important to the open setting of the village he considered that the distance separation and the fall in the levels would largely screen the proposal from public vantage points. Similarly whilst accepting that the daytime traffic flows through the quiet cul-de-sac village are very low and that visitor numbers are bound to increase it would not be sufficient to cause harm to its character. Therefore he considered that it would not harm character and appearance of the Conservation Area or conflict with the relevant Structure and Local plan policies.

Effect on residential amenities: Noting that the highway authority had raised no objection and in view of his conclusions about a modest increase in visitors he considered that the additional traffic over and above the existing traffic would not harm residential amenities of local residents. Therefore it would be not be contrary to Local Plan Policy (DW) ENV3.

COMMENT:

It appears that in the mind of the Inspector the proposed development whilst acceptable in some respects, particularly the limited intensification of use but that the design and layout of the lake was unacceptable. Whilst it is not clear from these comments whether any excavation of a lake within the meadow would be unacceptable, in principle, it is clear that the size and shape of the excavation was unacceptable. The case demonstrates that where the landscape character and the effect of the proposed development is carefully analysed the Council can demonstrate unacceptable harm to character and appearance of relatively unspectacular countryside with no particular designation.

NEW INFILL DWELLING – OVERSHADOWING EFFECT UPON NEIGHBOURS

5. Erection of a two storey dwelling, 3A Campion Terrace, Leamington Spa (W20021516)

- Delegated Decision 28 November 2002
- Mass, scale, proximity to neighbours detrimental impact on residential amenity, contrary to local plan policy (DW)ENV3 and (DW)H5
- Appeal DISMISSED 11 September 2003

The Inspector considered the main issue to be the effect on the living conditions of nearby residents in Princes Street particularly in terms of any loss of natural light or overbearing impact it might cause.

The Inspector considered that the proposal considerable merit particularly in remedying the disruption caused to the built frontage by the existing ugly gap occupied by an unattractive garage-type structure and its replacement by a two storey infill dwelling that would improve the street frontage and the contribution it makes to the setting of the nearby conservation area. It would also add a further dwelling to the housing stock and put under utilised land to beneficial use.

However he agreed with the Council that the appeal site gap provides a welcome sense of relief to the otherwise extreme sense of enclosure that exists caused by the close juxtaposition of the appeal site the rear elevations and garden of numbers 2 and 4 Princes Street and the rearward projection of no's 5 and 7 Campion Terrace. He agreed this manifests itself by the natural light that penetrates through the gap to the rear of the Princes Street houses. However, whilst accepting that the 45 degree code does apply to bedroom windows and would be infringed by the proposal the proximity of existing buildings on Campion Terrace which have the same effect means that he would be relying on the code.

In terms of light he considered that the relatively low height of the two storey appeal building and its distance from the Princes Street bedrooms, at most times of the year would not significantly alter the existing situation. Therefore he considered that the he would not withhold permission for that reason alone. However the enclosure of the gap would be unduly dominant and oppressive and cause pronounced overshadowing at ground level in the rear yards.

Therefore he concluded that the improvements that the proposed development would make to the Campion Terrace frontage and the housing stock *'should not be achieved at the expense of the amenity of adjoining local residents'*

COMMENTS

This was an unusual situation where the considerable benefits of a scheme in terms of character and appearance and the principle of development was outweighed by the severe effects on the living conditions particularly the rear outlook of corner properties. The Council had to put up good case in arguing that the protection of an obviously ugly gap in the street frontage was necessary to provide an invaluable relief to an already oppressive sense of enclosure.

NEW DWELLING FOR EQUESTRIAN BUSINESS – INAPPROPRIATE DEVELOPMENT IN THE GREEN BELT

6. Erection of a dwelling (for proprietor of the stud to replace existing mobile home), Lapworth Arabian Stud, Fingerpost Meadow, Pinley, Shrewley (W20021461)

- Committee Decision 8 January 2003
- Insufficient justification for a permanent new dwelling in the Green Belt, contrary to local plan policy (DW)ENV1
- Appeal DISMISSED 16 September 2003

The main issues were considered to be whether the appeal proposals represented inappropriate development and if so whether it was justified by very special circumstances, and the effect on character and appearance of the Arden Special Landscape.

The Inspector considered that since the breeding and keeping of horses for non agricultural purposes falling outside the statutory definition of 'agriculture' the proposal could not be regarded as being in the interests of agriculture. Also, since it cannot be considered an essential facility for outdoor sport he considered that it does not represent appropriate development in the Green Belt and in accordance with PPG 2 is, by definition, harmful to the Green Belt and should only be permitted except in very special circumstances.

Special circumstances? He considered that the Council's approach in granting various planning permissions since 1986 for the existing equestrian complex on the site to develop and expand was consistent with central government advice in Annex F to PPG 7 that urges a positive approach to horse based development which respects the rural environment. However, he considered that this, does not form, in itself, special circumstances. He agreed with the Council that the need for ready attendance for the protection and care of valuable, sickness prone animals can be achieved by the use of the appellants' existing house, Pinley Hill Cottage, some 160 metres distant, from which the business has been run for some years. He agreed that for this size of establishment and the number of horses involved the need for 24 hour supervision of foaling would be spasmodic and short term rather than a continuous resource issue and the site benefits from exiting surveillance. Therefore he agreed with the Council that there is no sound functional reason to justify the erection of a permanent dwelling immediately adjacent to the complex. He agreed that the Council that the current marketing of Pinley Hill Cottage constitutes evidence of lack of need for close surveillance.

Whilst acknowledging that the Council's granting of 4 temporary planning permissions for the mobile home on the site is not in accordance with central government guidance in Annex I of PPG 7 he did not agree with the appellant that this supports the appeal proposal. Rather he considered '*the continued existence of temporary accommodation on the site needs to be re-assessed*'. Therefore he concluded that there were no special circumstances that which justify the inappropriate development.

Effect on Character & appearance: He considered that the erection of a permanent dwelling would encroach upon the openness of the Green Belt and represent an intensification of sporadic development resulting in a more densely built up character close to a road frontage, contrary to Policy (DW)ENV 1 of the WDLF. Also, he agreed with the Council that it would threaten the local pattern of scattered development that would significantly harm the appearance of this part of the Arden Special Landscape Area, contrary to Policy (DW)C8 of the WDLF.

COMMENTS:

This resounding support for the Council's position clarifies many of the grey areas associated with equestrian development. Also the Inspector makes it clear that the generous stance of the Council in allowing the equestrian business to expand should not be abused either by the granting of this proposal or the further renewal of the planning permissions for the mobile home. It gives a positive steer should enforcement action be necessary to remove the mobile home in the event that it is not removed voluntarily now that the fourth temporary permission has expired.

RESIDENTIAL ROOF DORMER – UNACCEPTABLE 'TOP HEAVY' APPEARANCE

7. Rear loft extension, incorporating new windows, 30 Manor Road, Leamington Spa, (W20030482)

- Delegated Decision 22 May 2003
- Unsatisfactory design, injurious to visual amenities of the area, contrary to local plan policy (DW)ENV3
- Appeal DISMISSED 16 September 2003

The Inspector as a procedural matter declined to consider the appellant's representations and the Council's responses, relating to the need for planning permission stating that it would be a separate determination on an application for a Lawful Development Certificate. Therefore, the main issue was restricted to the effect on the character and appearance of the site and surroundings.

He considered that the proposed full width dormer from eaves to broadly ridge level '*would be an unattractive and incongruous addition, which would bear no relation to the scale and bulk of the original house*'. He judged that it was out of proportion with and not subordinate to the house and '*would give a top heavy appearance*'. He noted that there were three other properties within the row that have similar additions but that the majority of the houses have retained the original architectural form to the rear. He considered that the existing dormers undermine the existing architectural uniformity of the rear of the terrace that is clearly open to view from Elm Road and the rear lane that provides vehicular access. He disagreed with the appellant that the apparent inconsistency of the three previously developed dormers justifies the proposal. Since they demonstrate the damaging effect such proposals have, he considered that the proposals would harm the character and appearance of the site and surroundings, contrary to the aims of WDLP policy (DW) ENV 3.

COMMENTS

This is a further decision in which the Inspectorate has given encouragement to increased design standards by giving little weight to previous circumstance that have compromised the character and appearance of the area. It is encouraging that previous bad design is not being allowed to dictate future decisions. For consistency, since there is no record of planning permissions for the three other dormers, enforcement action would have to be considered if any of them were substantially completed less than four years ago (the time limit for such enforcement action).

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

Total number of Planning decisions (incl adverts)	= 28
Dismissed	= 23
Allowed	= 5

FORTHCOMING HEARINGS & PUBLIC INQUIRIES

PUBLIC INQUIRY

28 Oct Erection of two three-storey dwellings, including garages below, after demolition of existing workshop; Land at 2 Gerrard Street, Warwick, (W2011231)

HEARING

25 Nov Erection of a bungalow with hardstanding (after demolition of existing garage and workshop) with access of Arlington Mews; 31 Lillington Road, Leamington Spa, (W20020481)

HEARING

9 Dec Erection of 4 dwellings and garages after demolition of workshops; The Forge, Hatton Green, Warwick (W20030346)

PUBLIC INQUIRY

27&28 Jan Erection of 11 dwellings and construction of new vehicular access; Kingswood Nurseries, Old Warwick Road, Lapworth (W20021601)

HEARING

10 Feb Erection of a block of 15 flats - concern over railings ; Lamas Sport and Social Club, 46-50 Linen Street, Warwick, (W20021760)