

**List of Current Planning and Enforcement Appeals
October 2019**

Informal Hearings

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Date of Hearing	Current Position
W/18/0554	Waverley Riding School, Coventry Road, Cubbington	16 Dwellings Committee Decision contrary to Officer Recommendation	Lucy Hammond	Questionnaire: 21/5/19 Statement: 18/6/19 Comments: -		Awaiting Decision
W/18/1180	Faerie Tale Farm, Rouncil Lane, Kenilworth	Retention of Residential timber Cabin Committee Decision in accordance with Officer Recommendation	Dan Charles	Questionnaire: 17/5/19 Statement: 5/6/19 Comments: 3/7/19		Appeal Allowed. Application for Costs Refused.

Policy H12 of the LP states that permanent housing for rural workers in the open countryside will be permitted where it can be demonstrated that there is an essential need to live permanently at or near their place of work. It establishes five criteria when assessing need and it is common ground that the proposal meets criteria a, b, d, and e. These relate to functional need, employment on the site, size of dwelling, and other existing accommodation in the area.

Criterion c requires the business to be financially sound and have a clear prospect of remaining so. At paragraph 4.83, the Explanatory Text states that financial viability can be established if the unit has been established for at least 3 years, has been profitable for at least one of them, is currently financially sound, and has a clear prospect of remaining so. The unit has been established for over 3 years and consequently, the decisive factors relate to the other requirements of the explanatory text.

At the Hearing, substantial discussion took place around the recent financial performance of the business. This included evidence submitted in advance of the Hearing in relation to the 2017/18 financial year, as well as the current financial year up to the end of June 2019

To demonstrate that the business is financially sound and has a clear prospect of remaining so, the overall financial performance of the business has to be considered. In this respect, at the hearing, discussion principally focussed on the business's approach to its accounts, as well as cash injections to the business from shareholders, the payment and level of salary and other staff costs, and also the non-payment of rent.

It was confirmed at the Hearing by the appellant, that without financial injections, the business would have ceased trading. The reliance on shareholder injections therefore weighs against the suggestion that the business is financially sound and sustainable. Despite this, THE Inspector considered that much of the investment has provided a fixed asset rather than being used to supplement running costs, and the evidence also demonstrates that without the cash injections, the business would still have been profitable in the last 2 years.

Consequently, due to the increasing value of the business and its most recent financial performance, he was satisfied that the investment in the business has been worthwhile and does not indicate that the business is financially unsound.

The Inspector was satisfied that the business has realised a profit in the last 3 years. In addition, based on the evidence before him and on the basis of what was discussed at the hearing, net assets are increasing in value, cash in the bank is increasing, and retained earnings (the overall loss of the business) is getting smaller. Moreover, a positive cash flow position has also been achieved in 2 out of the last 3 years and the Director's salary has also increased and is paid before profit is taken.

The Inspector overall was satisfied that the business is financially sound and has a clear prospect of remaining so.

COSTS:

The applicant stated that detailed evidence from the applicant's consultant was not reported to the committee and that their decision was based on inaccurate information. They therefore consider that material evidence, which went to the heart of the case, was withheld from the planning committee. The Inspector noted that the minutes from the planning committee suggest that an addendum was circulated at the meeting which provided a 'further response received from the agent, contesting the Council's Agricultural Consultant's latest comments'. Based on this, he found that the committee did indeed have sight of the rebuttal provided by the applicant. He was therefore satisfied that the committee did not have evidence withheld from them and that consequently, it had the necessary information to make a valid planning judgement. In this respect, I am satisfied that the Council have not behaved unreasonably.

<p>New W/19/0209</p>	<p>Asda Supermarket, Chesterton Drive, Leamington</p>	<p>Replacement External Pod Delegated</p>	<p>Helena Obremski</p>	<p>Questionnaire: 2/8/19 Statement: 30/8/19</p>	<p>Hearing: 5/11/19</p>
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Written Representations

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Current Position
W/18/0986	Ivy Cottage, Barracks Lane, Beausale	One and two Storey Extensions Committee Decision in accordance with Officer Recommendation	Rebecca Compton	Questionnaire: 23/10/18 Statement: 14/11/18	Ongoing
W/18/1733	Sowe View, Coventry Road, Stoneleigh	2 bedroomed bungalow Committee Decision in accordance with Officer Recommendation	Angela Brockett	Statement: 5/6/19 Comments: 19/6/19	Appeal Allowed

In reaching his decision the Inspector had regard to established case law, in which the Court of Appeal held that, in considering the question of limited infilling, a village boundary as defined in a local plan would be a relevant consideration. However, the court also held that this factor is not necessarily determinative and that an assessment of the real extent of a village should be made on the ground. The Inspector considered that the appeal site is physically integrated into the built-up area of the village. Based upon his assessment of the site and its surroundings, he concluded that the appeal site does lie within the village of Stoneleigh.

The Inspector considered that given that the plot is surrounded by residential development on 3 sides and has frontage onto Coventry Road, the development would constitute infilling. Whilst the proposed dwelling would not fill the whole of the gap, its curtilage would. He found that in this location there are similar residential plots with wide frontages and large gardens between properties. He therefore concluded that the proposal would be consistent with the character and appearance of the area.

The Inspector stated that the proposed development would be contrary to Policies H1 and H15 of the WDLP and that in the context of a plan led system and an up to date plan, this must weigh against the proposal. However, he felt that the development would not undermine the general aims of these policies, which seek to ensure new housing is directed to appropriate locations. The proposal is for a single dwelling on a frontage infill plot, which would be visually read as being within the village.

W/18/2199	135 Warwick Road, Kenilworth	Amendments to Residential Planning Permission including in respect of access arrangements. Committee Decision contrary to Officer Recommendation	Lucy Hammond	Questionnaire: 1/5/19 Statement: 29/5/19 Comments: 12/6/19	Ongoing
W/19/0091	21 Northumberland Road, Leamington	Erection of Railings and Gates Delegated	Emma Booker	Questionnaire: 17/6/19 Statement: 9/7/19 Comments: -	Ongoing
W/18/2324	Valley Farm, Valley Lane, Lapworth	Conversion of Barn to Dwelling Delegated	Helena Obremski	Questionnaire: 18/6/19 Statement: 16/7/19 Comments: 30/7/19	Ongoing
W/18/2287	Lapworth Farm, Spring Lane, Lapworth	Removal of a planning Condition tying the Occupancy of a Dwelling to Valley Farm Appeal against Non-Determination.	TBC	Questionnaire: 10/6/19 Statement: 8/7/19 Comments: 22/7/19	Appeal Dismissed

The appellants initially sought to rely upon a number of the exceptions referred to in Paragraph 79 rather than specifically advancing an argument that the dwelling is not in an isolated location. However, the appellants in their final comments do provide detailed information with regard to location. Whilst, the appellant refers to the Cottage as being part of a cluster of dwellings, the Inspector considered that in itself does not mean that it is not isolated and does not address the likely reliance upon the private car in view of its location in the countryside. He considered that the dwelling would not make the fullest possible use of public transport, walking and cycling and future occupants would be likely use private car to make the most of their journeys for local services and facilities. The location including the narrowness of the lane is not likely to encourage walking or cycling. Paragraph 78 of the Framework refers to rural housing being located where it will enhance or maintain the vitality of rural communities and the Inspector was not convinced as to how the removal of the condition would achieve that particularly with a modest 3-bedroom cottage. He considered that the location does appear to be remote and isolated.

The appellants rely upon an enhancement of the setting being achieved by creating a curtilage and a garage. However, whilst a proposed layout is provided, those matters are not part of this application. The Inspector did not therefore consider that the proposal would constitute enhancement of the immediate setting.

W/18/1652	Land adjacent to Long Close, Glasshouse Lane, Lapworth	1 x New dwelling Delegated	Dan Charles	Questionnaire: 24/6/19 Statement: 22/7/19 Comments: 5/8/19	Appeal Dismissed
<p>The Inspector was mindful of the Court of Appeal judgment cited by the appellant, which broadly concluded that the boundary of a village defined in a local plan may not be determinative and its physical extent depends on the situation 'on the ground'. The Inspector considered that whilst the proposed dwelling would broadly follow the line of development already established to its northern boundary, there would still be open fields to the east. It would also be some distance from the village of Lapworth, separated by mainly open countryside and the Old Warwick Road (B4439). Consequently, the appeal site would not adjoin the settlement boundary for the purposes of planning policy, nor would there be any direct visual connectivity to it.</p> <p>Furthermore, even taking into account that the proposal would be likely to generate fewer vehicle movements and smaller vehicles along Glasshouse Lane in comparison to the existing use, the pattern of travel arising from a residential dwelling would be different and there would, nonetheless, be a need for future residents to access services and facilities. In contrast to the appeal decision cited by the appellant where the site abutted the urban area on a busy 'A' road, Glasshouse Lane is reasonably narrow with no pavement or street lights. The Inspector felt it would be unrealistic to assume that walking or cycling to reach Lapworth, or even Dorridge to the north-east, would be an attractive transport option for future occupants.</p> <p>The Inspector concluded that the proposal would be contrary to Policies H1 and H11 of the WDLP (2017) which principally seek to direct most new housing toward built-up areas, within settlement boundaries having regard to services and facilities and infrastructure, and to restrict new dwellings in the countryside, except in specific circumstances.</p>					
W/19/0209	Asda Supermarket, Chesterton Drive, Leamington.	Replacement External Pod Delegated	Helena Obremski	Questionnaire: 2/8/19 Statement: 30/8/19 Comments: -	Ongoing
W/19/0104 and W/19/0105/LB	1 Clarendon Place, Leamington	Single Storey Extension and Alterations Committee Decision in accordance with Officer Recommendation	Rebecca Compton	Questionnaire: 30/7/19 Statement: 27/8/19 Comments: 10/9/19	Ongoing

W/18/2440	Bramley Cottage, Mill Lane, Little Shrewley	Single Storey Extension Delegated	Emma Booker	Questionnaire: 19/7/19 Statement: 12/8/19 Comments: -	Appeal Dismissed
<p>The proposal would result in the demolition of the conservatory and garden room, being approximately 28m², and their replacement with a single storey side extension with a floorspace of approximately 32m². This would result in a total floor area of approximately 149m². The Inspector appreciates that, in comparison with the existing floor area, the appeal proposal would only result in an increase of approximately 4m². However, he considered that it would nonetheless, add more floor space to the property. It would also further increase the footprint of the dwelling in comparison to the original building. Taking into account the previous additions to the property, the proposal would considerably exceed the 30% threshold suggested by the supporting text to Policy H14. Whether the proposal would be disproportionate, however, is not only a matter of floorspace, but also the scale and form of the enlarged building. In this regard, the existing garden room is modestly set back from the front gable and there is a gap to the conservatory behind. However, the proposal would be built up to the front building line of the gable and it would extend for almost the entire depth of the dwelling. Furthermore, the hipped roof to the extension would obscure more of the flank elevation than the pitched roofs of the existing single storey projections. He concluded; consequently, it would appear more substantial.</p>					
W/18/1331	Land off Arras Boulevard, Hampton Magna	Residential development of 130 units Committee Decision contrary to Officer Recommendation	Lucy Hammond	Questionnaire: 2/7/19 Statement: 30/7/19 Comments: 13/8/19	Appeal Dismissed
<p>The Inspector considered that 92-107 (18 units & the most concentrated of 6 clusters across the development) formed a notable cluster and a significant proportion of the total number of affordable units proposed on the development which would form a clear and noticeable concentration of affordable housing, which also would have a limited connectivity to other areas of the site. This could manifest and potentially result in a non-inclusive community in the long term. He was therefore not satisfied that the proposed affordable housing would be adequately integrated within the market housing to ensure that an inclusive and mixed community would be created through the proposed development.</p>					

W/18/2119	1 Huddisdon Close	Erection of Fence Delegated	Rebecca Compton	Questionnaire: 23/7/19 Statement: 14/8/19 Comments: -	Appeal Dismissed
<p>The Inspector noted that this is an attractive open plan residential estate characterised by a network of green space and tree cover which gives the estate an open pleasant character. Boundary fences are generally set back from the highway separated by green spaces. This includes the area of green space along Hayle Avenue, to the side of the appeal property.</p> <p>The Inspector observed that the fence extends into this green space. It is visually prominent and forms an incongruous feature, intruding significantly into and disrupting this linear greenspace and having a harmful effect on the openness of the area.</p> <p>The Inspector did not accept the appellant's arguments relating to maintenance of the land, security or precedent relating to other fences on the estate.</p>					
W/19/0327	Piners Cottage, Old Warwick Road, Lapworth, Solihull, B94 6AZ	Erection of single storey side extension Committee Decision in accordance with Officer Recommendation	Rebecca Compton	Questionnaire: 20/08/19 Statement: 11/09/19	Ongoing
W/18/2375	Green Acres, Church Lane, Lapworth	Erection of a two storey side/rear extension Delegated	Jonathan Gentry	Questionnaire: 20/08/19 Statement: 11/09/19	Ongoing
W/19/0148	17 Stoneleigh Close, Stoneleigh	Increase in ridge height by 1.4 metres to provide first floor accommodation and repositioned chimney Committee Decision in accordance with Officer Recommendation	Jonathan Gentry	Questionnaire: 26/08/19 Statement: 17/09/19	Ongoing

W/18/2145 & W/18/2146/LB	Offa House, Village Street, Offchurch, Leamington Spa	Change of use; extensions and other alterations. Committee Decision in accordance with Officer Recommendation	Helena Obremski	Questionnaire: 30/08/19 Statement: 27/09/19	Ongoing
W/18/2177	Four Brothers Farm, Five Ways Road, Shrewley, Warwick	Notification for Prior Approval for a Proposed Change of Use of Agricultural Building to 3no. Dwelling Houses (Use Class C3) together with associated works to facilitate the conversion. Delegated	Rebecca Compton	Questionnaire: 03/09/19 Statement: 01/10/19	Ongoing
W/19/0554	28 Charnwood Way, Leamington Spa	Application for an extension to the existing 2m fence along the northern boundary Delegated	Rebecca Compton	Questionnaire: 04/09/19 Statement: 26/09/19	Ongoing
New W/19/0333	The Old Bakery, Hatton Green, Hatton	Extensions Delegated	George Whitehouse	Questionnaire: 17/09/19 Statement: 15/10/19	Ongoing
New W/19/0596	Land off Leam Street, Leamington	Demolition of Wall Committee Decision contrary to Officer Recommendation	George Whitehouse	Questionnaire: 18/09/19 Statement: 16/10/19	Ongoing

W/18/2258	Roundhill Farm, Rouncil Lane, Kenilworth	Conversion of barn to single dwelling house without complying with a condition attached to planning permission Ref W/13/140 Delegated	Helena Obremski	Questionnaire: 20/03/19 Statement: 17/04/19	Appeal Dismissed
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The appeal dwelling is part of a farm surrounded by fields, approximately 1.5 miles from the service centre of Kenilworth. It is not within or adjacent to any urban area, growth village or any other settlement and so is in open countryside.

On his visit the Inspector noted the site is located some distance from the urban area along a country lane without pavements or lighting which would not be conducive for safe walking. Nor was it within reasonable safe walking distance of a public transport interchange. In his view this would indicate residents would be likely to be reliant on the car, albeit journeys to Kenilworth would be relatively short. Hence there is conflict with WDLP Policy H1.

He accepted that two related households could live on the site and come and go independently of each other under the current arrangement, even with the site's existing limited access to services and facilities. However, having a relative occupying the dwelling is not the same as having it occupied by a completely separate, independent and unrelated household. Relatives would be more likely to share trips or undertake journeys for each other than independent occupiers. There would likely be more vehicle movements if the condition were removed, even if their number was not significant.

The appellant made reference to other application types (prior approvals for changes of use to dwellings) where issues of location and sustainability are not taken into account. However, the Inspector simply stated that such a proposal was not before him.

Part of the reason for imposing the condition was that the dwelling was "sited within the farm yard of a working farm there is a potential for noise and odour pollution". As such, relatives of the occupiers of the farm would likely have a greater degree of tolerance of noise and smells and farming activities than unrelated occupiers. Removing the condition would therefore introduce an incompatibility that would have implications for the living conditions of future occupiers, as well as the farm business itself. Both parties are satisfied that a suitably worded condition(s) could be imposed to limit the use of nearby farm buildings to non-noisy and non-odour producing activities. However, he found it unreasonable that a farm, whose use runs with the land and which existed before the converted dwelling was created, should have its farming activities, uses and practices curtailed.

Enforcement Appeals

Reference	Address	Issue	Officer	Key Deadlines	Date of Hearing/Inquiry	Current Position
ACT 450/08	Meadow Cottage, Hill Wootton	Construction of Outbuilding	RL	Start date 04/06/19 Statements 16/07/19 Final comments 06/08/19	Public inquiry over 2 days	Ongoing No confirmed date has been given for this inquiry but is expected mid Jan/Feb 2020