

**DM Appeals Update Report (July 2014 – present)**

- **Total decisions : 28**
- **Total appeals dismissed: 14**
- **Total appeals allowed: 14**

Case Ref	Address	Proposal	Decision Level	Officer's Recommendation	Appeal Decision	Comments / Learning Points
W/14/0018	The Maples, Church Lane, Lapworth	Single storey rear extension	Del	Refuse	Dismissed 21/7	The Inspector agreed that the proposed extension taken together with previous extensions would be disproportionate and harmful to openness and was therefore inappropriate development in the Green Belt.
W/13/1776 & 1777/LB	5 Clarendon Square, Leamington	Single storey rear extension (amendment to approved scheme)	PC	Grant	Allowed 17/12	The Inspector considered that as the property was tall and within a terrace, the additional height of the extension did not make it unduly dominant or disproportionate. Plastic downpipes were considered harmful but metal ones could be secured by condition. The string course was considered crude and simple but a more suitable treatment could be secured by condition.

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W/13/1756	Newlands House, Stoney Lane, Shrewley	Construction of wall, piers and timber gates	Del	Refuse	Dismissed 12/11	<p>s.336a of the TCPA 1990 defines the term 'building' as any structure or erection. The Inspector considered that this includes walls and gates. The NPPF states that the erection of new buildings in the Green Belt is inappropriate by definition and the appeal was dismissed for this reason alone. As it was possible to see over the walls and gates to the countryside beyond and that views were afforded into the site through the gates, he considered that they did not harm the openness of the Green Belt.</p>
W/14/0038	1 Angless Way, Kenilworth	2 storey side and rear and single storey rear extension	Del	Refuse	Dismissed 27/6	<p>The Inspector considered that non compliance with the Distance Separation SPG was acceptable as the neighbouring property was on higher ground. While the proposal would be clearly visible, it would not be overbearing. Given the narrowness of the side extension the Inspector considered that a requirement to set it down and back in accordance with the Residential Design Guide was not necessary. The Inspector agreed that the truncated first floor element was unusual and would appear disjointed he did not consider it wasn't sufficient to dismiss the appeal on.</p>

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W/14/0724	28 Fennyland Lane, Kenilworth	Rear balcony	Del	Refuse	Allowed 10/2	<p>The Inspector noted that there were existing oblique views from first and second floor windows of the dwelling into the adjacent garden and gardens beyond and were no more than might reasonably be expected from upper windows into gardens of closely positioned dwellings within a residential area. The Inspector considered that with the side and front balustrades in place and fitted with obscured glass, the ability to see into nearby gardens from the proposed balcony would not be dissimilar to that from existing windows.</p>
W/14/1120	The Glade, Three Ways, Firs Lane, Haseley	1 and half storey side and rear extension	Del	Refuse	Dismissed 11/11	<p>The appellant challenged the more prescriptive approach of Policy RAP2. However, the Inspector considered that it was not unusual for local policies to elaborate and clarify the more generalised approach of the NPPF.</p> <p>The Inspector noted that planning permission had recently been granted at the site for a large extension. While no greater in footprint, he considered the appeal proposal would have a noticeably greater mass because the proposal sought to change the roof from a hip to a gable in order to accommodate an additional en-suite within the roof space. The Inspector considered it would result in a much bulkier addition which would not respond well to the modest scale and proportions of the original dwelling. He sympathised with the appellants needs for additional space to accommodate the family's growing needs, he recognised that this is a pressure faced by many families and therefore only attached limited weight to this consideration. The appeal was dismissed on the basis that the extension was a disproportionate addition harmful to openness.</p>

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W/14/1262	10 Wheathill Close, Leamington	Single storey front, 2 storey side and rear and single storey rear extension	PC	Grant	Allowed 4/2	<p>The Inspector considered that, while large, the proposal would retain the existing shape of the house and that sufficient space would remain to the front and rear of the house for it to remain spaciouly set within its plot. As the roofs were set down the extension would appear subservient and as it would not project forward beyond no.4 it would not be unduly prominent in the streetscene. While the proposal would result in some overshadowing of nos. 8 and 12 at the start and end of the day, the extent and duration of the overshadowing would be insufficient to have an adverse affect on living conditions.</p>
W/14/1276	Wooton Grange Farm, Hill Wooton Rd, Hill Wooton	Detached 3 bay garage with loft room	Del	Refuse	Dismissed 5/2	<p>The erection of a new building is inappropriate development in the Green Belt. Limited weight is attached to the potential for permitted development rights within Class E (outbuildings) to be exercised.</p>

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W/13/1595	1 Morrell St, Leamington	Demolition of showroom/ offices and erection of HMO	Del	Refuse	Allowed 23/9	<p>The Inspector considered the absence of a plan and calculations meant that the figures provided by the Council for the percentage of HMOs in the area could only be treated as estimates. In the absence of crime statistics for the area and no objections from the police or Environmental Health the Inspector considered the proposed use would not harm residential amenity.</p> <p>The Inspector considered that the Council had failed to substantiate its reason for refusal through provision of full and evidence to support its case and costs were awarded to the appellant.</p>
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W/13/1787	12 Augusta Place, Leamington	Minor material amendment to raise side extension roof (eaves and ridge), increase depth of side and rear extension and omit vertical glazing bars in sash windows, brick work external finish to rear, and front facing French doors to match adjacent building.	PC	Grant	Allowed 7/8	<p>The Inspector considered the extension was a subordinate additional to the building which would sit comfortably in the streetscene and would not harm the character and appearance of the conservation area.</p>
W/14/0126	Land at High Chimneys Farm, Old Warwick Rd, Rowington	Appeal against timing specified in Ecology condition	Del		Allowed 10/2	<p>The Inspector concluded that the requirement to submit an Ecological Management Plan within 4 months of the grant of planning permission was unreasonable in the absence of any convincing evidence to indicate why. The requirement also failed to allow for the additional time required for the LPA to determine the submission. The condition therefore failed the tests set out in the NPPG. A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.</p> <p>Costs were awarded against the Council for unreasonable behaviour.</p>

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W/14/0128	Oakley Wood Farmhouse, Banbury Rd, Bishops Tachbrook	Detached garage	Del	Refuse	Allowed 10/2	<p>Policy RAP2 can only be applied to the assessment of extensions in open countryside and not free standing buildings. However, the NPPFA requires that the intrinsic character and beauty of the countryside should be recognised. The Inspector did not consider that increasing the size of the proposed garage would harm the character and appearance of the surrounding countryside as it would be set against and largely subsumed with the profile of the larger farmhouse. The extant permission for a smaller building was given significant weight by the Inspector.</p>
W/14/0350	Hillford House, Barford Rd, Barford	Erection of a dwelling and garage	Del	Refuse	Dismissed 6/10	<p>The Inspector considered that the proposal would be located some considerable distance away from any other dwellings and this together with the unlit and unpaved nature of the road meant it would be an isolated dwelling in the countryside contrary to the NPPF.</p>

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W/14/0366	4 Upper Grove St, Leamington	Conversion & change of use of building into 2 x 4 bed HMOs	Del	Refuse	Allowed 20/1	<p>The Inspector considered that there was sufficient capacity for on street parking and the proposal would not result in harm to highway safety or residential amenity.</p>
W/14/0533	16 Arlington Ave, Leamington	Erection of 6 flats after demolition of dwelling and garage	PC	Grant	Allowed 30/9	<p>The Inspector considered that the proposal would sit comfortably in its context and given the composition of its constituent elements and varying roof heights it would not be excessive in size and would not harm the character and appearance of the Conservation Area or living conditions of neighbouring properties.</p>

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W/14/0567	11 Hawkesworth Drive, Kenilworth	Conversion of garage and ground floor to create a separate flat	Del	Refuse	Allowed 17/12	<p>Whilst having sympathy with the local residents and noting the evidence submitted over existing parking taking place on the footpath, from his site visit, the Inspector concluded that although the street is fairly narrow, pavement parking is not necessary. Inconsiderate parking causing an obstruction to pedestrians could be dealt with under separate legislation.</p> <p>The Inspector considered the on site</p>
W/14/0589	75 Radford Rd, Leamington	Additional 2 bedrooms to existing 8 bed HMO plus lightwell and access to Radford Road	PC	Grant	Dismissed 30/12	<p>The outlook from the proposed bedrooms would be into lightwells. Notwithstanding that these met the Council's Private Sector Housing guidelines on underground room in relation light, the Inspector considered that the outlook would be very constrained and oppressive. Planning's assessment of living conditions is therefore not bound by compliance with Private Sector Housing guidelines. .</p>

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W/14/0627	Land adj The Rising, Old Warwick Rd, Rowington	Erection of detached dwelling and garage	Del	Refuse	Dismissed 31/12	<p>Limited infilling is not inappropriate development in the Green Belt. This particular Inspector took the view that the NPPF does not specify that the village has to be identified in a Local Plan for this exception to apply. However, he did not consider that the Council had behaved unreasonably by taking this view given the interpretation is not a clear cut matter and in the light of a lack of clear government guidance.</p> <p>The Inspector considered the character of the vicinity was one of substantial gaps between blocks of large properties set in large, well spaced plots. This dispersed pattern of development results in an open, spacious character. The infilling of this substantial gap between properties would compromise the established open pattern of development which would set an undesirable precedent if approved. Applications for outline planning permission must also indicate the area or areas where access points to the development will be situated, even if access has been reserved.</p>
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W/14/0712	13 Smith St, Warwick	Change of use from 2 shops to 1 shop and 1 apartment to rear	Del	Refuse	Dismissed 13/10	<p>The site was within the designated primary retail frontage. Retail floorspace would be almost halved and confined to the front of the building. The Inspector considered that this would be wholly inconsistent with Policy TCP2 and the contribution which the premises can make to the commercial offer and attractiveness of the town centre would be reduced. The Inspector stated that he had no reason to believe that an alternative retail operator or someone able to use the appeal premises for another town centre use could not be found if the premises were marketed appropriately.</p>
W/14/0834	481 Tachbrook Road, Leamington	Erection of single storey dwelling	Del	Refuse	Allowed 17/12	<p>The Inspector considered that the bungalow would be set spaciouly within the plot and would complement the infill bungalow to the north of the site granted in 2009 and would therefore not be out of keeping with the pattern of development in the area. While in private views of the site from the surrounding houses and their gardens the loss of open garden would be apparent, the single storey height of the bungalow and its low pitched roof together with gaps between it and the boundaries would mean it would not be prominent.</p> <p>The Inspector did considered that the proposed parking area would be harmful to the living conditions of the occupiers of the neighbouring property but felt that it could be relocated to a more acceptable position and that this could be secured by condition.</p> <p>The Inspector felt the proposal would make a contribution, albeit small, the Council's housing supply.</p>

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W/14/0848	1 Charlotte St, Leamington	Change of use to 7 bed HMO and 2 apartments	Del	Refuse	Allowed 14/11	<p>The previous appeal was dismissed on the basis that the proposal would be detrimental to highway safety because of the conflicting manoeuvres that would occur around the entrance to the site. This proposal differed in that it provided on-site parking for the 2 existing flats only. The Highway Authority raised objection to the proposal on grounds that the proposal would be detrimental to highway safety because of the narrow width of the access way serving the site which would result in conflicting vehicle movements within and adjacent to the highway. It would also lead to an increased demand for on-street parking along Charlotte Street, resulting in increased conflicts between vehicles within the highway.</p> <p>However, the Inspector considered that the reduced number of vehicle movements associated with the rear use of the car parking area compared to the previous appeal would not present an unacceptable risk to highway safety or to the safety of pedestrians. The Inspector did not consider that the potential for an additional 4 vehicles to be parked on the street would have a detrimental effect on highway safety.</p> <p>A costs claim was made against the Council on the basis that it did not substantiate its case at appeal. However, the Inspector considered that the submission of the officer's report was sufficient and the claim was dismissed.</p>
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W/14/0899	6 Hitchman Rd, Leamington	Change of use from dwelling to HMO	Del	Refuse	Dismissed 31/12	<p>The Inspector felt he had no reason to doubt the reasons behind the Council's Article 4 Direction and interim HMO policy, including noise, litter, parking problems and a lack of community cohesion resulting from a transient population and considered it to be a reasonable, well informed and up-to-date response to a specific and undisputed problem in the town. On this basis, he gave felt the interim HMO policy should be given moderate weight as an important material consideration.</p> <p>Observations on his site visit included a proliferation of HMOs evident from numerous estate agents boards, cars parked on pavements, overflowing dustbins and front yards full of rubbish, which he felt confirmed some of the concerns raised by the Council and local residents. Although the street itself had a relatively low concentration of HMOs compared to surrounding streets, the Inspector considered that waiting for a street to exhibit signs of an over-concentration of HMOs before refusing to permit others, would undermine the purposes of the Direction.</p>
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W/14/0907	Land south of Fieldgate Lane, Whitnash	Variation of renewables condition to allow a fabric first approach	PC	Grant	Allowed 21/1	<p>The Inspector considered that Policy DP13 and the associated SPD were broadly consistent with the NPPF. However, seeking to achieve the aim of addressing the causes of climate change by specifying a target for energy generation from on-site renewable sources does not accord with the NPPF. As such only limited weight should be given to these. Emerging Policy CC3 was considered to be more consistent with the NPPF and this was therefore given limited weight even though the emerging plan has not been submitted for examination.</p> <p>The analysis for the fabric first proposal put forward indicated that it would achieve a 13.7% reduction in the development's energy requirement and an emission rate 12.36% lower than that currently required by the Building Regulations achieved by measures which would not subsequently require monitoring, maintenance or replacement. The Inspector therefore concluded that the fabric first approach would provide better results in terms of energy efficiency, resilience and reducing CO2 emissions than renewables.</p> <p>Costs were awarded against the Council for unreasonable behaviour on the basis of Members choosing not to accept officer's recommendation of approval and also on the basis of failing to determine similar cases in a consistent manner.</p>
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## **Agenda Item 14**

W/13/0833	Homebase LTD, Myton Rd, Leamington	Erection of side and front extensions; subdivision of building into two separate units; alterations to car park and service yard; and variation of condition to allow unrestricted Class A1 retail use	Del	Refuse	Dismissed 16/2	<p>The 2014 update to the Warwick District Council: Retail and Lesiure Study highlights the priority for new retail floorspace to be focused in the town centre first in order to counter the increased competition from out-of-town centres and shopping facilities. The Inspector found that Leamington Spa is not attracting many new multiples and there is a danger of existing ones leaving such that it is in a fragile position so that even a small trade diversion could make the difference between the town holding its own, and attracting additional investment to new or existing shops, or sliding into a steady decline which could affect vacancy levels and have an impact on the overall vitality and viability of the town centre.</p> <p>Policy UAP3 was found to be consistent with the NPPF and afforded great weight.</p> <p>Limited weight was given to the likelihood that the Clarendon Arcade development would proceed sufficiently soon to be a realistic alternative for additional retail space.</p>
W/13/1465	Land East of Wellesbourne Rd and North of Wasperton Lane, Barford	Erection of 50 dwellings, provision of open space and associated infrastructure	Del	Refuse	Dismissed 27/11	<p>The Inspector considered that the surrounding estate lands provide a designed secluded setting for the listed house and that the particular character of the setting contributes strongly to the special interest and significant of Barford House. The proposal would result in the loss of the clear historic relationship between the house and grounds as a designed entity. The Inspector also considered that the proposal would exacerbate the preponderance of larger homes in the village and would not adequately meet the local need for smaller dwellings.</p>

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W/13/1688	Land South of Mallory Rd, Bishops Tachbrook	Residential development (Use Class C3) for up to 125 dwellings with construction of access from Mallory road, areas of public open space, landscaping and associated works	Del	Refuse	Dismissed 4/11	<p>Given the extent of public engagement in the Neighbourhood Plan process the Inspector disagreed with the appellant that no weight should be given to the Draft NP and that at this stage it should be given some, albeit very limited weight.</p> <p>In assessing the benefits of the scheme, the Inspector considered that contributions towards healthcare, education and libraries were sought to avoid incoming residents placing undue strain on existing infrastructure and therefore there would be no meaningful benefits to the wider local community.</p> <p>The Inspector considered that the appeal site formed part of the attractive countryside that surrounds the village and makes a positive contribution to its rural setting forming part of a valued landscape. The development would introduce a large new expanse of built development which would intrude into the countryside and significantly erode the rural setting of the village.</p> <p>The Inspector felt that local support for housing on neighbouring land could not be ignored. He also felt that the proposal taken together with the approved allocated site could erode the identity of Bishops Tachbrook as a compact rural settlement.</p> <p>The appeal site forms part of the surrounds of a Grade II Listed converted barn near Hill Farm. He felt that the unspoilt open qualities of the site allowed for a contextual appreciation of the listed building and views of some of the special architectural qualities of this heritage asset which would result in harm to the significance of the asset.</p>
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## **Agenda Item 14**

W/14/0361	Wellesbourne Rd, Barford	Partial demolition of approx 86m of wall circa 2m high to below line of damaged bricks and erection of safety hoarding together with necessary temp works plus storage of damaged bricks	Del	Refuse	Dismissed 27/11	<p>The Inspector considered that the boundary wall was a clear public demonstration of the location, enclosure and exclusive status of the house in its grounds and has high significance. He considered that timely repair over the past 38 years would have kept the wall in good condition and that it has been allowed to deteriorate which was evidence of deliberate neglect and therefore in accordance with the NPPF he took no account the deteriorated state of the wall in determining the appeal. Great weight was given to the conservation of the wall as an important heritage asset and he saw no clear and convincing justification for its demolition.</p>
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