

**List of Current Planning and Enforcement Appeals
Late March 2021**

Public Inquiries

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Date of Inquiry	Current Position

Informal Hearings

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Date of Hearing	Current Position

Written Representations

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Current Position
W/19/1973	Wooton Grange Farm House, Warwick Road, Kenilworth	Extensions and Alterations Delegated	Jonathan Gentry	Questionnaire: 23/4/20 Statement: 15/5/20	Ongoing
W/19/0860	6 Phillipps Road, Warwick	Change of use to Garden and Erection of Fencing Committee Decision in accordance with Officer Recommendation	Emma Booker	Questionnaire: 22/7/20 Statement: 13/8/20	Ongoing

W/19/1604	17 Pears Close, Kenilworth	First and Ground Floor Extensions Delegated	George Whitehouse	Questionnaire: 19/6/20 Statement: N/A	Ongoing
W/20/0097	10 Wasperton Road, Wasperton	Change of Use of Store Room to Dog Grooming Salon Delegated	Rebecca Compton	Questionnaire: 19/8/20 Statement: 16/9/20	Ongoing
W/20/0980	9 Camberwell Terrace, Leamington	Front Lightwells Delegated	Emma Booker	Questionnaire: 25/9/20 Statement: 19/10/20	Ongoing
W/20/0285	Pool Peace Bungalow Five Ways Road, Shrewley	Appeal against the refusal of a Certificate of Lawfulness for the Continued Occupation of a Dwelling without complying with an Agricultural Occupancy Condition. Delegated	Andrew Tew	Questionnaire: 26/11/20 Statement: 24/12/20	Appeal Allowed

The Council's main concern was whether any potential breach of Condition 2 through physical occupancy had been continuous. However, the Inspector made reference to a judgement which established that "*continuous physical occupation is not required for there to be occupation in breach*". He made further reference to another judgement in which it was held that "*it is not a question of continuous occupation contrary to a condition; it is a question whether, over the relevant 10-year period, there has been a continuing breach of the condition. The correct approach is to ask the question whether enforcement action could have been taken at all material times, successfully, in relation to what was happening in the premises, or to the premises, at any material time*". Consequently, it is necessary to consider whether enforcement action could have been successfully taken at all material times during a 10-year period prior to the date of the LDC application (19 February 2010 to 19 February 2020).

It was apparent to the Inspector from the evidence before him that there was not continuous physical occupation of the bungalow by the appellant prior to June 2011. Even though, the appellant and his wife were only occupying the bungalow on a second home basis prior to June 2011 they had declared to the Council that they were occupying the bungalow. Additionally, the prior approval for a substantial extension and garage was submitted in 2010 and the appellant stated, within his letter in relation to Council Tax, that once those works were complete, he and his family would live there 'full-time'. Therefore, the Inspector considered it reasonable to consider that those works were carried out in order to further the breach of the condition. On the balance of probabilities, he considered that over the whole 10-year period, February 2010 to February 2020, enforcement action could have been taken successfully in relation to the breach of Condition 2 of planning permission W870247. It is now too late to take enforcement action against that specific breach, and it follows that the Council's decision to refuse to grant the LDC in the terms applied for was not well-founded.

W/20/0331	The White House, Five Ways Road, Shrewley	Replacement Dwelling Delegated	Andrew Tew	Questionnaire: 13/11/20 Statement: 11/12/20	Ongoing
W/20/0940	Glenthorne, Five Ways Road, Shrewley	Appeal against a Certificate of Lawfulness for the use of a Building as a Dwelling. Delegated	Helena Obremski	Questionnaire: 14/12/20 Statement: 4/1/21	Appeal Dismissed and Costs Award Refused for both parties

The Council refused the application for a LDC on the basis that the building had not been used as a separate residential dwelling continuously for 4 years prior to the submission of the application. The Inspector noted that the building was not substantially completed until the end of 2018 and considered the appeal would therefore turn on whether a new planning unit has been created and if so, whether its creation is permitted by W/17/2164.

The appellant suggests that due to the physical separation between the appeal building and the dwellinghouse of Glenthorne, along with the provision for separate car parking and vehicular access onto Five Ways Road, a separate planning unit would be created. However, the Inspector noted that case law has established it is necessary to assess both the physical and functional links between the use of the outbuilding and main dwelling and consider whether a separate planning unit has been created as a matter of fact and degree.

The Inspector considered that whilst the appeal building appears to be physically separate from the main dwelling of Glenthorne, it appears that there remains a functional link between the use of the main dwelling and the appeal building. Moreover, the appellant confirms within his statement of case that he has never stated that the appeal building was converted to a separate dwelling.

The Inspector clarified that planning permission for the outbuilding is only granted by the GPDO if the building is 'incidental', Class E cannot grant planning permission for a building which is not incidental and whilst the Council issued a decision in respect of W/17/2164, this is not the equivalent of a planning permission.

The appellant suggests that the Council would be estopped from succeeding in any enforcement action because he has relied upon its confirmation that the operational development responsible for the material change of use would be lawful. However, the Inspector stated that application W/17/2164 would not have this effect since it can do no more than confirm that the development as proposed by the appellant, namely a building incidental to the enjoyment of a dwellinghouse, would have been lawful if instituted or begun on the date of application. Therefore, even if the appellant had provided sufficiently precise and unambiguous evidence that the appeal building is actually being used as a separate dwellinghouse and a new planning unit had been created, the creation of a new planning unit and change of use of the outbuilding to a single dwellinghouse would be a material change in the use of the land and would be development for which planning permission is required.

COSTS:

The Inspector noted that S171C of the Town and Country Planning Act 1990 (as amended) gives LPAs the power to require information about activities on land where it appears to the LPA that there may have been a breach of planning control. The Council's decision to issue a PCN does not therefore constitute unreasonable behaviour. Whilst he notes there is disagreement between the parties on various matters, he does not believe the Council ignored the appellant's legal arguments. The Council clearly set out within its officer report and decision notice its reasons for refusing the application.

The Inspector considered it was evident from the appellant's submissions, who, by his own admission is not a planning professional, he had every expectation that his case had a prospect of success. He could not therefore agree that he was unreasonable in exercising his right of appeal in this case.

W/20/1091	Terets Lodge, Rising Lane, Lapworth	Single Storey Rear Extension Delegated	Jonathan Gentry	Questionnaire: 14/12/20 Statement: 4/1/21	Appeal Allowed
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With regard to Policy H14, in the Inspector's opinion, assessing the proportionality of an extension based purely on a mathematical calculation would be a limited exercise. He considered that whilst the proposal would add to the cumulative impact of previous extensions,

the increase in the size of the original dwelling would be very modest and the combined cumulative increase would not be disproportionate in this instance having regard to the scale, design and location of the proposal. This approach is at odds with what we have experienced from other Inspectors where development over the 30% guideline has generally tended to be considered disproportionate.

W/20/0483	17 Gaveston Road, Leamington	Appeal against the refusal of a Lawful Development Certificate for the Use of the Property. Delegated	Andrew Tew	Questionnaire: 3/12/20 Statement: 31/12/20	Appeal Dismissed
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The Inspector made reference to case law which established that children cannot form a household without the presence of a caregiver. He noted that although in this case a care-worker would be present on the site at all times, they would not live at the property but would occupy it on a rota basis. The appeal site would be occupied by up to 3 children at any one time. Carers would provide continuous 24-hour care on a rota basis. As set out in the North Devon judgement, in this circumstance, the children and the carers would not be living together as a single household, since the children could not form a household without the presence of the caregiver. He saw no reason to depart from established case law in this case and conclude that the proposed use would be a C2 use.

The appellant contends that even if it is concluded that the use class should be C2 rather than C3, no material change of use would occur if the use gives rise to no greater level of disturbance or has no greater impact than would be generated by a C3 use. The appellant advises that the children would be expected and actively encourage to attend mainstream school. However, the Inspector considered that whilst this may be the appellant's intention, it is likely that at least some of the children would require some form of home tutoring, particularly those who are not at the property on a long-term basis. Tutors visiting the property may access the site by car, which would generate vehicle movements and associated comings and goings which would be less likely to be generated by a typical family. The children would have allocated social workers who, after an initial 'settling in' period, would only need to visit once a month. It is not clear what the 'settling period' would be, or what the turnover of children is likely to be. As such, it is not clear from the information provided how often social workers are likely to visit the property. Whilst a child living with its parents may receive visits from a social worker, it's likely that there would be only one social worker for the whole family, whereas each child would have a social worker in this case, who may be different and may visit at different times and at different frequencies depending on the needs of the child concerned. It is not clear from the appellant's evidence what the working pattern of care-workers at the site would be, what would happen during a change-over or what vehicle movements would be generated. Although one of the care-workers may choose to park at the rear of the property, he considered it highly likely that during a change-over, at least one care-worker would need to park on the road. This would generate parking requirements along Gaveston Road which would be in addition to parking requirements generated by other visitors to the site, such as social workers and tutors.

In the Inspector's view, it is likely that the movements generated by the proposed use, including tutors, care workers and social workers, would be significantly greater than would be generated by a C3a use and would lead to increased parking demand in the area leading to a material change of use in this case.

W/20/1055	Hobournes, Upper Spring Lane, Kenilworth	Two Detached Dwellings Committee Decision contrary to Officer Recommendation	Helena Obremski	Questionnaire: 14/12/20 Statement: 25/1/21	Appeal Dismissed
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The Inspector noted that the area is characterised by large individual dwellings in generous plots with mature gardens, with a looser pattern of development to the east side of the Lane, whereas Upper Spring Lane and Tainters Hill has a general rural character, comprising few large residences and is an area where the maintenance of semi-rural limited residential use is identified as important. A semi-rural characteristic is evident at the appeal site, which is a corner plot where the existing bungalow is barely discernible from the public realm. It has a pleasing aesthetic by virtue of its mature vegetation, trees and essentially undeveloped quality. In these respects, he viewed it as significant in the graduation from denser town centre development to the less sparsely developed settlement edge and open space of Parliament Piece with surrounding countryside beyond.

He considered that the proposed dwellings would form a continuation of residential development along Fieldgate Lane. While the mass and height of the dwellings would not be dissimilar to those opposite the site and would have some individual design details, the pattern of the proposed built form would distinctly contrast with development at the southern boundary on the east side of the Lane, which is characterised by individual larger dwellings set in their own grounds. As such, the proposal would fail to harmonise with the existing character of the street scene in the immediate vicinity of the appeal site. Although the development would be set back from the road, limited to the south of the site and with some screening, the character of the site would be largely altered by the proposed suburban style of development, including the shared access. Despite the proposed density, the footprint and bulk of the development would be substantial and would detrimentally change the valued undeveloped appearance of the site. Furthermore, it would result in a significantly reduced plot size for the large existing dwelling which would be out of keeping with the spatial composition of development on this part of Upper Spring Lane. As such it would harmfully erode, and, therefore fail to preserve, the semi-rural character which distinguishes this part of the Conservation Area.

W/20/1264	The Lodge, Wattcote Farm, Manor Lane, Wroxall	Change of Use to Pilates Studio	Andrew Tew	Questionnaire: 19/1/21 Statement:	Ongoing
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		Committee Decision in Accordance with officer Recommendation		16/2/21	
W/20/0987	Grist Mill, Chesterton Drive, Leamington	Change of use of first Floor to HMO Delegated	Dan Charles	Questionnaire: 18/1/21 Statement: 15/2/21	Ongoing
W/20/0974	1 Edmondes Close, Woodloes Park, Warwick	Revisions to previously granted planning permission for domestic extensions Delegated	George Whitehouse	Questionnaire: 8/1/21 Statement: 1/2/21	Ongoing
W/20/1170	2 Adelaide Road, Leamington	Infill of Service Wing Roof Delegated	Rebecca Compton	Questionnaire: 8/1/21 Statement: 1/2/21	Appeal Dismissed and Costs Award Refused

The Inspector noted that due to the open character of the bowling greens directly to the front of the site there are long uninterrupted views of the dwelling on the approach from Adelaide Bridge to the north. The dwelling is characterised by the decorative main house which addresses both Adelaide Road and Archery Road and the much plainer service wing. Given the building is in a prominent location and is an attractive semi-detached building of the Regency style, its appearance positively contributes to the character and appearance of the CA.

He also noted that the current service wing roof design shows deference to the main building and there are several dwellings along Adelaide Road that have similarly designed rear outriggers. He considered that by infilling this section of the roof, the proposal would create a terracing effect with the host dwelling that would increase the dominance of what is a subservient, ancillary wing to the host dwelling. The proposal would fundamentally change the visual relationship between the two elements of the building and would impair the ability to appreciate the original form and function of the respective elements of the building. The creation of a large L shaped terrace dwelling in this prominent location on Adelaide Road would cause harm character of Adelaide Road within the CA, which is characterised by these large detached and semi-detached villas. The grand detached and semi-detached villas are an important characteristic of the

CA and the harm this terracing effect would cause to the host dwelling, which is located in a prominent location within the CA, would fail to preserve the character and appearance of the CA.

COSTS:

The Inspector considered that the reasons for refusing planning permission were clearly set out on the face of the decision notice. The reasons for refusing planning permission set out in the Officer's report explained the relevant policy considerations and the Council made their assessment in accordance with relevant sections of the Planning. Whilst the applicant has concerns about the handling of the application, vague, generalised or inaccurate assertions about the proposal's impact were not made in the reasons for refusal or in the planning officer's report, he considered there was nothing to indicate that the Council refused planning permission for development that should have been permitted. Nor is there anything to suggest that the Council misapplied local and national planning policy when assessing the merits of the appeal scheme.

W/20/1321 and 1337	39 Northumberland Road, Leamington	i. Rear stair Tower and ii. One and two storey Extensions Delegated	Thomas Fojut	Questionnaire: 25/1/21 Statement: 16/2/21	Appeal Dismissed
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The Inspector noted that the highest point of the stair tower would sit above the ridge of the roof on the respective wing. He considered that the development would have a protruding, block-like appearance which would emphasise the vertical alignment of the structure in relation to the roof plane. As a result of these factors, the stair tower would appear discordant and poorly integrated with the curved façade of the turret and the pitched angle of the main roof of the dwelling. The disjointed appearance of the tower would be appreciable in views of the side and rear elevation of the dwelling from Beverley Road and from the side windows and garden serving the neighbouring dwelling at No 73 Beverley Road. As a result, the incongruity of the development would be evident to passers-by and neighbouring occupiers and this would detract from the character and appearance of the CA. He was not persuaded that there are no alternative design solutions that could be better integrated with the host dwelling.

W/20/1384	11 Edmondscote Road, Leamington Spa	Single storey extensions Delegated	Thomas Fojut	Questionnaire: 25/1/21 Statement: 16/2/21	Ongoing
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New W/20/1189	12 Warmington Grove, Warwick	Lawful Development Certificate for Use of Mobile Home as Ancillary Residential Accommodation Delegated	Andrew Tew	Questionnaire: 25/3/21 Statement: 19/4/21	Ongoing
New W/20/0729	4 Risdale Close, Leamington	Application of Render to Front and Rear Elevations Committee Decision in Accordance with officer Recommendation	Emma Booker	Questionnaire: 23/2/21 Statement: 17/3/21	Ongoing
New W/20/0358	Junction of Rising Lane and Birmingham Road, Baddesley Clinton	Erection of 2 Detached Houses Delegated	Rebecca Compton	Questionnaire: 10/3/21 Statement: 7/4/21	Ongoing
New W/20/1358	20 Ladycroft, Cubbington	Single Storey Extensions; Dormer Extension; Velux Roof lights and Front Parking Area Delegated	Thomas Fojut	Questionnaire: 11/3/21 Statement: 2/4/21	Ongoing
New W/20/1504	16 Aylesbury Court, Aylesbury Road, Lapworth	Extension to Garage to form Pool House Delegated	Thomas Fojut	Questionnaire: 126/2/21 Statement: 22/3/21	Ongoing

Enforcement Appeals

Reference	Address	Issue	Officer	Key Deadlines	Date of Hearing/Inquiry	Current Position
ACT 450/08	Meadow Cottage, Hill Wootton	Construction of Outbuilding	RR	Statement: 22/11/19	Public inquiry 1 Day	The inquiry has been held in abeyance

Tree Appeals

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Date of Hearing/Inquiry	Current Position