

## APPEALS AND ENFORCEMENT SECTION - MONTHLY REPORT

JANUARY 2004

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### PART 1 - PLANNING APPEALS RECEIVED FROM THE PLANNING INSPECTORATE

#### WRITTEN REPRESENTATIONS

Kerry, Wolverton Road, Norton Lindsey – *Erection of twenty boarding pens in rear garden (W20031158)*

2 Beech Cliffe, Warwick – *Felling of a sycamore (TPO 35)*

3 Smithy Cottages, Welsh Road, Offchurch – *Erection of a front porch entrance and single storey rear extension (W20031023)*

Deer Keepers Lodge, Stoneleigh – *Erection of a rear conservatory (W20031406LB)*

22 Spinney Hill, Warwick – *Erection of a new dwelling (W20031306)*

#### HEARING

1 Overell Grove, Leamington Spa – *Erection of a timber building in rear garden (W20031272)*

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### PART 2 - PLANNING APPEAL DECISIONS

#### COMMERCIAL EXTENSION – IMPACT ON CONSERVATION AREA

1. **Construction of mansard roof with additional office/storage space, 62 Brandon Parade, Holly Walk, Leamington Spa (W20030624)**
  - Delegated Decision 9 June 2003
  - Unacceptable bulk and mass of building, affect setting of listed building and appearance of the conservation area - contrary to WDLP Policy (DW) ENV3 (Development principles) and (DW)ENV6 (conservation areas)
  - Appeal ALLOWED 4 December 2003

The Inspector considered that there were two main issues. First, the likely effect of the development on the character and appearance of the Leamington Spa Conservation Area and secondly its effect on the setting of the adjacent grade II Listed Buildings.

#### **Character & Appearance:**

The Inspector agreed with the Council that although the character of the Conservation Area is varied, it has a unifying theme derived from the style, materials, form and layout of the buildings erected during the main period of the town's development. However, she considered that the heights of the buildings and the nature of the roofscape does vary in the vicinity of the appeal site. In particular she noted that a number of adjacent buildings and other buildings in the town centre had mansard roofs similar to that of the appeal proposal. Accordingly, she considered that it would not introduce a new or unusual feature but rather would reflect an existing, established characteristic of the Area. Moreover, she considered that by reason of the proposed recessive sloping face and the set back from the substantial parapet wall it would not be an unduly dominant or intrusive feature. Therefore she concluded that it would not harm the character and appearance of the Conservation Area which the various Development Plan policies seek to protect.

**Listed Buildings:**

It was noted that there was more than a 10 metre gap between the appeal building and the adjacent listed buildings and that the former is already higher. She considered that the proposed mansard roof would not reduce this gap and would only be slightly higher than the existing lift shaft which is already a prominent feature on the elevation adjacent to the listed buildings. For similar reasons, therefore she found that the proposal would not have an adverse impact on the setting of Listed Buildings and would not conflict with the relevant policies in the Development Plan.

**Conclusions and conditions:**

Planning permission was granted subject to the standard 5 year time limit implementation conditions.

**COMMENTS:**

In the context of the varied roofscape and heights of buildings of in the vicinity the Inspector, clearly, did not agree that Mansard roofs were an uncharacteristic feature, in principle, in the Leamington Spa Conservation Area and thought that this particular mansard roof was relatively discreet.

**LISTED BUILDING – SINGLE STOREY EXTENSION DRAWINGS LACK DETAIL****2/3. Erection of a rear kitchen extension, 38 Castle Hill, Kenilworth (W20030773/0774LB)**

- Delegated decisions 7 July 2003
- Size, design and plot coverage detrimental to the character of the listed building, contrary to local plan policy (DW)ENV11
- Size and design of extension detrimental to the character of the Conservation Area, contrary to local plan policy (DW)ENV6 and ENV8.
- Appeals ALLOWED 11 December 2003

The Inspector considered the main issue in this case to be whether the proposal would have a damaging effect on the listed building and on the conservation area.

The Inspector considered that the special interest of this terrace of listed buildings lies primarily in the front elevation facing Castle Hill, which makes a significant contribution to the character and appearance of the conservation area. He considered that the same could not be said about the rear of the terrace, which has seen extensive alterations and extensions over the years. This includes an existing kitchen and toilet extension on the appeal property and large extensions projecting back to the rear passageway on the two adjoining properties.

The Inspector noted that the proposed extension would not be as high as the extensions on adjoining properties and it would not extend to the rear boundary. Furthermore, it would not cover any more of the historic fabric of the house than is the case with the existing kitchen extension.

In terms of its proposed form and materials, bearing in mind the existing extensions that would be replaced, the Inspector did not consider that there would be material harm to the listed building. The Inspector noted that views of the extension from public vantage points would be limited and judged that it would not have a detrimental impact on the character and appearance of the conservation area.

Taking into account the degree of change that has already occurred at the rear of the terrace, the Inspector was satisfied that an extension of the shape, size and form proposed would be acceptable. However, he expressed concerns over the lack of detail in the application drawings. Therefore he imposed a condition requiring further details to be submitted and approved before the development commences.

## COMMENTS

The major alterations that have previously taken place to the rear of other properties in this terrace and the fact that there would only have been limited views of the proposed extension from public vantage points appears to have influenced the Inspector's decision in this case. He also afforded weight to the fact that previous inappropriate additions to the appeal property would be removed.

### **LARGE EXTENSION TO RESIDENTIAL BARN CONVERSION – INAPPROPRIATE DEVELOPMENT IN THE GREEN BELT**

#### **4. Erection of a single storey rear extension, 2 The Barn, Manor Park Farm, Haywood Lane, Baddesley Clinton (W200300856)**

- Delegated decision 7 July 2003
- Size, bulk and design detracts from original character of the barns, contrary to local plan policy (DW)C3
- Appeal DISMISSED 12 December 2003

The Inspector considered the main issues in this appeal to be (i) whether the proposal amounts to appropriate development in the Green Belt and if not, whether there are any very special circumstances sufficient to clearly outweigh the harm caused; and (ii) the effect of the proposal on the character and appearance of the Special Landscape Area and the building.

#### **Issue (i): Inappropriate development within Green Belt**

The Inspector calculated that the extension would increase the footprint of the dwelling by 23%. He noted that PPG2 states that strict control should be exercised over the extension of re-used buildings within the Green Belt. In this context, he considered that the extension would be sizeable, extending across almost half of the rear elevation of the dwelling. It would provide a whole new room and a rear lobby, rather than operating as an ancillary extension to an existing room. He concluded that it would result in the creation of a rear wing which would substantially alter the scale and character of the dwelling. It would not be a limited extension, but rather a disproportionate addition over and above the size of the original dwelling. He therefore judged that the proposal would be inappropriate development in the Green Belt.

The Inspector noted that the extension would partly fill the gap between the dwelling and a garage block to the north and therefore he considered that it would cause a material loss of openness on the site. This would, in turn, be harmful to the openness of the Green Belt.

The Inspector concluded that there were no very special circumstances that could justify permitting this inappropriate development within the Green Belt. He had regard to a claim that the extension would be well screened, but considered that it would be visible from adjacent highways. In any event, he stated that the degree to which a site is well screened is an argument that could be used many times thereby undermining the objectives of Green Belt policies.

#### **Issue (ii): Effect on character and appearance of Special Landscape Area and building**

The Inspector judged that the proposed extension would increase the prominence of the house when viewed from Haywood Lane and Rising Lane. It would thus erode the attractive and open nature of the Special Landscape Area.

The Inspector noted that the appeal property forms part of a relatively successful barn conversion scheme which has retained the simple, long elevations and rooflines so often found in rural buildings. He considered that the proposed lean-to extension would obscure a significant part of the rear wall and disrupt the simple pleasing structure of the buildings. He further considered that the recessed sections of roof proposed to accommodate the existing first floor windows would be a non-traditional and complicated construction for such a rural building. He concluded that the proposal would seriously detract from the character and appearance of the building.

## COMMENTS

The appellant had argued that Local Plan Policy (DW)C3 was only applicable to the initial conversion of agricultural buildings and was not applicable to future alterations to converted buildings. The Inspector commented that the Policy gives no specific guidance on dealing with proposals for extensions in the years after conversion. However, he agreed with the Council that its underlying objectives cannot be ignored. This supports the way in which the Council applies the Policy.

## BROWNFIELD RESIDENTIAL DEVELOPMENT – INFLUENCE OF PPG3 ADVICE

### 5. **Erection of 23 flats in two and three storey blocks and detached dwelling after demolition of existing buildings, 24,26 & works rear of 22 Clarendon Road, Kenilworth (W20021807)**

- Committee decision 18 June 2003 (*contrary to officers recommendation*)
- Scale, form and massing contrary to character of area, contrary to advice in PPG3, cramped layout contrary to local plan policy (DW)ENV3, unneighbourly form of development, increased traffic congestion and parking on Clarendon Road
- Appeal ALLOWED 22 December 2003

The Inspector considered that there were 4 main issues. First, the effect of the development on the character and appearance of the area and secondly its effect on the living conditions of the occupiers of nearby residential properties. The third was whether the development would provide satisfactory living conditions for future, and the fourth was its effect on highway safety on Clarendon Road.

#### **Character & Appearance:**

The Inspector agreed with the Council that the existing factory was fairly unobtrusive because of its low height and boundary vegetation and walling and that the proposed development of 63 dwelling per hectare, buildings up to 3 storeys and the removal of some vegetation would result in considerable change. He referred to the advice in PPG3 that new development must make efficient use of land without compromising the quality of the environment and said '*having respect for the character of the area does not automatically mean replicating existing building densities or dwelling types in the immediate locality*'. He considered that the proposed density was entirely appropriate to a previously developed site within easy walking distance of the town centre and a principal bus route. Moreover, he considered that the density was not wholly out of character with existing long established development on Clarendon Road citing the terraces of house of no.2 to 22, in particular.

He accepted that the scale and form of apartment blocks would represent a more dominant built form but considered that this was not a critical flaw given that their set back position would not make them part of the Clarendon Road street scene. Furthermore he considered that the retention of the 4 metre high wall on the southern boundary and the adjacent proposed 2 storey would represent a reasonable transition between the lower and less dense development of along Clarkes Avenue and the 3 storey part of the development. Also the attractive design, variation in heights, and rooflines would all help assist in reducing their overall scale.

He agreed with the Council that the frontage Ash tree has some amenity value and its loss together with the positioning of the new frontage house between 2 access roads would bring about a less enclosed appearance to the street scene. However, he considered that the scheme provided opportunities for new landscaping and trees outside the site would assist in integrating the development in the wider landscape.

Also he considered that despite the courtyard containing more than 10 car parking spaces the proposed planting within and around it would ensure that the parked cars would not dominate the surroundings.

He concluded, on this issue, *'the proposal would strike the right balance between making more efficient use of previously developed urban land in an accessible location and protecting the quality of the environment'*, thereby not conflicting with the objectives of the relevant district wide local plan policies – ENV3 ENV3A, and H5, in so far as they related to this issue

#### **Living conditions of occupiers of neighbouring residential properties:**

The Inspector noted that the Council's distance separation standards would be exceeded and considered that there would be no serious direct overlooking of gardens or any significant loss of privacy, daylight, sunlight or outlook. He considered that the removal of heavier traffic associated with, and nuisance from, the factory would outweigh the harm resulting from residential traffic along the proposed access road. Therefore, he concluded that the development would not harm these living conditions and not conflict with those parts of the same relevant local plan policies relating to this issue

#### **Living conditions for future occupiers**

The Inspector considered that adequate ventilation could be provided while maintaining satisfactory sound attenuation and did not agree that the proposed acoustic fencing would result in an unacceptably poor outlook. Whilst acknowledging that the main amenity spaces would be confined to the rear of the apartments and would be of limited size he said *'they are likely to be attractive to occupiers who would be prepared to forgo the normal standard of residential amenities to live in such location where facilities, services and other amenities are conveniently located'*. Therefore, he concluded that it would provide satisfactory living conditions and therefore not conflict with the relevant parts of the same local plan policies.

#### **Highway safety on Clarendon Road:**

The Inspector referred to the advice in PPG 3 that developers should not be required to provide more car parking than they or their potential occupiers might want, and that an average of more than 1.5 off street space per dwelling would not reflect the Government's emphasis on securing sustainable residential environments. In this context, he considered that the development, which would provide a lower level of parking provision (on average, about 1.2 off street car parking spaces per dwelling), would be appropriate for such a location on the edge of the town centre and where well served by bus services and the proposed Kenilworth railway station. Also, the unilateral undertaking would secure financial contributions to improve public transport. He acknowledged the Council's concerns about problems of on street parking at the Western end of Clarendon Road but considered that the proposed development would not lead to any significant degree of extra on street parking. However, he agreed that extra car parking space dedicated for the needs of disabled people was required which he considered could be controlled by planning condition. Therefore, he concluded that the proposal would not conflict with the objectives of policy (DW) ENV3.

#### **Other Matters:**

Noting the absence of objection from Severn Trent Water and the Environment Agency he considered that satisfactory drainage works could be accommodated within the existing foul and surface water systems.

#### **Conditions and Unilateral Undertaking:**

Planning permission was granted subject to 13 conditions relating to topic areas that include materials, boundary treatments, landscaping, visibility from access road, 2 disabled parking spaces, cycle store, drainage, contaminated land, noise reduction measures. He considered that the unilateral undertaking covering education and public transport contributions was acceptable, notwithstanding proposed drafting improvements made by Warwickshire County Council.

## COMMENTS

This is another case where policy emphasis of efficient use of land and the use of higher residential densities together with limits on the off street provision in PPG3, particularly on sustainable urban sites, have been given great weight. It also highlights that the parallel requirement for respect for the character of an area is being interpreted with considerable flexibility by the Inspectorate, thereby allowing considerable changes to be made in the built form and densities of such areas. Whilst the arguments presented on behalf of the Council succeeded in exposing a number of flaws in the proposed development it was not found to be sufficient to warrant refusing a scheme that the Inspector considered would strike the right balance between efficient use of land and the quality of the environment.

### NEW VEHICULAR ACCESS – IMPACT UPON HIGHWAY SAFETY

#### 6. **Creation of vehicular access and hardstanding onto Offchurch Lane; Copper Beeches, Offchurch Lane, Radford Semele (W20021877)**

- Delegated decision 25 February 2003
- Detrimental to highway safety , insufficient visibility, contrary to local plan policy (DW)ENV3.
- Appeal DISMISSED 30 December 2003

#### **Highway safety:**

The Inspector found the western visibility from the centre of the proposed access was restricted by a tall fence and conifer hedge along the front of the property but considered that there was potential to improve visibility by imposing a condition requiring their removal or cutting back. He considered that visibility to the east to be relatively good once shrubs within the garden of the appeal property were removed. However, the sight line would pass across a narrow portion of the front garden of the adjoining house and whilst there was no reason for the adjoining owner to place obstructions in this part of the garden he recognised that the appellant lacked the necessary control. Moreover, he was not convinced that a private car of average size could readily be turned within the narrow confined of the proposed front hardstanding. He considered that drivers trying to reverse out of the site would constitute a safety hazard for other road users particularly close to a busy road junction and along a road subject to a 40 mph speed limit.

He recognised the difficulties and dangers that the appellant, his family and any visitor may have in gaining access to the house bearing in mind the narrow width of the frontage grass verge and that notwithstanding the comparatively wide carriageway parked vehicles directly outside the house can also cause an obstruction. However he considered that this did not justify the creation of new hazards. He concluded that the development would be detrimental to highway safety thereby conflicting with local plan policy ENV3.

#### **Other issues:**

He did not consider that the development would cause harm to the settings of nearby listed buildings or have an adverse effect on the beech tree that formerly stood in the front garden of the appeal property and was the subject of a tree preservation order.

## COMMENT

This decision illustrates the importance attached to preventing dangerous reversing movements and ensuring that visibility splays are in the applicant's control notwithstanding that on road parking can also be a hazard.

## **DETACHED SWIMMING POOL BUILDING – INAPPROPRIATE DEVELOPMENT IN GREEN BELT**

### **7. Erection of a building to house a swimming pool; York Farm, Pagets Lane, Bubbenhall (W20021605)**

- Delegated decision 19 March 2003
- Harm to the openness of the Green Belt due to the building's position, size, and massing, contrary to local plan policy (DW)ENV1.
- Appeal DISMISSED 31 December 2003

The Inspector judged that the proposed swimming pool building was clearly in the category of inappropriate development within the Green Belt. He then considered whether there were any very special circumstances to justify departing from the strong presumption against the development.

The appellant had suggested that the proposal would resemble an agricultural building and that the presence of a nearby quarry had made it difficult to sell their property. The Inspector found that the building, with its full-length glazing and patio doors, would bear little resemblance to an agricultural building. He did not consider the presence of the quarry, at some distance from the house, to be a sufficiently overriding or powerful a reason so as to place the development into the category of special circumstances for Green Belt purposes.

The Inspector noted that the building would be in an open position visible across open land to the south and also from along the access road. He considered that the building would add to the existing sporadic development along the lane, thus harming the character and appearance of the area.

## **COMMENTS**

This proposal fell within the category of inappropriate development within the Green Belt and permission is only granted for such development in very special circumstances. The appellant in this case was not able to demonstrate any very special circumstances sufficient to justify the harm that would be caused. The proposal was for a large swimming pool building in a visually prominent position in the Green Belt. It is hard to think of any very special circumstances that could justify such a development.

## **EXTENSION TO BARN CONVERSION – APPLICATION OF BARN CONVERSIONS POLICY**

### **8. Erection of a single storey extension, White Lodge Barn, Stoneleigh Road, Baginton (W20031120)**

- Delegated decision 1 September 2003
- Disproportionate addition to a barn conversion, detrimental to the character and appearance of the Green Belt, contrary to local plan policies (DW)ENV1, (DW)ENV3, (DW)C1 and C3, and SPG on barn conversions.
- Appeal ALLOWED 8 January 2004

The Inspector did not agree with the Councils interpretation of Local Plan Policy (DW)C3. He considered that the policy deals with the initial re-use or adaptation of existing rural buildings, rather than extensions to buildings that have already been converted. The appellant had referred to Policy (DW)H14 and the Inspector attached weight to the fact that the extension complied with this policy.

The Inspector noted that the conversion of these former agricultural buildings had been carried out sympathetically. He considered that the extension would be suitable in size, being a 20% addition to the existing floor area, within the threshold specified in Policy (DW)H14. He therefore considered that the extension would be an appropriate development in the Green Belt in accordance with Policy (DW)ENV1.

Although the appeal property is in an open position, the Inspector considered that the extension would make little inroad into the openness of the Green Belt because of its relationship to the existing buildings.

## COMMENTS

It is disappointing that this particular Inspector did not appear to consider Policy (DW)C3 to be relevant following the initial conversion of a rural building. However, the Council's application of the policy in this way has been supported by Inspectors at other appeals.

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

Total number of Planning decisions (incl adverts)	= 52
Dismissed	= 40 (77%)
Allowed	= 12

### PART 4 : ENFORCEMENT NOTICE APPEAL

1. **Erection of a two metre high wall fronting Home Farm Crescent, including the erection of piers either side of a vehicular access on to Home Farm Crescent – 18 Whitnash Road, Whitnash (ACT127/5/01)**
  - Enforcement action authorized by Committee September 2002
  - Detrimental to visual amenity, contrary to WDLP Policy (DW) ENV3 (Development principles)
  - Hearing for part retention of wall at 1.5m height dismissed June 2003
  - Enforcement Notice issued 22 July 2003 to demolish the whole of the wall. Compliance period to be four months
  - Appeal on ground (f) that the compliance requirements of the notice are excessive
  - Appeal PART ALLOWED 8 January 2004, notice varied to require the reduction on height of the wall and associated piers to a height not exceeding 0.9m above ground level

The Inspector noted that the extensive planning history of the site and that it was the appellant's view that a wall of one metre in height could be retained as 'Permitted Development' taking into account of the provisions of the 1995 GPDO. He acknowledged that the Council in the notice was concerned not only with regard to the impact upon visual amenity, but also the harm to highway safety.

**Visual amenity** – Taking into account the general provisions in the 1995 GPDO it was a matter of fact that in normal circumstances a wall not exceeding 1 metre in height would not amount to a breach of planning control. The Inspector considered that without an Article 4 Direction (removal of Permitted Development rights) the Council was not in a position to control the appearance of a wall of this restricted height.

**Highway safety** – Article 3(6) of the GPDO does enable the highway safety issues to be taken into account. The Inspector stated that if the present arrangement would add to the dangers to those using the highway to the extent that it would be likely to cause danger to such persons. Thus, the effect of Article 3(6) of the GPDO would be to take away the permission granted by Article 3(1).

As the County highways Authority had in association with previous appeals indicated that a wall and piers no greater than 0.9m in height would meet their standards for highway visibility the Inspector considered that a wall of no greater than 0.9m in height would be acceptable, as a variation to the terms of the enforcement notice. To accord with the Inspectors decision the wall requires to be reduced to a height not exceeding 0.9m by 8 May 2004.



## **PART 5 – TREE PRESERVATION ORDER WORKS APPEAL**

### **1. The felling of an oak tree, 1 Leyes Lane, Kenilworth**

- Appeal against non determination of application within prescribed 8 week period
- Insufficient justification to remove the tree, adverse effect upon local street scene
- Appeal DISMISSED by the Secretary of State 5 December 2003

The building insurers were of the opinion that the roots of the tree had caused subsidence which in turn had caused damage to the property at no.1 Leyes Lane, as well as alleged damage to no.3 Leyes Lane. This damage would be mitigated by the removal of the tree.

As part of the appeal a very detailed site appraisal was carried out by an Arboricultural Inspector who then submitted a report with conclusions to the Secretary of State. The key points made were that the tree was of very significant amenity value, had been previously heavily pruned and was now a healthy tree of low vigour.

The evidence provided of subsidence and the crack monitoring on the garage (not underpinned) did not suggest that the oak tree was currently causing movement in the house. Further monitoring was required to be carried out, and that there were other options available to the felling, including underpinning and root barrier works. Only some of the amenity value of the oak could be replaced by a planting of another tree of medium stature.

The Secretary of State fully agreed with the Inspectors conclusions

## **FORTHCOMING HEARINGS & PUBLIC INQUIRIES**

### **HEARING**

2 Mar        Erection of first floor and 2 storey side and front extension - 53 Arras Boulevard, Hampton Magna, Budbrooke (20030588)

### **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 (20030256)

### **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)

### **PUBLIC INQUIRY – CERTIFICATE OF LAWFULNESS APPEAL**

30 Mar        Use of land for the stationing of a mobile home for use for residential purposes - Five Ways Nurseries, Five Ways, Haseley (W20031010)