

**List of Current Planning and Enforcement Appeals  
10 October 2017**

Public Inquiries

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Date of Hearing/Inquiry	Current Position
W/14/0618	Land north of Common Lane, Kenilworth	Outline application for up to 93 dwellings	Sandip Sahota	TBA	-	In abeyance whilst the applicant considers their position to amend s.106 agreement
W/16/0112	Glenthorne, Fiveways Road, Shrewley	Certificate of Lawful Use for use of land as part of curtilage <b>Delegated</b>	Sandip Sahota	Proof of Evidence: 7 August 2017	5 and 6 September 2017	<b>Appeals Allowed</b>

The previous Inspector's decision was quashed in the High Court in November 2016. The judge considered that the Inspector has erred under the law by not considering the relevant of S.55 (2) (d) of the Town and Country Planning Act 1990. S.55(2)(d) of the Act states that the use of the land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse shall not be taken for the purposes of the Act to involve development of the land.

There is no authoritative definition of the term 'curtilage', it must be judged on the facts of any given case. The Inspector made reference to several key pieces of case law which established the following principles: To fall within the curtilage of a building, land should serve the purpose of the building in some reasonably necessary or useful manner; curtilage is a small area forming part and parcel with the house or building which it contained or to which it was attached; must be intimately associated with the building; curtilage should serve the purpose of the building within it in some reasonably necessary or useful manner. On the issue of smallness, a 2000 case found "smallness' varies with circumstances and is relative to the size of the building; a curtilage does not always have to be small".

The Inspector found that early in his ownership of the property the appellant established a vegetable patch in the south-west corner of the north part of the land; this use albeit a small part of the north part of the land was clearly for a purpose that served the occupation of the dwellinghouse in a reasonably useful manner. The appellant and his wife have owned a dog for many years and the neighbour to the north stated in a statutory declaration made in 2014 that dog walking in the north part of the garden had been a daily activity since at least 1999. The use of the land for this activity has been useful to occupation of the dwellinghouse. Two benches positioned at the perimeter of the land have been there for considerable time suggesting that time has also been taken to sit and enjoy the surroundings for their own sake. Evidence also indicated that the north part of the land had been used for recreational activities such as archery, pitch and put and other lawn games.

It was not necessary to establish a date on which the curtilage of the dwelling was first established. It was only necessary to establish that the curtilage of the dwellinghouse at the appeal property was the whole of the plot on the date of the application, 21 Jan 2014.

The Inspector considered that creating a garden is not in itself conclusive because the land must also serve occupation of the dwelling in a necessary or useful manner. Regular exercising of a dog is also not in itself conclusive but taken together with use of part of the land as a vegetable patch and use of the land for sitting out and recreational activities, the Inspector concluded on the balance of probability and on the facts of the case that the whole of the plot served occupation of the dwelling in a reasonably useful manner on 21 Jan 2014. The size of the plot did not alter the overall conclusion he reached. In this regard, he considered that the dwelling was large with substantial ancillary buildings associated with it and is located in a countryside area where the size of its curtilage reflects its location.

Informal Hearings

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

Written Representations

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Current Position
W/16/0429	68 Thornby Avenue, Kenilworth	Single Storey Rear Extension <b>Delegated</b>	Liz Galloway	Questionnaire: 2/8/16 Statement: 24/8/16 Comments:	Ongoing
W/16/2157	Land at the former Bryants Nursery, Station Lane, Lapworth	3 detached dwellings <b>Delegated</b>	Helena Obremski	Questionnaire: 19/5/17 Statement: 16/6/17 Comments: 30/6/17	Ongoing
W/16/2046	Llandrecies, Church Road, Old Milverton	New Dwelling <b>Committee Decision in accordance with Officer Recommendation</b>	Dan Charles	Questionnaire: 26/6/17 Statement: 24/7/17 Comments: 7/8/17	Ongoing
W/16/2110	Narborough Court, 58 Warwick Place, Leamington	Fencing <b>Delegated</b>	Ed Pigott	Questionnaire: 19/6/17 Statement: 17/7/17 Comments: 31/7/17	Ongoing

The fencing proposed would run on top of the existing boundary wall and add almost 1m in height. The Inspector considered that this part of the Conservation Area was generally characterised by boundary walls which, generally, were low brick walls with hedging or trees behind, in keeping with the historical development of the area, with few examples of fencing. He considered that this contributed to the softer green and pleasant character of this section of the Conservation Area and to its open residential nature.

The Inspector concluded that the proposed expanse of fencing would detract from the appearance of the street by covering up some of the soft hedging and introducing an unsympathetic, enclosing and more intrusive feature resulting in harm to the Conservation Area.

The intended reduction in littering and loitering at Narborough Court as a result of the development were considered to be private benefits which would not amount to public benefits that could outweigh the harm to the Conservation Area.

W/17/0326	21 Staunton Road	Change of Use to HMO <b>Delegated</b>	Emma Spandley	Questionnaire: 19/6/17 Statement: 17/7/17 Comments: 31/7/17	<b>Appeal Dismissed</b>
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The appellant argued that there was little evidence provided about harmful impacts that would arise from the development. However, the Inspector referred to the text accompanying Policy H6 which makes it clear that the Council have had a significant and persistent problem with an accumulation of HMOs in Leamington Spa giving rise to noise, disturbance and other issues that Policy H6 amongst others properly seek to address.

The appellant suggested that approving the proposal would not result in residents at No.19 being sandwiched between the existing HMO at No.17 and the proposed HMO at No.21 because of the orientation of No.21 and the stretch of garden abutting No.19. The Inspector considered that while there is no definition of 'sandwiching' in the policy, he found it as a matter of fact that No.19 would be 'sandwiched' because the two immediately adjacent properties would both be HMOs. The garden at No.21 runs sideways between the two properties, but nevertheless it would still form part of the same property, its use and its associated activities. Particularly given the large number of residents proposed at No.21 (9), the Inspector found that the short distance over the garden would not prevent any effect on No.19 from the associated increased levels of activity, comings and goings, deliveries and noise and disturbance that would be likely to occur from greater number of occupants at a further HMO.

W/16/1970	Poultry Farm, Warwick Road, Norton Lindsey	9 Dwellings <b>Delegated</b>	Dan Charles	Questionnaire: 19/6/17 Statement: 17/7/17 Comments: 31/7/17	<b>Appeal Dismissed</b>
<p>Annex 2 of the NPPF excludes land that is or has been occupied by agricultural buildings from being defined as previously developed land.</p> <p>The Inspector noted that the majority of the proposed buildings would be two storeys in height and therefore the proposal would be larger in scale and mass than the existing low profile single storey poultry buildings and this would result in harm to the openness of the Green Belt.</p> <p>The linear form and combined mass of the proposed dwellings would be incongruous when viewed alongside adjoining open fields and the dispersed pattern of surrounding development. Whilst additional landscaping is proposed, the resultant reduction in height of roadside vegetation to deliver vehicular visibility splays would have a harmful impact on the rural character of Warwick Road.</p> <p>The Inspector observed that the connecting section of Warwick New Road to New Road and to the centre of Norton Lindsey is unpaved and unlit. He also saw that vehicles travelled along Warwick Road at speed and that there are no bus services in close proximity to the site. The lack of paving and lighting are unlikely to offer future occupants a realistic, regular and all year round option for walking and cycling to access shops and services and they would be reliant on the private car. Consequently in the context of para 55 of the NPPF, the development would be sited in an isolated location in terms of its accessibility and would therefore result in harm when considering the environmental dimension of sustainable development in the NPPF.</p> <p>The appellant asserted that if the appeal failed he would reactivate the poultry farm use which would result in a greater level of traffic compared to the proposed dwellings and the necessary improvements to the buildings would result in visual harm. However, the Inspector considered that there was no substantive evidence to indicate that there is a significant probability that the poultry farm would be reinstated. Moreover, based on the evidence, he was not convinced that the fall-back position would lead to a greater level of harm than the appeal proposal.</p>					
W/16/1650	Lower Farm, Brownley Green Lane, Hatton	New Dwelling <b>Delegated</b>	Lucy Hammond	Questionnaire: 23/6/17 Statement:	Ongoing

				21/7/17 Comments: 4/7/17	
W/16/2108	Park House, 6 Adcock Drive, Kenilworth	1 Dwelling <b>Delegated</b>	Helena Obremski	Questionnaire: 17/7/17 Statement: 14/8/17 Comments: 28/8/17	Ongoing
W/16/2103	The Oaks, Chessetts Wood Road, Lapworth	Change of use of land to garden land and single storey extension <b>Delegated</b>	Holika Bungre	Questionnaire: 26/6/17 Statement: 24/7/17 Comments: 7/8/17	Ongoing
W/17/0203	1 St Mary's Road, Leamington	Retention of Brick Wall <b>Committee Decision in accordance with Officer Recommendation</b>	Holika Bungre	Questionnaire: 8/8/17 Statement: 30/8/17 Comments: TBC	<b>Appeal Dismissed</b>

The Inspector found that frontages in the area were open and when defined, boundary walls and fences were low. The Inspector considered that the continuous 1.6m high height of the wall was conspicuous within the streetscene and wider area. As a particular contrast to the other roadside frontages he considered that the wall had a harmful effect on the character and appearance of the area.

W/17/0110 and W/17/0111 /LB	19 Mill Street, Warwick	Single Storey Rear Extension <b>Delegated</b>	Emma Spandley	Questionnaire: 21/7/17 Statement: 18/8/17 Comments: 1/9/17	Ongoing
W/16/2123 /LB	Rowington Hall, Old Warwick Road, Rowington	New Slate Roof <b>Delegated</b>	Nick Corbett	Questionnaire: 21/7/17 Statement: 18/8/17 Comments: 1/9/17	Ongoing
W/17/0109	R/O 21 Dale Street Leamington	New Dwelling <b>Delegated</b>	Helena Obremski	Questionnaire: 22/8/17 Statement: 19/9/17 Comments: 3/10/17	In preparation
<b>New</b> W/17/1022	York Barn, Pagets Lane, Bubbenhall	Removal of Condition restricting Permitted Development Rights <b>Delegated</b>	Ed Pigott	Questionnaire: 5/10/17 Statement: 2/11/17 Comments: 16/11/17	In preparation
<b>New</b> W/16/2169	66 Radford Road, Leamington	Change of Use to HMO <b>Delegated</b>	Emma Spandley	Questionnaire: 6/10/17 Statement:	In preparation



				3/11/17 Comments: 24/11/17	
<b>New</b> W/17/0581	Land to the rear of 122 Leicester Lane,	Erection Of 5 x 4 bed houses <b>Delegated</b>	Emma Spandley	Questionnaire: 11/9/17 Statement: 9/10/17 Comments: 23/10/17	Ongoing
<b>New</b> W/17/0429	95 Clarendon Street, Leamington	Hipped roof incorporating increased ridge height and dormer windows <b>Delegated</b>	Holika Bungre	Questionnaire: 28/9/17 Statement: 20/10/17 Comments:	In preparation
<b>New</b> W/17/0419	The Moat House, Church Road, Honiley	Certificate of Lawfulness for Outbuilding <b>Delegated</b>	Emma Spandley	Questionnaire: 20/9/17 Statement: 18/10/17 Comments: 8/11/17	In preparation
<b>New</b> W/16/1788	135 Warwick Road	Residential development: revised design including to access road width. <b>Committee Decision contrary to Officer Recommendation</b>	Lucy Hammond	Questionnaire: 13/9/17 Statement: 11/10/17 Comments: 25/10/17	In preparation


### Enforcement Appeals

Reference	Address	Issue	Officer	Key Deadlines	Date of Hearing/Inquiry	Current Position
ACT 429/15	Wroxall Abbey	Removal of unauthorised structure (marquees and pergolas) and reinstatement of land	DC	Appeal start date 01/03/17 Statement 12/04/17 Final comments 03/05/17	-	<b>Appeal allowed in part (temporarily) and dismissed.</b>
<p>The Inspector took the view that the unauthorised structures had a significant impact upon the openness of the Green Belt and the setting of the heritage assets at the site. However, he also concluded that very special circumstances exist, essentially in relation to the business need for the marquee extension sufficient to grant temporary planning permission for a period of 2 years for that structure whilst upholding the Enforcement Notice in respect of the remaining unauthorised structures.</p>						
ACT 340/16	Rowington Hall, Old Warwick Road, Rowington	Unlawful replacement of slate roof without listed building consent	NC	Appeal Start 01/09/17 Statement due 13/10/14 No final comments date yet	-	Ongoing
ACT 363/15	Fizzy Moon 35 Regent Street	Unlawful works to listed building (painting of	RL	Appeal start 20/09/017	-	Ongoing

	Leamington Spa	windows, new menu board, timber clad front steps,  installation of planter		Statement due  01/11/17 Final comments 22/11/17		
ACT 167/16	Flat 2, 99 Upper Holly Walk Leamington Spa	Unauthorised installation of balcony	TBC	Appeal Start 22/09/17 Statement 03/11/17 Final comments 24/11/17		Ongoing
ACT038/17	66 Radford Road Leamington Spa	Unauthorised change of use to HMO	ES	Appeal Start 22/09/17 Statement 03/11/17 Final comments 24/11/17		Ongoing

