List of Current Planning and Enforcement Appeals
September 2021

Public Inquiries

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Date of Inquiry	Current Position
W/20/0617	Land South of Chesterton Gardens, Leamington Spa	Outline Application for 200 dwellings **Committee Decision contrary to Officer Recommendation**	DC	Statement of Case: 24 May Proofs of Evidence: 15 June 2021	13 July for up to 4 Days	**Appeal and Full Costs Claim Allowed.**

<u>First Issue - Whether the provision of a single vehicular access to the site would be detrimental to the safety of pedestrians, cyclists and drivers.</u>

The Council, in its reason for refusal, was of the view that the provision of a single vehicular access to the site via an existing residential area would result in a substandard form of development which would be detrimental to highway safety and therefore contrary to Policy TR1.

The Inspector noted that the only technical evidence on highways submitted as part of the appeal was that produced by the Appellant, which was agreed by the Local Highway Authority (LHA). Having undertaken a full assessment of the development proposals, the LHA raised no objections to the proposals, subject to conditions and s106 obligations. The technical evidence deals with highway safety and capacity and accessibility. The LHA was content that the proposals are acceptable in highway terms, and the Inspector considered that as important, because the LHA is the statutory consultee, and the body charged with maintaining the safety of the highways. Independent road safety audits were also undertaken in respect of the access arrangements, and the proposed traffic calming scheme and made some minor recommendations that can be incorporated in the final detailed designs. The Inspector summarised - every expert highway and transport professional who has looked at the proposals agreed they were safe.

The CPRE suggested that less weight should be given to the LHA's response because it did not refer to the WDLP and it was not taken to Councillors or a Committee or Panel for approval. The Inspector noted that it is normal for specialist officers to provide a response on behalf of the LHA. The LHA is a technical consultee who are the independent body that manage/maintain and look after the safe operation of the local road network including footways and cycleways. The role of the LHA is to provide expert opinion to assist in the determining of planning applications. Moreover, he was not clear what difference it would make if the technical consultation had referred to the WDLP. There is no suggestion that there is any conflict between the WDLP and the NPPF.

The submitted Transport Assessment demonstrated that the local road network has significant residual capacity to accommodate vehicle movements arising from the appeal proposals. Suitable visibility can be achieved at the site access, and emergency access is to be provided via Church Lane. The precise location where the emergency access goes into the site would be an issue for reserved matters, but the Inspector found that there can be no question marks over the ability of the Appellant to deliver that access. The proposals would generate approximately 100 additional vehicle movements in the AM peak and 114 in the PM peak period. At worst, that is just less than 2 vehicles per minute which would not materially affect the operation of the local or wider highway network given the spare capacity on those roads.

He then turned to the two main points raised by the objectors in relation to highways and access matters: The first point is that the Inspector in an appeal decision in 2013 concerning land south of St. Fremund Way and north of the site appeal commented at paragraph 20 that further land to the south would not be dependent on access via that site which would not be suitable for accessing additional development to the south "due to the limited capacity in the Sydenham road network." The second point that the objectors rely on is the explanatory text contained within the WDLP at paragraph 2.47 which says that the allocation will deliver 500 dwellings and a rebuild and extension to Campion School to enable access.

The Inspector accepted that consistency in the planning process is important and like cases should be decided in a like manner. A previous appeal decision is capable of being a material consideration where the previous decision is sufficiently closely related to the issues that regard should be had to it. However, an Inspector is entitled to disagree with an earlier decision (whether on the same site or elsewhere) if there are sound reasons for so doing. Where there is disagreement then the Inspector must weigh the previous decision and give his reasons for departure from it.

Importantly, the Inspector in the 2013 appeal was assessing a different scheme, and he did not have the benefit of the detailed technical evidence that supports it which was before this Inquiry. The Inspector said that it is hard to know what evidence was before the earlier Inspector since none of the experts or participants in this Inquiry were there. Indeed, there is no evidence that was provided to that Inspector to support the conclusion arrived at. The highways evidence confirms this. Even if such evidence had been provided, the comment was given in the context of the evidence, and presumably his view, on highway capacity that the Inspector had available at

that time. The Inspector on this appeal stated that it was difficult to see how any weight can be attributed to the earlier Inspector's comment about the road network having limited capacity for any future access to the south in that context because, it is demonstrably wrong given that there is capacity on the network to accommodate traffic arising from the appeal proposals.

The Inspector's view was that the 2013 decision cannot bind his decision in this case as he was making the decision on the basis of different evidence, and in a vastly changed planning context. Most fundamentally, the development plan context has changed with the adoption of the WDLP in 2017 and the site is now allocated for residential purposes. It was not allocated in 2013 when the previous appeal was determined. Furthermore, the up-to- date highway assessment demonstrates that St Fremund Way, Chesterton Drive and connecting roads have a significant residual capacity to safely accommodate the appeal proposals. This position is agreed by the LHA who have raised no objections to this appeal subject to mitigation through conditions and s106 obligations

Having read the supporting text to Policy DS11 at paragraph 2.47 of the WDLP, he considered that there is no requirement within that paragraph or anywhere in the WDLP to deliver the Campion School access. The paragraph presents an idea or an aspiration of how access might be achieved but it does not make it a prerequisite of planning consent. It could have said that explicitly.

Further, the paragraph refers to the development of the whole allocation and it is only the first phase of the wider allocation that is proposed through this appeal. The suitability of the access for this scheme has been determined through the Transport Assessment and it is agreed as being acceptable by the LHA. If and when a second access does come forward, it would still be desirable to have two accesses including the Brimstone End access to offer full permeability through the wider development.

He noted that as a matter of law, the explanatory text is not policy, does not have the force of policy, and cannot trump the policy. As the Court of Appeal held in the Cherkley case, a development that accords with the policies in a local plan cannot be said to not conform with the plan if it fails to satisfy an additional criterion referred to only in the supporting text. The CPRE was in error to suggest accordance with the development plan was contingent on a second access being delivered, there is nothing in the Court of Appeal's judgement to support that approach.

Neither the Manual for Streets (MfS) and the Manual for Streets 2 (MfS2) indicates limits on the numbers of dwellings from a single point of access. The Fire Service considers each application based on a risk assessment for the site, and response time
requirements. He noted that the Warwickshire Fire and Rescue Service has formally raised no objection to the appeal proposal on consultation at the application stage.

The CPRE also made reference to the evolution of the WDLP and made reference to extraneous material including the Local Plan Inspector's Report. However, the appeal decision is to be made in accordance with the development plan itself, having regard to the

words of the policies informed by the explanatory text. The Inspector made the point that it is rarely appropriate to go behind the plan, which doesn't in any event move matters on here. The position at the time of the WDLP Examination was as set out in ID CPRE2. Negotiations with the Campion School have been protracted, and there has been a significant amount of correspondence between the relevant parties. It is still the Appellant's desire to secure that access, but that is not an issue that can, or needs to be resolved as part of this appeal.

It is proposed to provide vehicular access to the development off the existing highway network via the Chesterton Gardens development to the north. The access point is proposed to be from Brimstone End. Brimstone End is some 6.7m wide with footways either side. The access design includes a crossing point with an existing east-west bridleway and is designed as a one-way priority for vehicles entering the site. In respect of the proposals to cross the bridleway, there is nothing unusual or difficult about that process. Public rights of way (PROW) are often incorporated into new development and this would still be the case if access were coming from Campion School and/or Brimstone End as anticipated. The Local Plan Inspector would have been aware of the bridleway when allocating the site and nothing has changed in that respect.

An independent Stage 1 Road Safety Audit (RSA) was undertaken of the proposal. The audit highlighted minor issues regarding the priority arrangement and interaction between users of the bridleway and the site access and accordingly the access detail has been revised to respond to those recommendations. The proposed access has been agreed as being acceptable and safe by the LHA.

Throughout the course of the Inquiry the CPRE developed a case that the access to the site was unacceptable because of harm to equestrian activities. However, the Inspector could not agree with this view for several reasons. First, the response from the PROW Officer raised no objections to the scheme. Secondly, the RSA made recommendations, having particular regard to equestrians, and found that the access would be safe. Thirdly, the bridleway leads to the wider road network in any event which the CPRE expressed was a positive thing, so unless horse riders are simply going to go up and down the bridleway (which seems unlikely), they will encounter surfaced roads, and other road users at some point. Fourthly, equestrians use roads up and down the country daily. In his view, the access has been designed to accommodate a range of different users and there would be no adverse safety impacts.

<u>Second Issue - Whether the provision of single vehicular access to the development would provide acceptable living conditions for existing and future occupants, with particular reference to noise and disturbance.</u>

The Council's second reason for refusal alleges that the provision of a single vehicular access to the new development from an existing substantial cul-de-sac would direct significant movements onto the existing development access which would lead to an unacceptable impact on the amenity of local residents through increased noise and disturbance. The Council considered that the appeal

proposal was contrary to Policy BE3. The CPRE, Local Councillors and interested persons submitted objections to the proposal as they consider it would cause noise pollution along the access route during the construction and occupation periods.

The NPPF requires that planning decisions should prevent unacceptable levels of noise pollution, and that decisions should ensure that new development should mitigate and reduce to a minimum, potential adverse impacts resulting from noise, and avoid noise giving rise to significant adverse impacts on health and quality of life.

The Inspector felt it important to note that the only expert evidence on noise submitted to the Inquiry was that provided by the Appellant's acoustic consultant. With regard to the impact of noise on existing residents the consultant agreed with the Council's Environmental Health Officer (EHO), that the effects of the appeal proposals would sit between the LOAEL and the SOAEL. The most up-to-date acoustic evidence is set out in the consultants Noise and Vibration Assessment. The Inspector considered that this was a robust and comprehensive assessment that thoroughly explores the proposed noise impacts around the site, and the wider road network.

The CPRE did not agree with the consultant's Assessment claiming that constant noise "spikes" from construction traffic and increases in local traffic noise as a result of the proposed development would be unacceptable. However, there is no law, policy or guidance that recommends noise is measured in the way the CPRE advocates. Moreover, as the consultant explained the predicted change in road traffic noise using the L10, T noise level captures the noise which is exceeded for 10% of the time over the relevant period and can be considered to encompass 'spike' events from passing vehicles. In effect, the "spikes" have been taken into account.

Neither the policy nor the guidance defines a consistent numerical limit for noise or requires development to avoid all noise. The Noise Assessment provided by the Appellant's acoustic consultant sets out the thresholds adopted for the appeal site. The Inspector found these thresholds entirely appropriate to assess the suitability of the site for this scheme, and they show that no unacceptable effects would be brought about by the scheme.

From the evidence submitted, in terms of the level of noise risk, the Inspector considered that overall, the appeal site is a medium risk. The eastern part of the site tends towards a low to medium risk with noise levels below the LOAEL during the day and in the lower range of values above LOAEL but below the SOAEL during the night. The western part of the site, close to the railway is considered to tend to be a medium to high risk, with noise levels in the upper range of values above LOAEL but below the SOAEL during the daytime, and above SOAEL but below the level at which an unacceptable effect occurs during the night-time. On this basis, he considered that the site is suitable for residential use, subject to incorporation of appropriate mitigation.

With regard to off-site road traffic noise, he accepted that the traffic associated with the development has the potential to lead to changes in road traffic noise levels on the local road network surrounding the site. Road traffic data for roads around the site was supplied by the appellant.

In the case of most locations assessed, it is noteworthy that the predicted noise increase would be below +3dB as a result of traffic associated with the proposed development. The Inspector considered that increases of up to +3dB would be classed as minor magnitudes of change in the short term and negligible change in the long term. That applies at Chesterton Drive north of St Fremund Way, Prospect Road, Sydenham Drive, Withy Bank and Emperor Boulevard. The exception to that is Brimstone End, where the absolute change could be as high as +9dB, which would be classed as a "moderate" magnitude of change in the long term by the Design Manual for Roads and Bridges, but which would still meet guideline values for internal noise levels most of the time. For periods where windows are open, the internal noise levels within 1 to 4 Brimstone End are likely to be just above the 40dB guidelines value for a 'reasonable' internal daytime noise climate within living rooms and bedrooms. In all cases, the noise levels are shown to be less than 45 45dB, which is the internal daytime guideline noise value for dining areas.

The mitigation that is proposed in this case involves traffic calming measures to reduce vehicles speeds, encouraging people to travel via sustainable modes of transport, and to provide high speed internet to support working from home. Each house with a dedicated parking space would be equipped with an external wall plug for charging electrical vehicles. The Appellant also offers additional measures to the affected occupiers of Brimstone End should they choose to accept them, which would assist in controlling noise ingress further.

COSTS:

An application for a full award of costs was sought on a substantive basis that in refusing the appeal proposals, the Council had prevented or delayed development which should clearly be permitted. Contrary to the Officer's advice, the Council refused the proposals for two reasons concerning highways and amenity objections. There was no evidence to support the reasons for refusal.

The Inspector acknowledged that the Council's Planning Committee as decision-takers have the discretion not to accept the professional recommendations of its Officers, but they must have a reasonable basis for doing so - in this case there was none.

The Inspector noted that nothing at all had changed between the Committee's determination and the Council's withdrawal from the appeal. It is difficult to comprehend how a "review" so soon after the Committee's decision, and with no new or additional information to consider could have led to a different decision if the Council's refusal had been reasonable in the first place.

The Inspector concluded that the Council's actions prevented or delayed development which should clearly be permitted and accorded with the development plan and national policy. There can be little doubt that had the Council not refused planning permission contrary to the recommendation of its professional officers, that an appeal would not have been necessary. Although the Council did review its case this did not come soon enough and was only done after the second application failed. The Appellant had exhausted its free go and was left without a permission. It had no choice but to continue with the appeal in order to try and secure a consent. Taking into account all of the points raised the Inspector considered that there was compelling evidence of unreasonable behaviour by the Council in this case.

Informal Hearings

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Date of Hearing	Current Position
W/20/1176	Land on the North Side of Birmingham Road	Variation of Condition to Allow the Removal of a Footpath/Cycle Link on Planning permission for 150 dwellings (W/19/0933) **Delegated**	DC	Statement Due: 29 April 2021	6 July	**Appeal Allowed.**
The main issue was whether the removal of the footpath/cycle link would result in an unsustainable form of development with regard to social cohesion and accessibility to local services and facilities. The Council, in the Statement of Common Ground, acknowledged that the need for a footpath/cycle link was not discussed at the Local Plan examination, that it is not a requirement under the site allocation nor that it was discussed at pre-application stage. However, the Council contended that the footpath/cycle link is desirable to connect future occupiers to the existing community and that without the link it would be less attractive for residents to interact and visit one another.						

In the Inspector's judgement, the proposed development would be read as an appropriate extension of Hatton and would still be connected to the village and its facilities through links on Birmingham Road and Ugly Bridge Road, and the absence of the footpath/cycle link at Ebrington Drive would not result in a segregated or isolated form of development and would not unacceptably undermine the ability of existing and future residents to move through the village, to meet or interact.

The Council and a number of local residents expressed concerns that the absence of the link would deter future residents from walking into the village and visiting facilities including the village green, shop and hall. The shop and hall, in his view, are attractive destinations in their own right and are likely to draw future occupants into the village to visit them. There is no credible evidence to suggest that future occupants would not make a conscious effort to visit facilities in the village in the absence of the Ebrington Drive link. He was also mindful that the creation of communities goes beyond just physical linkages and is made up by individuals and local groups having buildings and spaces to interact in which to establish connections and friendship groups. The Inspector was satisfied that the proposal would not undermine social cohesion or community sustainability.

The Inspector acknowledged that Birmingham Road is a busy road and currently the section between Ugly Bridge Road and Charingworth Drive is not an attractive route for pedestrians due to overgrown planting and sections of narrow pavement. Based on the evidence before him, including the advice of the Highway Authority, he was satisfied that the highway works proposed by the appellant and secured by the UU would improve the quality of the physical environment for both pedestrians and cyclists. The works would maintain their safety and encourage the use of Birmingham Road as a route into the village. The works would also improve access across Birmingham Road to the petrol station. Whilst acknowledging that the product range at the petrol station is more focused towards drivers filling up with fuel, it would still provide an additional option for residents including buying goods to top up their weekly shop.

The Council contended that these works would not make the route more desirable as residents would have to 'leave' the development and re-enter the village. However, the Inspector found that this would not be unacceptable given future residents would travel along Birmingham Road for only a short distance. Furthermore, existing and proposed dwellings would extend along the road frontage maintaining the impression that residents are still within the village. While the routes along Ugly Bridge Road and Birmingham Road would be less direct compared to the Ebrington Drive link, he was satisfied that the path of the routes and the overall distances would not be unduly convoluted or discourage future occupiers from walking into the village.

Written Representations

Reference	Address	Proposal and Decision Type	Officer	Key Deadlines	Current Position
W/19/1604	17 Pears Close, Kenilworth	First and Ground Floor Extensions **Delegated**	George Whitehouse	Questionnaire: 19/6/20 Statement: N/A	Ongoing
W/20/1504	16 Aylesbury Court, Aylesbury Road, Lapworth	Extension to Garage to form Pool House **Delegated**	Thomas Fojut	Questionnaire: 12/2/21 Statement: 22/3/21	**Appeal dismissed**

The proposed single storey extension would be pitch-roofed and oriented with gables facing the front and rear of the property. The extension would be set down from the existing garage but would extend to the front and rear of the garage. The Inspector considered that whilst there is variation in the surrounding housing layout, outbuildings are generally of a scale and layout that is clearly subservient to the host dwellings. He had regard to the set back of the extension from the main dwelling, nevertheless, considered that the combined scale of the existing garage and the proposed extension, in combination with the forward projection and limited visual relief of the extension's frontage, would fail to maintain the subservient relationship between the outbuilding and main dwelling. As such, the proposal would be harmful to the character and appearance of the host property and the surrounding area.

Whilst the recent residential development included the demolition of several outbuildings surrounding the listed building, the residential development has significantly increased the amount of surrounding built form. The proposed extension would further urbanise the setting of Aylesbury House Hotel and would have a detrimental effect on views of the listed building from the east. Whilst these impacts would have only a very limited effect on the surroundings in which the listed building is experienced, they would, nevertheless, be detrimental to the ability to experience and appreciate the significance of Aylesbury House Hotel.

The Inspector considered that it was clear that the extension would be significantly in excess of a 30% increase in the gross floor space of the original building. The proposal would represent a disproportionate addition over and above the size of the original

building and would be, therefore, inappropriate development in the Green Belt. The proposal would increase the footprint and bulk of built development on the appeal site. It would be visible in public views from the east and within the wider residential development. As a result, both in spatial and visual terms, the openness of the Green Belt would be reduced contrary to paragraph 137 of the Framework.					
W/19/1573/LB	Church Farmhouse, Woodway, Budbrooke	First Floor Extension **Delegated**	George Whitehouse	Questionnaire: 13/3/21 Statement: 27/4/21	Ongoing
W/20/0966	45 Brook Street, Warwick	Timber Pergola **Committee Decision in accordance with Officer Recommendation**	Andrew Tew	Questionnaire: 17/5/21 Statement: 14/6/21	**Appeal Dismissed**
Whilst acknowledging that the area contains a variety of buildings of different design and materials, the Inspector found that the addition of the pergola structure constructed in short lived materials and covered in lightweight roofing fabric appears as a discordant feature that is prominent and obtrusive. Furthermore, it occupies a space that would previously have had an open appearance. Consequently, it appears out of context within its immediate surroundings. Harm to the character and appearance of the area occurs as a result. As defined within the Framework, the setting of a heritage asset is the surroundings in which the heritage asset is experienced. Grade II Listed Wootton House can be readily appreciated from within Brook Street, with glimpses also possible from Market Place which is located to the north. The appeal development forms part of the streetscene within which Wootton House is experienced. Whilst the Grade II Listed Congregational Chapel is set back from Brook Street, and is of a larger scale than its neighbours, it can only be clearly seen from the southern part of Brook Street. However, it can be seen from the appeal site and there is a clear spatial relationship between it and the appeal site. As a result, the proposed development would clearly be sited in the surrounding in which both Wootton House, and the Congregational Chapel, are experienced. Consequently, the Inspector considered there was a harmful effect on the settings of both of these designated heritage assets.					

The Inspector acknowledged that the proposal provides some shelter for customers using the outdoor seating area. He also noted that there is support for the appeal proposal from the public. However, he considered that such benefits are limited given the nature of the proposal and do not amount to public benefits which outweigh the great weight that he was required to give to the harm that would be caused to the significance of the designated heritage assets.					
W/20/1497	4 Appletree Cottages, Old Warwick Road, Warwick	First floor extensions **Delegated**	Emma Booker	Questionnaire: 1/6/21 Statement: 22/6/21	**Appeal Dismissed**
The main parties agreed that the original dwelling's floor area was approximately 58.6 m_2. However, they disagreed over the net increase resulting from existing and proposed extensions. The Council asserted that the net increase in floorspace would be 57.9 m_2, or 98.8%, whereas the appellant contended that the net increase would be 32.4 m_2, or around 55.29%. The Inspector noted that whilst allowing for some flexibility, even if he were to take the lower figure, the net increase in floorspace would still be significantly greater than the 30% recommended within the Local Plan. The Inspector was satisfied that the proposal would result in a significant increase in the width, albeit a smaller increase in the depth of the host property at first floor level. As a result, the proposed extensions would significantly add to the host property's scale, bulk, and mass. Consequently, the extension would amount to a disproportionate addition over and above the size of the original building. For these reasons, the proposed development represents inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The appeal proposal would result in the replacement of existing single storey structures with two storey extensions. The increase in height of these parts of the building would affect both visual and spatial openness in that it would be reduced. Whilst in isolation this reduction in openness would be modest, harm to the Green Belt would result. In terms of design, the Inspector noted that appeal property is a two-storey dwelling in a terrace of four cottages. Nos 1-3 are narrow fronted, have a consistent ridge line and have doors facing south. In contrast No 4 already possesses a wider frontage, a lower ridge line than the rest of the terrace and is accessed from the communal drive that lies to the north of the property. The addition of the side extension, which would be a continuation of the original building line of the cottage, would further increase the width of the host property at first floor level. As a result, it would make the appeal property more prominent in the context of the					

terrace, particularly when viewed across the access drive to Russett Cottage, and which the use of materials as proposed would not mitigate. Furthermore, the addition of a rear gable on the side extension, of a similar width and height to that proposed on the rear of the host building, would not result in a subservient extension, and would result in an unacceptable juxtaposition between the proposed extensions. It would diminish the coherent appearance of the terrace when considered as a whole and erode the modest and rural character offered by the existing dwelling.					
W/20/1732	13 North Close, Cubbington	First floor side extension **Delegated**	Emma Booker	Questionnaire: 14/6/21 Statement: 6/7/21	Ongoing
W/20/1856	12 Helmsdale Road, Lillington	Hip to gable extension; side extension and dormer window **Delegated**	George Whitehouse	Questionnaire: 8/6/21 Statement: 30/6/21	Ongoing
W/20/1415	62 Brunswick Street, Leamington Spa	Various extensions and alterations **Delegated**	Helena Obremski	Questionnaire: 26/5/21 Statement: 23/6/21	**Appeal Dismissed**
While the front part of the appeal property would remain two-storey in appearance, the rear-part of the building would be increased in height. When viewed from the front elevation this upwards extension, including an increase in the height of the eaves, would give the appearance of a three-storey building. Moreover, the north-side elevation facing Christine Ledger Square would see the height of the eaves increased even further and windows inserted at the second-floor level. The Inspector considered given that the properties immediately adjacent and to the north of the appeal site along Brunswick Street are two-storey buildings, and the properties to the rear of the appeal property along Shrubland Street are a mix of single and two-storey buildings, the proposal would result in a building that is considerably at odds with the scale of the surrounding properties. The mix of two, two-and-a-half and three storey elements and varying eaves heights would result in a confused and cramped appearance to the property. Furthermore,					

the proposed eaves height of the north-side elevation facing Christine Ledger Square would result in a roof slope that is much smaller in scale than the other roof slopes and as such would be substantially out of proportion to the other roof slopes. Although the proposal seeks to remedy the presently disjointed appearance of the building, any benefit in terms of greater uniformity in appearance would be outweighed by the harm caused as a result of the overall scale and form of the extension which would be discordant with the street scene and would detract significantly from the character and appearance of the area.

Section 5 of the Warwick District Council Residential Design Guide (May 2018) (RDG) states that a minimum of 10 square metres of outdoor private amenity space should be provided for each flat or apartment in a development. It further states that in situations where this standard cannot be achieved, such as this appeal proposal and other high density housing developments, a provision may be agreed to upgrade a nearby off-site amenity space. The Inspector considered that despite the appellant's assurances, in the absence of any formal agreement between the parties it is unclear how such funding would be secured, where or how the funding would be used, or how that would mitigate the harm arising from the cramped and sub-standard amenity space for prospective residents. Accordingly, he concluded that the proposal fails to provide adequate private amenity space for the future occupiers of the flats. The proposal therefore fails to accord with Policy BE3 of the LP.

W/20/1683	Former Polestar Foods, St Mary's Road, Leamington	Appeal against the refusal of a lawful development certificate **Delegated**	Helena Obremski	Questionnaire: 9/6/21 Statement: 7/7/21	**Appeal Dismissed**

The Council refused the application on the basis that there was insufficient evidence of a precise and unambiguous nature to demonstrate that the existing lawful use of the site is purely B1 Use Class and so the use of the site for purely B1 purposes would not be immune from enforcement action.

The appeal site comprises a substantial building located in a generally industrial area. The building was previously occupied by Polestar Foods Ltd and is stated to have been used for 'food production, storage, distribution and associated office activities'. The site was vacated a number of years ago and there has been no intervening use of the site since. The main thrust of the appellant's case is that the use of the site is a mixed use comprising B1/B2/B8 and can lawfully be used for any of the specified uses without a material change of use occurring.

Although the site was used for food production, storage, distribution and associated office activities, it seems likely from the appellant's description that some of these activities would have been ancillary or incidental to a primary use. However, it is not possible to determine from the evidence before me, whether this would have constituted a mixed use, a B1 use or some other combination of B1, B2 or B8 uses. Both the Council and the appellant describe B1/B2/B8 as a mixed use. Since sites in mixed use do not benefit from the provisions of S55(2)(f), the use of the building for a B1 use would not benefit from the provisions of S55(2)(f).					
New W/20/1428	Land to the North of Bakers Lane, Knowle	Replacement dwelling **Delegated**	Andrew Tew	Questionnaire: 19/8/21 Statement: 16/9/21	Ongoing
New W/20/1898	The Bungalow, School Lane, Hunningham	Incorporation of adjacent allotment land into domestic curtilage **Delegated**	Andrew Tew	Questionnaire: 19/8/21 Statement: 16/9/21	Ongoing
New W/20/1947	Firs Cottage, Firs Lane, Haseley	Stabling and Hay Store **Committee Decision in accordance with Officer Recommendation**	Andrew Tew	Questionnaire: 13/9/21 Statement: 11/10/21	Ongoing
New W/20/2161	Land fronting Red Lane, Burton Green	Dwelling and Garage **Delegated**	Andrew Tew	Questionnaire: 13/9/21 Statement: 11/10/21	Ongoing

New W/21/0725	Highway Verge, Primrose Hill, Woodloes Park	Prior Notification for 15m Phase 8 Monopole **Delegated**	Andrew Tew	Questionnaire: 13/9/21 Statement: 11/10/21	Ongoing
New W/20/1392	27 Upper Cape, Warwick	15 x Residential Apartments **Delegated**	Helena Obremski	Questionnaire: 31/8/21 Statement: 26/9/21	Ongoing
New W/20/1895	Terets Lodge, Rising Lane, 'Lapworth	Replacement Garage **Delegated**	Jonathan Gentry	Questionnaire: 9/8/21 Statement: 31/8/21	Ongoing
New W/20/1332	52 High Street, Leamington	48 Sheet Digital Advertisement **Delegated**	Rebecca Compton	Questionnaire: 9/8/21 Statement: 31/8/21	Ongoing
New W/20/1871	29 George Road, Warwick	One and two Storey Extensions **Delegated**	Thomas Fojut	Questionnaire: 3/8/21 Statement: 25/8/21	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