List of Current Planning and Enforcement Appeals
July 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	Awaiting Decision

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	Awaiting Decision

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/20/1189	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	Appeal and costs award allowed.

The decision turned on whether the provision of a mobile home/caravan within the curtilage for incidental/ancillary residential use to the main house would constitute a material change of use of the land, which would require planning permission. The use of the mobile home is described as additional living accommodation incidental to the main house rather than separate self-contained residential accommodation.

The issue requiring consideration regarding this appeal was not whether there would be an independent residential use, but rather, whether the proposal would involve a material change of use of land and thus amount to "development" within the meaning of section 55(1) of the 1990 Act. Although the mobile home would be equipped with all the facilities required for independent day-to-day living, it does not follow automatically that once occupied there would be a material change of use simply because primary living accommodation is involved. Much depends on how the unit would actually be used and the proposal should be assessed on the basis of the stated purpose and not what might possibly occur. If there is no material change of use of the land, then there can be no development requiring planning permission.

In Uttlesford DC v SSE & White the judge considered that, even if the accommodation provided facilities for independent day-to-day living it would not necessarily become a separate planning unit from the main dwelling; it would be a matter of fact and degree. The occupant of the annexe in the Uttlesford case was living alone and was in need of care at the time the application was being considered. Whilst the annexe was fully self-contained and gave the occupant some independent space, the level of dependency on the occupiers of the main dwelling for the care received was sufficient to tip the balance in favour of the annexe being ancillary to the main dwelling. The situation is akin to a 'granny annexe' in a separate building in the curtilage of the main dwellinghouse, which would normally be regarded as part and parcel of the main dwellinghouse use.

The appellants made the case that they are a close-knit family unit that supports and relies on one another in a range of ways including emotional care and support, childcare support, domestic support, general care regarding health and wellbeing and also financial support for one another. In the appellant's view the family unit demonstrates all the features defined in the term "interdependency relationship".

The Inspector considered that it was clear that there would be a family and functional link with the land which would remain in single ownership and control. The proposed use of the mobile home in the manner described would not involve physical or functional separation of the land from the remainder of the property. The character of the use would be unchanged. Thus, the use described would form part of the residential use within the same planning unit. Only if operational development which is not permitted development is carried out or if a new residential planning unit is created, will there be development. From the application, neither scenario is proposed. Accordingly, the proposal would not require express planning permission.

Costs:

The Council took the view that due to the lack of the requisite interdependency between the occupier of the mobile home and the main dwelling, the mobile home would not be ancillary and would constitute a change of use which would require planning permission. The appellants consider the Council acted unreasonably by steadfastly maintaining that the proposed use was not incidental/ancillary to the enjoyment of the dwellinghouse and giving precedence to the capability of the mobile home for independent occupation over its stated intended use. It relied on the perceived capability of the mobile home to be occupied independently from the main dwellinghouse. This was because the Council considered that the mobile home could exist without reliance on the main dwellinghouse and that it lacked both the functional and physical relationship with the main dwellinghouse.
To reinforce this view, the Council noted the mobile home would include all the facilities necessary for a self-contained dwelling but acknowledged that this was not sufficient in itself to say the unit would not be ancillary. Reference was Uttlesford made to where it was established that a self-contained annexe can still be ancillary to the main house. The Council's view remained that the appellants'

case differed markedly from Uttlesford because there the occupant was totally reliant on the occupants of the main house and the evidence clearly showed this to be the case.

The Inspector considered that the appellants were clear in explaining that an ancillary use was sought with reliance placed on the main house for care and assistance. The intended manner of occupation was described along with details of the facilities to be shared with the main house. The combination of factors pointed clearly towards a use that would comprise additional living accommodation without creating a separate planning unit.

The Council maintained the evidence submitted was not sufficiently precise or unambiguous to indicate that there would be an immediate need for full care by the appellants nor had it been fully demonstrated why the intended occupant would not be fully capable of looking after himself, and thereby using the mobile home as a separate dwelling. Furthermore, due to the positioning of the mobile home, "at the far end of an unusually long garden" this was considered to limit the physical relationship between the house and mobile home which added further weight to the argument that the occupation would not be ancillary.

The Inspector considered that the Council took the wrong approach which neglected to understand that an LDC can only be issued for what is actually applied for.

Having decided that the mobile home would enable some independence, the Council concluded it would not be ancillary and the conclusion was drawn that it would be functionally and physically separate from the main dwellinghouse. This was seemingly done without grasping key points raised in the appellants' submission which included reference to Appeal where LDC's were granted for uses of caravans which were found to form part of the primary residential use of land and thus did not amount to a material change of use.

Despite being aware of these decisions and having regard to established case law in Uttlesford, the Council failed to establish whether the actual use of the mobile home, rather than any perceived or potential use, would form part of the primary use of the land. Even where circumstances differed in the Appeal Decisions, these still provided a steer on the principles to apply.

The Council remained resolute that its stance was correct. The Inspector concluded that the Council did not follow well-established case law and that was unreasonable, and in doing so lead to the appellants incurring wasted expense in appealing the Councils reason for refusing the LDC.

Officers are carefully considering these decisions.

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	Ongoing
W/19/1573/LB	Church Farmhouse, Woodway, Budbrooke	First Floor Extension **Delegated**	George Whitehouse	Questionnaire: 13/3/21 Statement: 27/4/21	Ongoing
W/20/1741	149 – 151 Warwick Road, Kenilworth	Demoliton of Hotel and Dwelling and erection of 9 Dwellings **Delegated**	Helena Obremski	Questionnaire: 13/4/21 Statement: 17/5/21	Appeal dismissed

The Inspector considered that despite the dominance of the existing building, its siting ensures that it has space to the south-east, and it is set forward of its neighbour to the north-west. Accordingly, the hotel represents an individual event within the street scene that provides some architectural interest to the otherwise low-key surroundings. However, due to its demonstrable differences with the prevailing character and appearance, the building should not be seen as the architectural 'norm' within the surrounding built environment. The hotel is an individual structure within an otherwise low-key street scene. It has space about it as well as architectural interest. Accordingly, as a one-off event in the street, it makes a pleasing contribution to the built environment.

In contrast, the Inspector considered that the proposed dwellings would introduce a substantially wider and unrelieved mass to the road, and the scale, height, and overall bulk of the proposed houses would be significantly greater than the prevailing form of development. As a consequence, due to their scale and overall bulk, rather than reinforcing a uniform and harmonious scale of development, the proposed houses would be unduly dominant and imposing within the street scene. They would introduce an overwhelming presence within the street that would be demonstrably different to the interest provided by the individual and pleasing nature of the current building. This would cause substantial harm to the otherwise unassuming street scape.

In terms of living conditions, the Inspector considered that due to the length of the proposed gardens and the height of the proposed dwellings, the proposal would give rise to clear views into neighbouring gardens from elevated positions. This would have a demonstrably harmful effect on the privacy currently enjoyed by the occupants of neighbouring dwellings. The separation between plot 6 and the garden space of plots 4 and 5 would be very limited. Accordingly, unrestricted and elevated views would be provided in close proximity, and in my judgement, this would result in an unsatisfactory level of privacy for future occupants. The proposed vehicular access would not provide separate pedestrian footpaths, and instead the central space would be a shared environment for all users of the site. This would have the effect of vehicles and pedestrians using the same space to move around the site as well as to provide access to and from the main highway. The Inspector noted the Council's concerns regarding the potential conflict of movements, however, he considered that the nature of the entrance and the internal space would be such that vehicle speeds within the development would be slow. In addition, due to the scale of the development, the number of vehicular movements would also be somewhat limited. Due to the low number of movements and the likely slow speeds, he was satisfied that pedestrians and vehicles could share the space in a safe and satisfactory manner.					
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	Ongoing
W/20/1497	4 Appletree Cottages, Old Warwick Road, Warwick	First floor extensions **Delegated**	Emma Booker	Questionnaire: 1/6/21 Statement: 22/6/21	Ongoing
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	Ongoing
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	Ongoing
No new appeals received.					

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

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