

Committee: Planning and Licensing Committee	Date: 10 February 2021
Subject: Planning Appeals Update (November 2020 – January 2021)	Wards affected: All
Report of: Phil Drane, Corporate Director (Planning and Economy)	Public
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Summary

This report provides Members with information regarding recent planning appeal decisions.

Main Report

Introduction and Background

1. This report advises the Committee of decisions that have been received in respect of planning appeals determined since November 2020. The intention is to provide this report at every other committee, alternating with an enforcement overview report. It provides a summary of the main issues and comments made by inspectors, which can be useful when making decisions on current and future planning applications.
2. It can be seen from the summaries that different inspectors reached different views on similar matters, for example the degree of consistency between the 2005 local plan and the National Planning Policy Framework (NPPF). Although not indicated in the summaries below inspectors have an inconsistent approach to the planning conditions they are willing to impose, for example requiring provision of a travel information pack often requested by highways and also on the removal of specified permitted development rights.
3. The committee is aware that a local planning authority's record at defending appeals is the Ministry of Housing, Communities and Local Government (MHCLG) chosen measure taken to assess the quality of its decision making. This is broken down into Majors (M) and Non Majors (NM) with a maximum allowable 'loss rate' of ten percent of the total number of applications of that type determined. The measure is challenging for Majors due to the low number of such applications the authority determined, in contrast to the measure for non Majors where the authority receives a large number of non major applications. The summary below identifies the type of appeal in each case. Two cases listed in this report were determined by committee, both were refused contrary to recommendation, and these are marked with a (C).
4. The application documents and the appeal decisions are available to view on the Council's website at www.brentwood.gov.uk/planning and via Public Access.

Appeal Decisions

5. The following appeal decisions have been received since the start of November 2020.

Application No:	19/01574/FUL	NM
Location:	197 Roman Road Mountnessing Brentwood	
Proposal:	Demolition of conservatory and removal of roof and construction of ground and first floor rear extension with new roof and reconfiguration of internal layout with material change to elevations	
Appeal Decision:	Appeal Dismissed	06.11.2020

6. The Inspector identified one main issue: the effect of the proposed first floor rear extension on the living conditions of occupiers at 8 and 9 Church Crescent with respect to overlooking and privacy. This reflected the Council's reason for refusing the application.
7. The distance between the first floor rear windows of the extended dwelling and those of the dwellings to the rear would be significantly below the 35m window-window distance required in the Brentwood Local Plan 2005 (Appendix 1), the effect made worse by difference in levels. The appellant referred to lesser standards in the updated Essex Design Guide, though the Inspector considered it acceptable for local planning authorities to set their own standards, and a different approach in the Council's emerging Local Development Plan (LDP). At this point the Inspector considered the LDP to have limited weight.
8. Even considering, neighbouring properties, a previously permitted scheme, the Inspector found the degree of overlooking to be unacceptable and dismissed the appeal.

Application No: 19/01396/FUL

NM

Location: Hatch House 17 Coxtie Green Road Pilgrims Hatch South Weald

Proposal: Demolition of outhouses and stables and construction of 2 detached bungalows with associated parking

Appeal Decision: Appeal Dismissed

23.11.2020

9. The Inspector identified four issues:

- a) whether the development would be inappropriate development in the Green Belt;
- b) the effect on the character and appearance of the area;
- c) noise from nearby commercial premises on the living conditions of future occupiers of the proposed dwellings; and
- d) very special circumstances necessary to justify the development.

10. The inspector afforded full weight to the 2005 plan's green belt policies. The proposal was not considered to meet any of the exceptions to inappropriate development in the greenbelt given in the NPPF and would materially harm its openness. The proposal would introduce an urban form of development harming its existing character and appearance. The Inspector was not persuaded that occupiers would be adversely affect by noise from adjacent commercial units.

11. The inspector was not persuaded that the green belt boundaries were 'out of date', pointing out that boundaries should only be changed in exceptional circumstances and that was not proposed in the LDP; the NPPF sought to protect the green belt even where there is a lack of five year land supply; the applicants claim about the sustainability of the location or potential 'low carbon footprint' were considered to carry limited weight. The Inspector dismissed the appeal.

Application No: 19/01469/FUL

NM

Location: Ivy Cottage Mill Green Road Fryerning Ingatestone

Proposal: Demolition of existing outbuildings, construction of new outbuilding and alteration and extension of existing dwelling including construction of basement, ground floor rear extension, first floor rear extension, single storey side/rear extension, roof extension and replacement of front porch

Appeal Decision: Appeal Allowed

12.11.2020

12. The Inspector identified four issues:

- a) whether the development would be inappropriate development in the Green Belt;
- b) its effect on the green belt;
- c) effect on character of host building and the conservation area; and
- d) very special circumstances necessary to justify the development.

13. The Inspector identified inconsistencies between green belt policies in the 2005 plan and the NPPF and so gave them 'moderate weight'. The inspector agreed with all parties that the development was inappropriate development. The inspector considered that the harm to the green belt would be 'moderate'.

14. The building is not listed or locally listed and the works to the building would not be harmful to the building or the conservation area. When assessing the planning balance, the inspector noted that part of the proposal (the basement would be below ground), the scheme would have a limited effect on openness, and would have a very similar effect to a previously permitted scheme which is a realistic fall back position. This latter issue amounted to very special circumstances.

Application No: 19/01027/FUL

NM

Location: Flat 1 Carousel Highland Avenue Brentwood

Proposal: Conversion of 2x flats into single dwellinghouse to include single storey rear extension, six rooflights and flat roof dormer to the existing roof and alterations to fenestration

Appeal Decision: Appeal Allowed

16.11.2020

15. The Inspector identified two issues:

- a) living conditions due to loft conversion; and
- b) effect of the overall loss of one dwelling on local housing land supply.

16. The second floor accommodation (in the converted roofspace) would be compliant reliant on rooflights for ventilation, light and outlook as their only windows. The inspector considered that overall dwelling as a whole would provide acceptable living conditions, given the outlook from windows to the ground and first floor accommodation and its generous garden.

17. On the second issue, the inspector identified an out of date approach in Policy CP vi) (no net loss of units) whereas the NPPF, which seeks to significantly boost overall numbers, does not resist changes to existing housing stock where this would meet a demand for another form of residential accommodation in the area. He considered that the loss of one dwelling involved in the 2:1 conversion was not material and while no evidence had been provided of a particular need to retain small units there was significant evidence of the need for larger dwellings which this proposal would make a contribution to meeting.

Application No: 19/01551/FUL

NM

Location: 37A Hanging Hill Lane Hutton Brentwood

Proposal: Demolition of existing chalet dwelling and construction of 1 pair of semi-detached dwellings with new vehicular access

Appeal Decision: Appeal Allowed (C)

03.12.2020

18. The inspector identified one main issue: the effect of the proposal on the character and appearance of the area.

19. The inspector considered that the proposal would not be at odds with the mixed character of the area, the hipped roof would limit the bulk of the building and its overall design would be appropriate for its context. The dwellings would have small but acceptable gardens and the development would not be cramped or overdeveloped. He was satisfied that the proposal would not have a material impact on the living conditions of the occupiers of adjoining properties as a result of loss of light or overlooking.

Application No: 20/00146/FUL NM
Location: 27 Hampden Crescent Warley Brentwood
Proposal: Demolition of existing outbuildings and garage, construct detached bungalow with parking, private amenity, bin store and secure garden bike storage
Appeal Decision: Appeal Allowed 06.11.2020

20. The inspector identified one main issue: the effect of the proposed bungalow on the character and appearance of Hampden Crescent and the surrounding area with respect to design, form and layout.

21. The footprint would be deep and narrow, though the scale of the building would be smaller and lower than other dwellings. The site is tucked away and therefore the difference in form and design to other dwellings in the locality would not harm the generally uniform and well established character or appearance of Hampden Crescent.

Application No: 19/01460/FUL NM
Location: 14-16 Crown Street Brentwood CM14 4BA
Proposal: Installation of a new shop front in association with the subdivision of the existing ground floor shop unit, construction of a two storey rear extension, replacement windows, the formation of 2no. one bedroom flats to the first floor and a commercial unit to the rear at ground floor
Appeal Decision: Appeal Dismissed 01.12.2020

22. The Inspector identified two issues:

- a) the effect on character and appearance of the Brentwood Town Centre Conservation Area; and
- b) on the living conditions of 12 Crown Street, with particular reference to overbearing impact and loss of light.

23. On the first issue The Inspector noted the historic and architectural interests and the distinct character of this part of Crown Street. The proposal would result in the infilling of the historic terraces which would significantly detract from the character and form of the historic Victorian terrace, eroding much of the original plan form that is currently evident. He noted other examples of similar development but did not see that as a justification to permitted a

harmful development. He saw the benefits claimed by the appellant as not outweighing that harm. On the second issue, he was not persuaded that the proposal would have a harmful effect on the occupation of adjacent properties.

Application No: 20/00338/FUL NM
Location: 2 Danes Way Pilgrims Hatch Brentwood
Proposal: Construction of bungalow
Appeal Decision: Appeal Allowed 26.11.2020

24. This proposal was the subdivision of a generous garden to one of a pair of two storey semi detached dwellings and the erection of a bungalow to its side to replace a single storey extension and garage. The Inspector identified two issues (1) the effect of the proposed dwelling on the character and appearance of the area; and (2) whether it would provide acceptable living conditions for future occupiers, with particular reference to internal living standards.

25. On the first issue, the Inspector considered the existing garage had eroded some of the sense of space, the site in its current form contributed little to the appearance of the area and the development would not appear cramped but would be in character with existing development.

26. With regard to living standards, the Inspector judged that it fell below the national space standards guidance, which has not been adopted by the Council, but would still provide an acceptable form of accommodation.

Application No: 20/00273/FUL NM
Location: 16 Heybridge Road Ingatestone CM4 9AG
Proposal: Hip to gable roof, dormer window to rear and velux rooflights to front to create first floor, single storey rear extension and alterations to fenestration to include reduction in window to side and new side door (Retrospective)
Appeal Decision: Appeal Dismissed 13.11.2020

27. The main issue identified by the Inspector was the effect of the rear dormer on the character and appearance of the surrounding area. The dormer would

appear as a bulky addition to the dwelling that would completely dominate the rear roofscape and be highly visible from locations in the locality. Overall he considered the proposal would result in an over dominant dormer window contrary to Policy H17 and was generally poor design contrary to Policy CP1.

Application No: 20/00126/FUL NM
Location: 121 Priests Lane Shenfield Brentwood
Proposal: Remove front boundary hedge and construct new boundary wall with 1.2m high brick piers and brick wall/railings and new central access set back from the highway with electric entrance gate
Appeal Decision: Appeal Allowed 02.11.2020

28. The main issue is the effect of the development on the character and appearance of Priests Lane. The Inspector referred to the prevalence of front boundary hedges and other planting within front gardens giving the frontages of the properties in Priests Lane a quite verdant appearance. Nevertheless, noting that this street is within a built up area he took the view that installation of the proposed wall and railings would not result in an urbanising effect or an uncharacteristic sense of formality.

Application No: 19/00578/COND/2 -
Location: Sussex Cottage 2 Challacombe Close Hutton Brentwood
Proposal: Discharge of conditions 3 (Details of materials) of application 19/00578/FUL (Demolition of existing dwelling, construction of new replacement dwelling to include formation of an ancillary basement pool room and gym under main dwelling with basement courtyard, new gates and brick piers to driveway and hard and soft landscaping)
Appeal Decision: Appeal Withdrawn 04.12.2020

29. The applicant had submitted a better proposal to discharge the condition which had been approved so withdrew the appeal before it was determined.

Application No: 19/01512/FUL

NM

Location: Eversley, Kingsley Road, Hutton, CM13 2SH

Proposal: Demolition and replacement of the existing detached dwelling, with 3 new detached dwellings, as well as the formation of two new vehicular accesses and crossovers and associated ancillary works.'

Appeal Decision: Appeal dismissed

07.12.2020

30. The Inspector identified three main issues in this appeal:

- a) The effect of the proposal on the character and appearance of the area,
- b) The effect of the proposal on the living conditions of the occupiers of nearby dwellings and on the living conditions of any future occupiers of the development;
- c) The effect of the development on the health of a nearby Silver Birch tree and the effect of this on the character and appearance of the area.

31. The inspector commented that the character of the area was of linear development across the frontage of sites and that the erection of a dwelling to the rear would be out of character, and together with supporting development – the access and its garage – would urbanise the area, detract from the amenity of neighbours. With regard to the two frontage dwellings these would also act to urbanise the area through their size and design. The proposal would be likely to affect the Silver Birch in the highway verge which is a positive feature in the streetscape. Given that the tree is on land outside the applicants control there was no evidence that the applicant would be able to replace it leading to the loss of that tree to the detriment of the character of the area. The Inspector concluded that the harm of the proposal would outweigh its small boost to the housing supply and local economy.

Application No: 19/01476/FUL

NM

Location: Garth Cottage, Cricketers Lane, Herongate, CM13 3QB

Proposal: Demolition of existing garage and construct detached dwelling (revised application of 19/0400/FUL).

Appeal Decision: Appeal dismissed

07.12.2020

32. This decision was given in the same letter giving the decision on the case below relating to the same site. This proposal was for a separate dwelling on two floors that was larger than a scheme previously permitted but smaller than one previously refused. He noted the mixed character of the area including other chalet style dwellings. However, the proposed dwelling would be in close proximity to the host property, which is single storey. Given its proximity to Garth Cottage, the overall height and prominent features such as the front dormer windows and large gabled entrance, the proposed dwelling would appear overly large in relation to its constrained plot and in relation to Garth Cottage. The introduction of a dwelling of this scale into what is predominantly the rear garden of Garth Cottage, would impact upon the spatial character of this part of Cricketers Lane. He found no harm in relation to the setting of the listed building or in relation to the living conditions of future occupiers in terms of outdoor space.

33. A related application for costs against the Council was refused.

Application No: 20/00468/FUL

NM

Location: Garth Cottage, Cricketers Lane, Herongate, CM13 3QB

Proposal: Demolition of existing garage and construct detached dwelling

Appeal Decision: Appeal Allowed (C)

04.12.2020

34. This decision was given in the same letter giving the decision on the case above relating to the same site. This proposal was for a separate dwelling on one level that was slightly larger than a scheme previously permitted but smaller than others applied for since that permission. In essence the Inspector considered that the minor increase in width from the approved development would be acceptable.

35. When refusing the application, the committee had said that there was no need for this type of housing in the area. No evidence had been provided and he gave the claim no significant weight. He noted the lack of a five year land supply. He was not persuaded that the proposal would be harmful to the listed building (Suffolk House), or to the nearby Conservation Area. He was not persuaded that the proposal would be harmful to highways safety and said he could not consider third party claims about damage to kerbs, the road, walls, hedges etc.

36. A related application for costs against the Council was refused. The Inspector said "Whilst I have come to a different conclusion, the decision is a matter of

subjective judgement. Thus, the Council did not act unreasonably in this case.”

Application No: 20/00101/FUL NM
Location: Flora, Days Lane, Pilgrims Hatch, CM15 9SJ
Proposal: Demolition of rear lean to and replace with single storey rear extension
Appeal Decision: Appeal dismissed 14.12.2020

37. The main issues were (1) whether the proposed development constitutes inappropriate development in the Green Belt, (2) its effect on the openness of the Green Belt, and (3) would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

38. On the first issue, the proposal would result in considerable built form over that of the original dwelling making it inappropriate development. The proposal would detract from openness. While the proposal would not be harmful, contained modest elements relating to sustainability and none amounted to very special circumstances that clearly outweigh its harm.

Application No: 20/00428/FUL NM
Location: 37A Hanging Hill Lane, Hutton, Brentwood, Essex CM13 2HY
Proposal: Demolition of existing chalet dwelling and construction of 1 pair of semi-detached dwellings with new vehicular access
Appeal Decision: Appeal withdrawn 21.12.2020

39. The appeal was withdrawn. The same site was granted planning permission on appeal - see 19/01551/FUL above.

Application No: 20/00924/HHA NM
Location: 105 Hanging Hill Lane, Hutton, Brentwood, CM13 2HG
Proposal: Removal of existing rear single storey extension, re-modelling of existing front single storey extension and addition of new storey above original bungalow

Appeal Decision: Appeal dismissed

05.01.2021

40. This proposal was for the alteration of a bungalow to become a two storey dwelling. The Inspector considered the proposal would result in the creation of a taller, wider, deeper and bulkier building than currently exists, becoming taller than the neighbouring dwellings to either side. It would not appear subordinate to the host property but would result in a building that would appear dominant in its immediate surroundings. The Inspector summed it up as “an unsympathetic addition, crammed into its plot, out of keeping with the general attributes of the surrounding area” with “the effect of “looming” over the front of this neighbouring dwelling, to the detriment of the outlook from that property.”

Application No: 19/01302/FUL

NM

Location: Camilla Lacey, 7 Hillwood Close, Hutton, Brentwood, Essex, CM13 2PE

Proposal: Demolition of existing dwelling and erection of new dwelling and outbuilding and associated landscaping works

Appeal Decision: Appeal allowed

19.01.2021

41. The Inspector identified the main issue in this appeal is the effect of the proposed development on the character and appearance of the area. She proposed noted the range of dwelling sizes and typologies in the locality and referred to a long expired permission for extensions that would have substantially increased the scale of the dwelling. The Inspector noted a number of large dwellings with similar features in Hutton Mount, noted that it would be a four storey (including basement) dwelling replacing a two storey property, that it would be higher than its neighbours. She considered that “crucially” due to its position and with neighbouring dwellings set an angle “...its additional mass and bulk would not be unduly dominant and would assimilate acceptably within the street scene”.

Application No: 19/01199/FUL

NM

Location: 4 Nags Head Lane, Brentwood CM14 5NJ

Proposal: ‘New detached dwellinghouses’

Appeal Decision: Appeal dismissed

22.01.2021

42. This appeal followed one dismissed in 2016 and the Inspector clearly took that decision into account when considering this one. The 2016 Inspector had concluded that the development was not inappropriate development in the green belt, a judgement that the planning authority had accepted when determining this application and the Inspector reached the same view. He considered that insufficient evidence had been provided for him to conclude that the effect of the development on biodiversity would be acceptable. He noted that the site was poorly served by cycle and walking routes and that most journeys from the site would be via car, though given the location of the site these would be relatively short with limited harm. He had no particular concern about the design and layout of the development, including the acoustic fencing to mitigate motorway and railway noise, and did not consider it would harm the character or appearance of the area. It was noticeable that many of the concerns raised by interested parties were dismissed based on those parties not providing firm evidence to support their assertions.

43. The Inspector made a clear statement that due to low levels of housing delivery in the borough and the lack of a five year land supply that the 'presumption on favour of sustainable development' (often referred to as the 'tilted balance') was engaged. Despite that the development would create only four dwellings and the harm of the proposal outweigh its benefits.

Application No: 19/01566/FUL

NM

Location: 1A Doddinghurst Road, Brentwood Essex CM15 9EJ

Proposal: Demolition of existing detached garage and construction of two storey side

Appeal Decision: Appeal dismissed

01.02.2021

44. The Inspector considered the main issue were the effect on (a) the character and appearance of the street scene and (b) the living conditions of the occupiers of the adjoining property.

45. The application dwelling is a two storey dwelling set at higher land than its neighbour to the right – a bungalow. On the first issue, the Inspector considered that it would not be harmful in the street scene. However, on the second issue, he found the increased height and bulk would the dominate the outlook and reduce the light to windows in the bungalow next door, unmitigated to any significant extent by being set away from the boundary.

Consultation

46. Individual applications include statutory consultation periods.

References to Corporate Strategy

47. The Council's Planning Development Management team perform statutory planning functions as the local planning authority. The team assists in achieving objectives across the Corporate Strategy, including economic growth, environmental protection, community development and delivering effective and efficient services. The planning appeals system is part of the local decision making process.

Implications

Financial Implications

Name/Title: Jacqueline Van Mellaerts, Corporate Director (Finance & Resources)

Tel/Email: 01277 312500/jacqueline.vanmellaerts@brentwood.gov.uk

48. There are no direct financial implication arising from this report. The cost of defending appeals is covered by the Development Management budget. Lost appeals can result in additional financial implications if costs are awarded, for instance. This is projected and considered when setting the budget.

Legal Implications

Name & Title: Amanda Julian, Corporate Director (Law & Governance) and Monitoring Officer

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49. There are no legal implications arising from this report.

Economic Implications

Name/Title: Phil Drane, Corporate Director (Planning & Economy)

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50. There are no direct economic implications arising from the report.

Background papers

None

Appendices to report

None