

Committee(s): Planning and Licensing Committee	Date: 15 December 2021
Subject: Planning Appeal Update (July – November 2021)	Wards affected: All
Report of: Phil Drane, Corporate Director (Planning and Economy)	Public
Report Author: Mike Ovenden, Associate Consultant Planner Tel: 01277 312500 Email: mike.ovenden@brentwood.gov.uk	For Information

Summary

This report summarises recent planning appeal decisions between July and November 2021. This is part of regular updates provided to Planning & Licensing Committee, the last provided in July 2021 (Item 90).

Main Report

Introduction and Background

1. This report provides a summary of recent decisions concerning appeals relating to sites in the borough. This is part of a regular series of updates brought to the Planning and Licensing Committee for information, the most recent update brought on 27 July 2021 (Item 90).
2. Comments made by inspectors may be informative and useful when making decisions on current and future planning applications. Summaries can highlight different approaches taken by individual inspectors on similar matters, for example the degree of consistency between the 2005 local plan and the National Planning Policy Framework (NPPF). Inspectors are sometimes inconsistent in their approach to the conditions they are willing to impose, for example requiring provision of a travel information pack, wheel washing and keeping the highway clear of mud from construction sites, 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 of success of defending appeals is the measure taken by the Department for Levelling Up,

Housing and Communities (DLUHC) 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 receives, in contrast to the measure for non Majors. The summary below identifies the type of appeal in each case. Any cases relating to applications determined by the committee 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 via Public Access.

Appeal Decisions

5. The following appeal decisions have been received since 1 July 2021.

Application No:	19/01717/FUL (NM) (C)
Location:	Canterbury Tye Hall, Doddinghurst Road, Pilgrims Hatch
Proposal:	Demolition of buildings and conversion of former farm buildings to form 4 dwellinghouses.
Appeal Decision:	Appeal dismissed 13 September 2021

6. The Inspector identified the main issues as:
 - a) The effect of the proposed works on the special architectural and historic interest of a) the Grade II listed building 'Barn 30 Metres North East of Canterbury Tye Hall Farmhouse' (Ref: 1197208) (the listed barn) and b) the Grade II curtilage listed barn buildings, and c) the setting of the Grade II listed building, 'Canterbury Tye Hall Farmhouse' (Ref: 1206468) (the listed farmhouse); and
 - b) The effect of the proposal on highway safety.
7. The Inspector agreed with the local planning authority assessment on Green Belt and was not a reason for refusal or a main issue in this case.
8. The Inspector agreed that the proposed works to buildings B and C would have a positive impact on the special interest of the listed farmhouse and barn, and the curtilage listed barn groups. It was also agreed that the alterations to the pole

barn to provide a pair of semi-detached dwellings would also have a neutral impact upon the listed farmhouse and barn retaining its separation by the proposed agricultural materials and appearance.

9. The Inspector had concerns regarding the proposed cutting of studs and sole plates in the listed barn. The Inspector found that there was not sufficiently clear detail and analysis of the proposed loss of stud and sole plate fabric in the listed barn, in the appeal evidence, to demonstrate that this would be justified. Therefore, he found that the proposed loss of stud and sole plate fabric would have a negative impact on the special interest of the listed barn, therefore would fail to preserve the special interest of the Barn 30 metres north east of Canterbury Tye Hall Farmhouse. The harm to the listed barn is less than substantial, however of considerable importance and weight.
10. The concerns of residents in the local area were taken into account, including highway related concerns, however the Inspector considered the vehicles serving the converted farmstead are likely to be more agile than commercial vehicles servicing and using the commercial and storage units. The volume of traffic arising from the proposal would be limited by the limited number of new dwellings and this echoes the view of the highway authority. The Inspector concluded the proposal would result in a modest improvement to the highway safety in the vicinity of the site access.
11. The Inspector concluded that whilst the listed building harm was only in the reason for refusal of the application in appeal A (LBC) it results in decisive conflict with the Act, the Framework and the Development Plan. Thus, it is grounds for dismissal of both appeals and the appeal is dismissed on this basis.

Application No:	19/01718/LBC (NM) (C)
Location:	Canterbury Tye Hall, Doddinghurst Road, Pilgrims Hatch
Proposal:	Demolition of buildings and conversion of former farm buildings to form 4 dwellinghouses.
Appeal Decision:	Appeal dismissed and costs dismissed 13 September 2021

12. The Inspector identified the main issues were:
 - a) The effect of the proposed works on the special architectural and historic interest of a) the Grade II listed building 'Barn 30 Metres North East of Canterbury Tye Hall Farmhouse' (Ref: 1197208) (the listed barn) and b) the Grade II curtilage listed barn buildings, and c) the setting of the Grade II listed building, 'Canterbury Tye Hall Farmhouse' (Ref: 1206468) (the listed farmhouse); and
 - b) The effect of the proposal on highway safety.
13. The Inspector agreed with the local planning authority assessment on Green Belt and was not a reason for refusal or a main issue within this case.
14. The inspector agreed that the proposed works to buildings B and C would have a positive impact on the special interest of the listed farmhouse and barn, and the curtilage listed barn groups. It was also agreed that the alterations to the pole barn to provide a pair of semi-detached dwellings would also have a neutral impact upon the listed farmhouse and barn retaining its separation by the proposed agricultural materials and appearance.
15. The inspector had concerns regarding the proposed cutting of studs and sole plates within the listed barn. The inspector found that it was not sufficiently clear detail and analysis of proposed loss of stud and sole plate fabric in the listed barn, in the appeal evidence, to demonstrate that this would be justified. Therefore, found that the proposed loss of stud and sole plate fabric would have a negative impact on the special interest of the listed barn, therefore would fail to preserve the special interest of the Barn 30 metres north east of Canterbury Tye Hall Farmhouse.
16. The harm to the listed barn is less than substantial, however of considerable importance and weight. For the reason above the appeal was dismissed,
17. In terms of the costs decision application made against the Council, the Inspector concluded that in relation to matters (a), (b) and (c) and the listed building reason for refusal, the Council had acted unreasonably through not recognising the substantive public benefit. In relation to matters (a) and (b) and the highway safety objections, the Council had acted unreasonably through failing to articulate a substantive, evidence-based rationale for its assertion of additional traffic, and consequent highway safety harm. However, given the harm to the listed barn's

fabric, and community concern about the safety of the access, it was seen that it was not clear that had the Council's decisions reflected more closely the above matters, the appeals would have been avoided or the core arguments been substantially different in scope.

18. Unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practice Guidance, was not demonstrated and therefore the application for costs was refused.

Application No:	20/01447/HHA (NM)
Location	98 Worrin Road, Shenfield
Proposal:	Demolition of existing part single and part two-storey rear extensions and erection of part single storey and part two-storey side and rear extensions; extension of roof over front porch; conversion of loft to habitable space with rear facing Juliette balcony.
Appeal Decision:	Appeal allowed 10 September 2021

19. The Inspector considered the main issues were the effect upon the character and appearance of the area. The Inspector agreed with the Council's report in relation to the proposed works at the front of the property, the single storey side elements and the conversion of the roof space, in that these elements did not raise concerns or objections.
20. In relation to the works to the roof at the rear, the Inspector noted the variety of roof forms within the surrounding area and noted that whilst the Gambrel roof is a less common roof design, it would be set in and set down from the original roof and the shallow roof pitch would not be visually prominent. With limited views of the proposed roof from the street, the Inspector did not consider the rear roof design to be harmful in this particular case. The appeal was allowed.

Application No:	20/01031/FUL (NM)
Location:	12 Bournebridge Close, Hutton
Proposal:	Construction of 2 x 2 bed dwellings.
Appeal Decision:	Appeal allowed 16 July 2021

21. The Inspector considered the main issues were (i) the effect upon the character and appearance of the area and (ii) whether the proposal would include satisfactory vehicular access with particular regard to safety and convenience.
22. The Inspector noted that various aspects of the proposal had been accepted by a previous inspector when considering a similar proposal, although that appeal had been dismissed. He also considered that those aspects that had been unacceptable had been addressed through the later refused application now appealed. The Inspector acknowledged that parking in the locality was difficult, and this development may lead to inconvenience for some existing residents in accessing on street parking, but he did not consider this to be a significant problem. The appeal was allowed.

Application No:	20/01151/HHA (NM) & 20/01152/LBC (NM)
Location:	Holly Cottage, Padhams Green, Mountnessing
Proposal:	First floor rear/side extension to include alterations to roof, to include dormer window.
Appeal Decision:	Appeal dismissed 19 July 2021

23. The Inspector considered the two appeals concurrently, but on their own merits, because there were common matters between them. The Inspector identified the main issues in these appeals were:
 - a) Whether the proposal would be inappropriate development in the Green Belt and its effect on the openness of the Green Belt (Appeal A);
 - b) Whether the proposed works and development would preserve the Grade II listed building known as Holly Cottage or any features of special architectural interest that it possesses (Appeals A and B); and
 - c) whether there were any Very Special Circumstances to overcome the harm to Green Belt and any other harm (Appeal A).
24. The Inspector agreed with the LPAs assessment on Green Belt and noted that whilst the extensions in isolation were modest, the original cottage was not large and combined with the previous extensions to the building the appeal scheme would be a disproportionate extension over and above the size of the original dwelling and would therefore be inappropriate development in the Green Belt which would, by definition, harm the Green Belt. The Inspector concluded that

the proposal would result in some limited harm to the openness of the Green Belt.

25. The Inspector considered the proposal would over-extend the property and therefore harmfully erode the character and interest presently expressed in its modest size. The extension's height and detailing would also be 'problematic'. The Inspector noted that historic, evidential and aesthetic value of the building as a surviving vernacular cottage would be meaningfully harmed contrary to local and national policy and the Planning (Listed Buildings and Conservation Areas) Act. The Inspector did not consider the very limited public benefits put forward would outweigh the harm.
26. The Inspector concluded that the harm to the Green Belt, along with the other harm to the openness of the Green Belt and the less than substantial harm to the listed building, was not clearly outweighed by the other considerations identified, which he afforded very limited weight. Therefore, the very special circumstances necessary to justify the proposal did not exist and the appeals were dismissed.

Application No:	20/01469/HHA (NM)
Location:	154 High Street, Ingatestone
Proposal:	Pitched roof to porch and new front window and new boundary wall (Retrospective)
Appeal Decision:	Part Dismissed and Part Allowed 19 July 2021

27. The Inspector considered the main issues were:
- a) the effect on the character and appearance of the conservation area;
 - b) the character and appearance of the host dwelling and surrounding area;
and
 - c) highway safety.
28. On the first two issues the Inspector considered the boundary wall to be harmful, although of less than substantial harm, giving no public benefit, and was unacceptable. The proposal would give rise to highway dangers. Neither the Council nor the Inspector had any concerns about the porch that had been erected and that element was permitted (hence the split decision) though the appeal on the rest of the proposal was dismissed.

Application No:	20/01220/FUL (NM)
Location:	13 Westwood Avenue, Brentwood
Proposal:	Demolition of garage and construct 1 detached bungalow with associated parking and landscaping with site access between 4 and 5 The Terlings
Appeal Decision:	Appeal allowed and costs dismissed 20 August 2021

29. The main issue relating to the merits of the proposed dwelling was the effect on the character and appearance of the area. The Inspector considered that the proposal was poorly related to other properties, was ‘an incongruous’ form of backland development and therefore harmful to the character and appearance of the area contrary to Policy CP1. However, as the authority does not have a 5-year land supply and a history of poor delivery, the Inspector considered the ‘tilted balance’ to be engaged. This advocates granting permission unless the harm of doing so would significantly and demonstrably outweigh the benefits of the additional dwelling. The Inspector concluded that the development would not result in harm of this magnitude and therefore should be permitted. The Inspector noted that the authority had not shared the concerns of neighbours about loss of light, noise, access or disturbance and considered that to be correct. Issues about restricted covenants and land ownership were not relevant to his decision.
30. In terms of the costs decision following an application made against the Council, this was made on the basis that the Council should have applied the tilted balance and had regard to an appeal decision in the locality. The Council had taken account of both matters. While the Inspector had allowed the appeal that was on the basis of a planning judgement and the Council in having exercised its planning judgement had acted reasonably. The costs application was refused.

Application No:	20/01749/HHA (NM)
Location:	31 Docklands Avenue, Ingatestone
Proposal:	First floor side extension
Appeal Decision:	Appeal Dismissed 19 July 2021

31. The Inspector identified the main issue to be the effect of the proposal on the character and appearance of the surrounding area.
32. The appeal property is located on a prominent corner plot and proposed a substantial side extension which was in line with the existing main front and rear

facades and extending off of the existing ridge line. The Inspector considered the width, height and bulk of the proposal to not appear subordinate to the main building and consequently out of scale with the existing building. Secondly, the fenestration (windows/doors) would be at odds with the existing fenestration pattern. The cumulative effect of the works would appear incongruous and not in keeping with the character and appearance of the surrounding area.

33. The Inspector had regard to the Public Sector Equality (PSED) contained within the Equality Act 2010 the purpose of which is to set out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The appellant had set out a case of specific needs and personal circumstances and their contended justification for the extension which the Inspector considered the needs would fall within the auspices of the PSED. The Inspector concluded that the proposal before them was not the only way to meet the specified needs of the appellant.
34. The Inspector considered the proposal contrary to local Policy CP1, national policy and the aims of the National Design Guide and dismissed the appeal.

Application No:	19/01324/FUL (NM)
Location:	Woodbarns Farm, Blackmore Road, Fryerning
Proposal:	Retention of existing conservatory
Appeal Decision:	Appeal Allowed 3 August 2021

35. The Inspector considered the main issues were whether the proposed works and development would preserve the character of the Grade II listed building. The Inspector discussed the history of the building, with its evolution into a grand country residence and that the age of the building gives it historic value, with its significance being found in the historic, evidential and aesthetic values. It was considered that the timber painted joinery, balanced elevations, being traditional in design, along with the handmade brick plinth that matches the modern extension it adjoins, resulted in a harmonious addition that fitted the scale, narrative and character of a grand country residence. Subsequently it was considered to not offend the aesthetic value of the listed building and is sympathetic to its character. The appeal was allowed.

Application No:	19/01325/LBC (NM)
Location:	Woodbarns Farm, Blackmore Road, Fryerning
Proposal:	Retention of existing conservatory
Appeal Decision:	Appeal Allowed 3 August 2021

36. The Inspector considered the main issues were whether the proposed works and development would preserve the character of the Grade II listed building. The Inspector discussed the history of the building, with its evolution into a grand country residence and that the age of the building gives it historic value, with its significance being found in the historic, evidential and aesthetic values. It was considered that the timber painted joinery, balanced elevations, being traditional in design, along with the handmade brick plinth that matches the modern extension it adjoins, resulted in a harmonious addition that fitted the scale, narrative and character of a grand country residence. Subsequently it was considered to not offend the aesthetic value of the listed building and is sympathetic to its character. The addition elongates the plan of the building, with the proposal set away from the early modern core, resulting in no loss of historic fabric. The proposal was considered modest in scale, respecting the hierarchy of the building and subsequently the appeal was allowed.

Application No:	20/00531/PNTEL (NM) (C)
Location:	Masefield Court, Victoria Road, Warley
Proposal:	Installation of 3no rooftop tripods accommodating 12no antenna apertures, 3no support poles accommodating 4no transmission dishes, plus the installation of 9no equipment cabinets and ancillary development thereto
Appeal Decision:	Appeal Allowed 12 August 2021

37. The Inspector considered that the proposal would be out of character with the existing building and surrounding area and therefore contrary to Policy IR2. He also considered that the proposal would adversely affect the outlook from the penthouse flats, though only to a limited degree, and therefore be contrary to Policy CP1. He concluded however that the need for mobile coverage, for the emergency services network coverage, and 5G roll out, outweighed the harm of the development. The appeal was allowed.

Application No:	20/01722/FUL (NM)
Location:	70 Larchwood Gardens, Pilgrims Hatch
Proposal:	Demolition of existing garage and construction of part single part two storey side extension to create new dwelling.
Appeal Decision:	Appeal Allowed 18 August 2021

38. The Inspector identified the main issues were:
- a) The effect on the character and appearance of the area; and
 - b) The effect on the living conditions of the occupiers of the host dwelling No.70 Larchwood Gardens.
39. The inspector agreed that the scale of the proposal would overall amount to overdevelopment of the site due to the overall width, depth and height of the proposed house. It would be out of keeping with the scale of side extensions and infill residential development within the surrounding area. The proposal would conflict with Policy CP1.
40. The inspector disagreed that the proposal would result in harm to the surrounding occupiers of the site or the host dwelling due to the nearby windows of the proposed development not occupying habitable rooms and the single storey addition would project further than the new dwelling. The Inspector noted the Council's position with regard to land supply and housing delivery and considered the 'tilted balance' to be engaged.
41. The inspector concluded that the proposal would result in one additional house, supporting the Government's objective of significantly boosting the supply of homes and given the shortfall of housing land attracts moderate weight and therefore the benefits would significantly outweigh the harm arising from the development of the character and appearance of the surrounding area. The appeal was allowed.

Application No:	20/01776/HHA (NM)
Location:	79 Cornwall Road, Pilgrims Hatch
Proposal:	Two storey side/rear extension
Appeal Decision:	Appeal Allowed 19 August 2021

42. The Inspector identified the main issue to be the effect of the proposal on the character and appearance of the surrounding area.
43. The proposal sought to extend from the existing eaves and ridge line in line with the principal elevation of the building. The Inspector considered this to be a natural extension with the retention of a gable end and did not consider a set

back of the enlarged part or set down from the ridge to be appropriate within this row of terraces.

44. Within the wider area, the Inspector noted examples of two-storey side (and rear) extensions on corner plots. The Inspector concluded that adequate spatial distances from the side boundary with a presence of a grass verge and footway providing spatial quality along this edge. The Inspector concluded the enlargement, despite being on a prominent corner plot, would not appear unduly dominant or incompatible with its surroundings compliant with Policy CP1. The appeal was allowed subject to standard conditions (time, drawings in accordance, materials to match).

Application No:	20/01608/HHA (NM) (C)
Location:	13 Warleywoods Crescent, Warley
Proposal:	Proposed dropped kerb/cross over to provide vehicular access from Crescent Road
Appeal Decision:	Appeal Dismissed 2 September 2021

45. The main issue was the effect of the proposal on the character and appearance of the street scene. The Inspector considered that the proposed tarmac crossover would encroach onto the grass verge and would undermine its visual benefits in the street scene and was not convinced that the suggested planning conditions could resolve this harm. The proposal would detract from the character and appearance of the street scene, and the information supplied did not demonstrate that the harm to the environmental asset would be outweighed by the need for the development.

Application No:	20/01070/FUL (NM)
Location:	Land opposite Cherrywood, Blind Lane, Herongate
Proposal:	Retention of hard standing
Appeal Decision:	Appeal Dismissed 19 November 2021

46. This is a development that was carried out before the planning application was submitted. The main issues identified by the Inspector were:
- a) Whether the development is inappropriate development in the green belt and its effects on it;
 - b) Effect on character and appearance of the area;
 - c) Potential contamination; and

d) Whether very special circumstances outweighed the harm to the green belt and other interests.

47. The inspector agreed with the planning authority that it was inappropriate development, meeting none of the exceptions in the NPPF, substantially harming openness, encroaching into the countryside and conflicted with the purposes of the green belt. Similarly, the development would be harmful to the character of the area. While no information had been provided on whether the road planings and hardcore tipped on the site was contaminated, the inspector considered that testing could be required by planning condition if the development were to be permitted. With regard to very special circumstances, none were identified by the appellant or inspector. The appeal was dismissed.

Application No:	21/00940/HHA (NM)
Location:	4 Willow Close, Hutton
Proposal:	Erection of roof extensions and porch.
Appeal Decision:	Appeal Dismissed 19 November 2021

48. The Inspector identified the main issue was the effect on the character and appearance of the area.
49. The inspector agreed that the proposal would harm the character and appearance of the area, as the first-floor extension would be large, partly flat roofed and span across a significant proportion of the dwelling. The first floor would sit awkwardly above the single storey projections and the porch resulting in a front elevation that appears cramped. The appeal was dismissed.

Consultation

50. Individual applications include statutory consultation periods.

References to Corporate Strategy

51. 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

52. 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

Tel & Email: 01277 312500/amanda.julian@brentwood.gov.uk

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

Economic Implications

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

Tel/Email: 01277 312500/philip.drane@brentwood.gov.uk

54. There are no direct economic implications arising from the report. Monitoring the performance of the Planning Development Management service is important to maintain the Council's role in delivering quality development in line with local and national policies.

Background papers

- Item 90, Planning and Licensing Committee, 27 July 2021, Planning Appeals Update (February – July 2021)

Appendices to report

None