

<b>Committee(s):</b> Planning and Licensing Committee	<b>Date:</b> 22 February 2022
<b>Subject:</b> Planning Appeals Update (December 2021 – January 2022)	<b>Wards affected:</b> All
<b>Report of:</b> Phil Drane, Corporate Director (Planning and Economy)	<b>Public</b>
<b>Report Author:</b> Mike Ovenden, Associate Consultant Planner Email: mike.ovenden@brentwood.gov.uk	<b>For Information</b>

### Summary

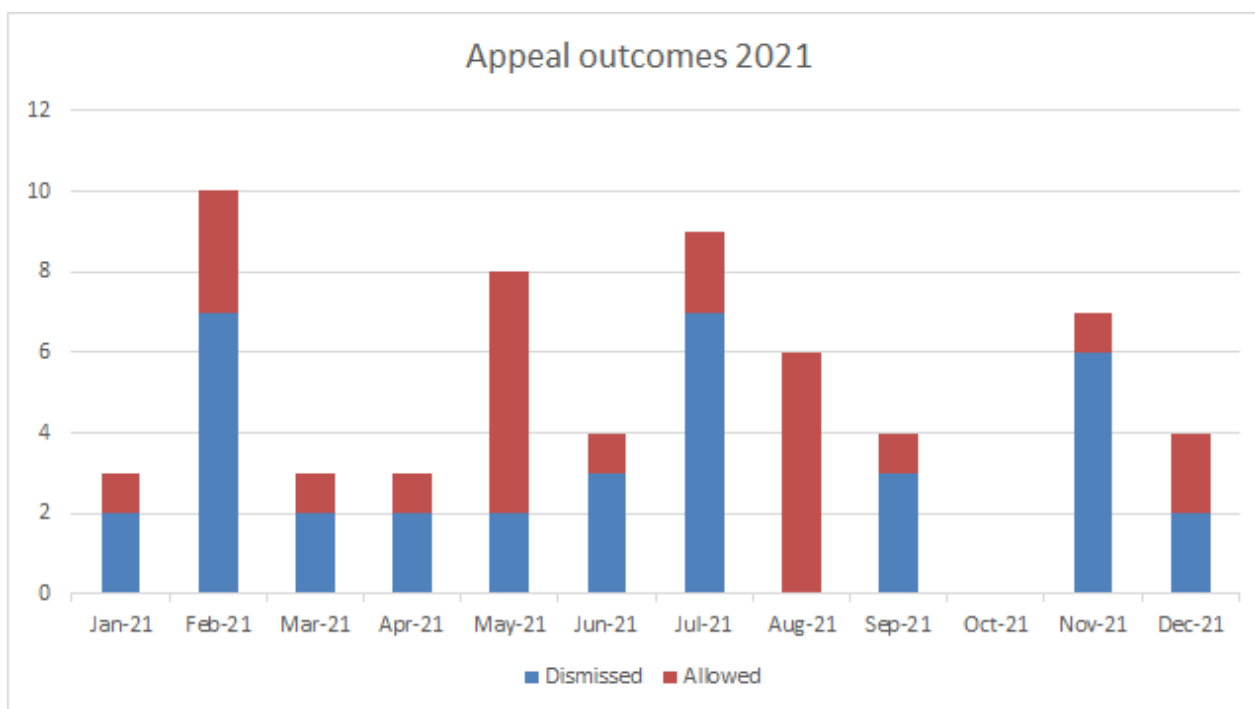
This report provides the Committee with summaries of recent planning appeal decisions.

### 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 15 December 2021 (Item 253).
  
2. The summaries in this report show that different inspectors can reach different views 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, often requested by highways, and also on the removal of specified permitted development rights.
  
3. The committee is aware that a local planning authority record of success for 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](http://www.brentwood.gov.uk/planning) via Public Access.
  
5. When the report was last discussed at committee, there was a request for information on other authorities in Essex for the purposes of comparison. Officers are considering how best to provide the information as a straight comparison might be misleading. For example, appeal performance is likely to be influenced by the status and age of the authority's local plan, the existence and extent of green belt and whether the 'tilted balance' is invoked due to land supply or delivery issues.



Note: No appeal decisions received in October 2021.

### Appeal Decisions

6. The following appeal decisions have been received since 26 November 2021.

<b>Application No:</b>	<b>20/01694/HHA (NM)</b>
Location:	51 Tor Bryan, Ingatestone,
Proposal:	Demolish rear conservatory and construct part single, part two storey rear extension with covered patio
Appeal Decision:	Appeal Dismissed 26 November 2021

The main issue was the effect of the proposal on the character and appearance of the Conservation Area. The Inspector considered that the proposal would significantly change the character and appearance of the host dwelling, including the rear roof scape, rear and side elevations, and be out of scale with the neighbouring properties and different in terms of design, when compared with the surrounding character of the Tor Bryan estate. The appeal was dismissed.

<b>Application No:</b>	<b>20/01296/FUL (NM)</b>
Location:	Braehurst East Avenue Road Ingatestone Essex
Proposal:	Demolish ground floor side extension of the existing Braehurst East house and the construct detached 4 bedroom 2 storey house.
Appeal Decision:	Appeal Dismissed 26 November 2021

The main issue was the effect of the proposal on the character and appearance of the area. The Inspector agreed with the planning officer in that the density of Avenue Road changes from east to west, with the appeal site relating to lower density development. The Inspector considered the introduction of a dwelling would diminish the spatial gap between buildings that would be out of keeping with the low density and character of the eastern part of Avenue Road. The Inspector concluded that the development would harm the character and appearance of the area and conflict with Chapter 12 of the NPPF and CP1 (i) and (iii) of the local development plan. The appeal was dismissed.

<b>Application No:</b>	<b>21/00609/HHA (NM)</b>
Location:	40 Stocksfield Kelvedon Hatch Brentwood Essex
Proposal:	Two storey front extension, single storey rear extension part conversion of garage.
Appeal Decision:	Appeal Dismissed 26 November 2021

The main issue was the effect of the proposal on the character and appearance of the host building and surrounding area. The Inspector considered that the two storey front extension would alter the uniformity of common building line with the neighbouring dwellings and thus harm the character and appearance of the street scene. At the rear, the differing heights of the rear extensions, the hipped roofed dining room and flat roof that would wrap around the rear of the garage, extending above the boundary wall and overall width extending beyond the main house and along the rear of the attached garage would lead to a dominant and bulky addition. Concluding that both the front

and rear extensions would harm the character and appearance of the host dwelling and because of the prominent corner position would also harm the street scene. The appeal was dismissed.

<b>Application No:</b>	<b>21/00861/HHA (NM)</b>
Location:	116 Chelmsford Road Shenfield Brentwood Essex
Proposal:	Increase in height of ridge and dormer window to rear to create second floor, first floor front extension and alterations to fenestration.
Appeal Decision:	Appeal Dismissed 26 November 2021

The main issue was the effect of the proposal on the character and appearance of the building and the surrounding area. The Inspector considered that the site is set amongst pairs of houses that have similar ridge heights, which diminish in height down the hill, creating a rhythm with contributes to the character and appearance of the group of houses, although some have been extended and altered. The increase in height by 0.75 metres would break up the rhythm of the roofscape and appear incongruous and out of scale. The proposed rear dormer would fill most of the roof place and along with the increase in height would appear top heavy and out of proportion with the existing dwelling and neighbours. The appeal was dismissed.

<b>Application No:</b>	<b>21/00346/HHA (NM)</b>
Location:	39 Conifer Drive, Warley, Brentwood
Proposal:	Demolition of existing conservatory and construction of two storey rear extension to include Juliette balconies to the side and rear. Insertion of two pitched roof rear dormer windows to existing garage and conversion of one garage to habitable accommodation, along with alterations to the fenestration.
Appeal Decision:	Appeal Allowed 3 December 2021

The Inspector considered the main issues were the effect upon the character and appearance of the area and the living conditions of neighbouring occupiers. The Inspector noted that the roof of the extension would be set lower than that of the main house and would appear subservient to the host dwelling. In relation to the rear dormer addition to the garage, it was considered that the dormers would not dominate the garage roof and that they would be seen within the context of the wider area, should the screening at the rear be removed.

In relation to the neighbouring amenity, the proposed window openings would have a distance of approximately 15 metres to the rear garden boundaries. There is considered to be an element of overlooking from neighbouring properties in Guardsman Close and is considered that the additional potential overlooking would not harm the living conditions of No. 4 and 5 Guardsman Close to a degree that would warrant withholding planning permission. The appeal was allowed.

<b>Application No:</b>	<b>21/00151/ADV (NM)</b>
Location:	6 Ongar Road, Brentwood
Proposal:	Removal of existing timber advertisement board and replacement with 1 x internally illuminated LED digital Advertisement of a smaller size.
Appeal Decision:	Appeal Dismissed 3 December 2021

The main issue is the effect of the proposed advertisements on amenity. The Inspector noted the appeal site was outside of the Brentwood Town Centre Conservation Area but close to it. Wilsons Corner; a building of 'architectural merit' that is inside the conservation area, was also noted as being visible from the appeal site. The Inspector stated there are many advertisements close by, but a limited number of illuminated advertisements. The proposed digital signage would be highly visible from the junction and approach to the conservation area and would detract from views of Wilsons Corner. The Inspector considered the use of landscaping and the control of brightness of the digital signage would not overcome the harm identified. The Inspector concluded the proposal would conflict with paragraph 136 of the NPPF and local policies CP1, C14 and C21 of the development plan. The appeal was dismissed.

<b>Application No:</b>	<b>19/00152/UNLCOU (NM)</b>
Location:	Rustic Dene, Parkwood, Doddinghurst Road, Doddinghurst
Proposal:	Appeal against the creation of an additional separate primary self-contained residential dwelling house known as Malaika House i.e. planning unit within the existing residential curtilage of the land known as Rustic Dene
Appeal Decision:	Appeal Allowed Enforcement Notice Quashed 10 December 2021 and Costs allowed

Ground (d)

For an appeal to succeed on this ground, the appellant must satisfy the Inspector on the balance of probabilities that it was not possible for the Council to take enforcement action on the date the notice was issued. The enforcement notice was issued on 11 November 2020, alleges unauthorised development through the creation of Malaika House as an additional separate primary self-contained residential dwelling house. The change of use of the summerhouse to a single dwelling took place before 11 November 2016 and subsequently it was too late for the Council to have issued the notice. Therefore, the ground (a) appeal (the planning merits of the development) did not need to be considered.

### Costs

Costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Paragraph 48, states LPA's are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.

The Inspector considered that the Council's case for issuing the notice and defending the appeal lacked merit in the face of precise and unambiguous evidence from the appellant that immunity has been acquired for the use of Malaika House as a separate dwelling.

He concluded that unanswered correspondence from the Council to the appellants agent and positive engagement with the agent would have obviated the need for the notice and subsequent appeal. Furthermore, the Inspector considered that the Council had failed to substantiate each reason for serving the enforcement notice on the appeal. Evidence relating to parking contradicted the highways related reason for issue cited in the notice, by way of the parking provision met the policy. This concession could have been made earlier, rather than have the appellant's team deal with it in its evidence.

<b>Application No:</b>	<b>21/00073/FUL (NM)</b>
Location:	Hall Farm, Hall Lane, Shenfield
Proposal:	Demolition of existing stables building and construct single storey detached dwellinghouse with associated parking and landscaping.
Appeal Decision:	Appeal Allowed 29 December 2021

There were two main issues – the effect on the green belt and on the setting of Hall Farm, a grade II listed building. The Inspector considered that the proposal would bring

about some improvement to green belt openness. The appeal site made a limited contribution to the setting of the listed building and the proposal would not compete or detract from the preeminence of the listed building.

<b>Application No:</b>	<b>21/01167/HHA (NM)</b>
Location:	90 Long Ridings Avenue, Hutton
Proposal:	Two storey side extension, part single storey rear to include roof lantern and single storey front extension to include canopy roof and pitched roof to porch.
Appeal Decision:	Appeal Dismissed 13 December 2021

Following a review of examples of perceived similar development, brought forward by the applicant at application and appeal stage, in the surrounding area the inspector considered the examples did not relate directly to the appeal site. This was due primarily to differing relationships with surrounding buildings, in the context of the appeal site the bungalows to the east have a building line set significantly behind the two storey side extension proposed. As such, this would result in an extension that would be highly visible from the nearby junction and from Woodland Avenue, substantially reducing the space to the side of the dwelling and projecting closer to the highway than nearby examples, especially to the rear where the site tapers inward. Overall, the proposal was concluded to be prominent, intrusive and cramped, and the sense of spaciousness to the side of the dwelling would be eroded, in conflict with Policy CP1 of the BRLP - which requires development not to have an unacceptable detrimental impact on the character and appearance of its surroundings.

<b>Application No:</b>	<b>21/00702/FUL (NM)</b>
Location:	The Auction Gallery, 45 North Road, Brentwood
Proposal:	Demolition of the existing building (auction house) and the construction of a detached office building with integral garage and storage area.
Appeal Decision:	Appeal Dismissed 4 February 2022

The main issue is the effects of the proposed development on the character and appearance of the area. The Inspector considered the proposed development would lead to the creation of a building that would stand taller than those immediately adjacent to it, increasing its visual dominance and divergent roof design that would be clearly visible from public land. The Inspector considered the rear dormer wouldn't be

unacceptable given it would not be visible from public land. The Inspector considered the fallback position put forward by the appellant (an extant permission) would have a less detrimental effect on the character and appearance of the area. The Inspector concluded the proposed development would harm the character and appearance of the area by way of its roof form and height contrary to policy CP1, the Town Centre Design Guide SPD, the NPPF and the National Design Guide. The appeal was dismissed.

<b>Application No:</b>	<b>21/00382/FUL (NM)</b>
Location:	Ongar Road Dentist, 16 Ongar Road, Brentwood
Proposal:	Proposed extension forming second floor
Appeal Decision:	Appeal Allowed 2 February 2022

The Inspector considered the main issues were the effect upon the character and appearance of the area. The Inspector noted that the recent development opposite the appeal site, of up to 4 storeys high, which due to its height, prominent location and striking design, defines the character and appearance of the area. The Inspector agreed that No. 16 and No. 14 readily relate to each other. However, given the dominant character and appearance of the development across the road, the proposal would not appear incongruous within the streetscape, with the pitched roof in keeping with the dominant roof design. The appeal was allowed.

<b>Application No:</b>	<b>21/01098/HHA (NM)</b>
Location:	96 Woodman Road, Warley
Proposal:	Hip to gable loft conversion to include dormer to rear, and roof lights to front. Alterations to chimney stacks.
Appeal Decision:	Appeal Dismissed 3 February 2022

The main issue for this appeal was the effect of the proposed development upon the character and appearance of the surrounding area.

The principle of the alterations proposed were acceptable, and no objections were raised by the Council or the Inspector in respect of the roof alterations (hip-to-gable) or the provision of front roof lights. The Council had raised a concern in respect of the chimney alterations, which the Inspector concluded was, after confirmation from the appellant, an error whereby the chimney pots had been excluded which would ensure a design in keeping with the surrounding buildings.

Most importantly, the rear dormer window would cover the majority of the roof space to the rear of the building with a height similar to the ridge of the building and a width



extending the full width of the building. The substantial size was considered to be bulky and overly large addition not subservient to the building contrary to policies CP1 and H17 of the local plan. Despite being only partially visible from the street scene, it was nevertheless visible from the surrounding dwellings and would have a significant impact upon the character and appearance of the area. The proposed fenestration (glazing) was also considered to draw attention to the top-heavy appearance and discordant nature when compared to the traditional appearance of the existing and surrounding buildings fenestration.

In addition, the Inspector gave consideration (and substantial weight) to a permitted development fallback position. However, the proposed dormer and fenestration was larger than what was allowed under permitted development rights and therefore would have a greater impact upon the character and appearance of the area. The lesser scale of the fallback position was considered to be preferable and did not justify the acceptance of the harm identified within the appeal. The appeal was consequently dismissed.

<b>Application No:</b>	<b>21/00321/PN42 (NM)</b>
Location:	2 Danes Way, Pilgrims Hatch
Proposal:	Single storey rear extension. The proposed extension would extend 5.0m beyond the rear wall of the original dwelling, the maximum height of the proposed extension would be 2.9m and the proposed eaves height would be 2.7m
Appeal Decision:	Appeal Allowed 10 February 2022

The main issue was whether the proposed extension was permitted under Schedule 2, Part 1, Class A, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The Inspector considered, despite differences between the dimensions of the extension set out with application form and those within the drawings, that the development would comply with the conditions, limitations and restrictions applicable to the development permitted by Class A.

In addition, an existing (original) side extension was to be demolished as part of the proposed works. Whilst there was an extant permission which would see this extension's demolition, there was no certainty that the permission would be implemented. Nevertheless, its inclusion within this proposal was accepted by the Inspector as it did not infringe upon the rear extensions' compliance with the above Class. No objections to the proposal had been received, therefore no assessment of the

development upon the amenities of neighbours was required (paragraph A4.7). The appeal was allowed and prior approval was granted.

## **Consultation**

7. Individual applications include statutory consultation periods.

## **References to Corporate Strategy**

8. 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**

9. 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**

10. 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**

11. 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 253, Planning and Licensing Committee, 15 December 2021, Planning Appeals Update (July – November 2021)
- Item 90, Planning and Licensing Committee, 27 July 2021, Planning Appeals Update (February – July 2021)

**Appendices to report**

None