

Committee(s): Planning and Licensing Committee	Date: 29 September 2022
Subject: Planning Appeals Update (June – August 2022)	Wards affected: All
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Summary

This report provides Members with a summary of recent planning appeal decisions.

Main Report

Introduction and Background

1. This report provides a summary of recent planning appeal decisions in the borough between June and August 2022. This is part of a regular series of updates brought to the Planning and Licensing Committee for information. Most recently an update was provided in June 2022 (Item 60).
2. The report 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. It shows that different inspectors can reach different views on similar matters. Inspectors can sometimes have an inconsistent 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. 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 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 relating to Major appeals is challenging due to the low number of such applications that smaller authorities tend to receive in contrast to the measure for Non-Majors. However, there is currently no basis for concern regarding either measure in Brentwood borough, though this is reviewed regularly.
4. The summary of appeal decisions below identifies the category in each case (i.e. Major or Non-Major). Where the application that led to the appeal was determined by committee, it is marked with a (C), and where it was refused contrary to recommendation this marked (C*).
5. 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

6. The following appeal decisions have been received since June 2022. Overall, 11 decisions were issued of which 10 were dismissed and one was allowed (this equates to 91% dismissed or in line with the council's decision during that period). In addition, one application for appeal was made outside the allowed period and so the Planning Inspectorate turned away the appeal. None of these cases were determined by the Planning and Licensing Committee.

6.1

Application No:	15/00039/UNLCOU
Location:	Karma Court, Ashwells Road, Pilgrims Hatch
Proposal:	Appeal against material change of use of the land from agricultural use to a mixed use of agricultural use and residential use and car sales and car storage use and also unauthorised operational development by the siting of a mobile home on the land which, given its degree of permanence, facilitates the unauthorised residential use and also the siting of a portacabin which is used as an office for the car sales/car storage business to facilitate the unauthorised material change of use of the land
Appeal Decision:	Appeal dismissed, Enforcement Notice upheld 29 June 2022

Public Inquiry appeal held at Town Hall on 14 & 15 June 2022. The Inspector considered three grounds of appeal against the Enforcement Notice:

Ground B: That the breach of planning control had not occurred: The inspector determined that the siting of a mobile home and portacabin (in association with the car sales and storage use) and the unauthorised storage of vehicles for sale on the land did constitute a material change of use of the land, and that therefore their removal, as required by the Notice was justified.

Ground D: That it was too late to take enforcement action against the matters stated in the Notice: The Inspector determined that, based upon the evidence presented at the Inquiry, the appellant had failed to prove on the balance of probabilities test, that the 10 year immunity period had been achieved, especially given the other evidence available, i.e. satellite images taken over several different years.

Ground G: That the time given to comply with the Notice is too short: The Inspector determined that the compliance periods as stated in the

Enforcement Notice “strikes an appropriate balance between the appellant's rights and the wider public interest, i.e. the ongoing public harm caused by the unauthorised development”.

The appeal was dismissed on all three grounds.

6.2

Application No:	20/01645/FUL (NM)
Location:	Land Adjacent 63 Tallon Road, Hutton
Proposal:	Proposed construction of a new office building, alongside ancillary vehicle access, parking, and associated development
Appeal Decision:	Appeal dismissed, costs not awarded 12 August 2022

The main issues were the impact of the development on highway safety with particular regard to parking provision and access; and the impact on future occupants of 63 Tallon Road and the proposed office in terms of layout and availability of parking provision. The council claimed the development proposed would be incompatible with adjacent residential development (applications 17/01333/PNCOU and 17/01966/FUL), which is completed and occupied.

The appeal site related to the rear car park of 63 Tallon Road within a busy industrial estate. It was observed that there was a significant extent of parking on the footpaths and verges of the road within limited on street parking opportunities within the immediate vicinity. These factors result in the narrowing of the carriageway and pedestrians needing to walk in the road meaning great care is needed when using the highway.

In terms of parking provision, the supporting documents failed to demonstrate the relationship of the new parking provision with those provided for the occupants of the completed residential development. The absence of this information led the Inspector to conclude that some parking bays would be “lost or negatively impacted through the appeal scheme”. This would lead to parking outside of the site and would exacerbate “existing parking pressures and hazardous conditions”. Furthermore, in terms of access, the new structures were considered to be substantial barriers to visibility for both emerging and approaching vehicles and in the absence of evidence for suitable visibility splays to be achieved, there would be “an unacceptable hazard” to vehicles and, given the removal of demarcated pedestrian access, “a significant risk to the safety of pedestrians”.

In terms of effects upon occupants of 63 Tallon Road, it was observed that whilst the absence of off-street parking was inconvenient, this factor alone was not considered to result in existing and proposed accommodation being substandard.

The Inspector did not consider that conditions could be imposed to overcome the harm identified as they would fail to meet the six tests and consequently dismissed the appeal.

This application was also subject to a costs application against the council which was refused. The appellant considered the council behaved unreasonably through failure to give an opportunity to make minor amendments to the proposed development, and the alleged inaccuracy of comments from the Highway Authority. The Inspector considered that whether amendments can be submitted related to the councils processes and practices who themselves considered amendments not to be minor and required re-consultation if accepted. There was no convincing evidence to suggest such amendments would have made the scheme acceptable. This did not amount to unreasonable behaviour. In terms of the Highway Authority consultee comments, the Inspector concluded that whilst unclear in terms of parking standards being complied with or not, this had been clarified within the officer's report. This did not amount to unreasonable behaviour.

6.3

Application No:	21/00043/HHA (NM)
Location:	Lion Lodge North, The Avenue, Warley
Proposal:	Partial demolition of existing utility room and removal of pergola. Construction of single storey side and rear extensions.
Appeal Decision:	Appeal dismissed, costs not awarded 25 August 2022

The main issue of the appeal was whether the proposal would preserve a Grade II Listed Building, a Grade II* registered park and garden, Thorndon Hall and any features of special historic interest that they possess, and the extent it would preserve or enhance the character and appearance of Thorndon Park Conservation Area.

The Inspector found there still to be symmetry between the two lodges when viewed from the west, irrespective of their 20th Century additions and their significance is derived from its architectural and historic interest as a pair of notable former lodge buildings, which previously related to a 18th-century country house, Thorndon Hall.

The greater extent of development proposed at North Lodge would have a more harmful effect on the floor plan layout and setting of the building. However, given the historic evolution of the lodge set out above, it is highly likely that the proposal would not lead to the loss of important historic fabric, so the demolition of later additions would not be harmful to the significance of the listed building. The proposal included a WC to bedroom one which the Inspector found to constitute harmful alterations to the plan form of the bedroom.

The Inspector found the proposal would bring greater symmetry and unity to the composition of the additions to the lodges, it would not directly affect the original lodge or result in the loss of important historic fabric, and the works to Bedroom 1 would have no direct effect externally. Nevertheless, the extension would crowd the lodge building and distract from its architectural and historic interest. Furthermore, alteration of the floor plan and concealment of a window in Bedroom 1 would undermine the legibility and, thereby, the understanding and significance of the listed building.

Benefits were put forward, in that the proposal would better meet the needs of the appellant, however this would amount to a private benefit. The Inspector determined that the public benefits if any, would not justify allowing the works.

The inspector found no harm to the Conservation Area as the proposal would be situated away from the road and would not be prominent and set within existing planting of a garden and therefore would result in the existing characteristics of the surrounding woodland.

The siting of the proposal would fail to preserve the special historic interest of the Grade II listed building, including its setting. It would fail to satisfy the requirements of the Act, National Planning Practice Guidance, paragraphs 197, 199 and 200 of the Framework and conflict with the design and heritage aims of Local Plan Policies BE14 and BE16.

The Inspector found the council had acted unreasonably (the reasons for refusal should have been clearer in the officer's report), however did not cause unnecessary or wasted expense. Therefore, an award of costs was not justified.

6.4

Application No:	21/00044/LBC (NM)
Location:	Lion Lodge North, The Avenue, Warley
Proposal:	Partial demolition of existing utility room and removal of pergola. Construction of single storey side and rear extensions.
Appeal Decision:	Appeal dismissed, costs not awarded

25 August 2022

This appeal covered much the same issues as the related planning appeal, reported above.

The siting of the proposal would fail to preserve the special historic interest of the Grade II listed building, including its setting. It would fail to satisfy the requirements of the Act, National Planning Practice Guidance, paragraphs 197, 199 and 200 of the Framework and conflict with the design and heritage aims of Local Plan Policies BE14 and BE16.

6.5

Application No:	21/01282/FUL (NM)
Location:	Greenbank, Little Warley Hall Lane, Little Warley
Proposal:	Removal of conditions 4 (Outbuildings 3 and 4 to be demolished), 5 (Permitted Development Rights for Dwelling), 6 (Permitted Development Rights for Outbuildings) and 7 (Use of Outbuildings) of application 18/00315/FUL (Replacement dwelling and associated works (Retrospective))
Appeal Decision:	Appeal allowed 15 June 2022

Permitted development extensions were approved at this site (13/01374/PN42 and 17/00839/S192) but the extent of demolition necessitated the need for a planning application for a replacement dwellinghouse (see 18/00315/FUL). The application subject to this appeal sought to remove conditions 4, 5, 6 and 7 of that permission. The council granted planning permission, removing condition 7 and varying and reimposing conditions 4, 5 and 6 as new conditions 1, 2 and 3, which are the subject of this appeal. The main issue was whether the conditions were reasonable and necessary to preserve the openness of the Green Belt and the purposes of including land within it.

Condition 1 required outbuildings to be demolished on site; condition 2 withdrew permitted development rights for extensions and alterations to the replacement dwellinghouse; and condition 3 withdrew permitted development rights for development under Class E (buildings etc incidental to the enjoyment of a dwellinghouse).

The Inspector found that Condition 1 was reasonable, subject to an amendment to the wording, because it informed the decision of the original application (18/00315/FUL) in ensuring the exception to inappropriate development within the Green Belt was met. In terms of conditions 2 and 3 which relate to the withdrawal of permitted development rights, the Inspector

considered that there was not clear justification to do so. Having considered the context of the site and the degree in which openness would be impacted by further works, given neighbouring dwellings which still retained such rights, there were not circumstances particular to the site to justify a stricter approach to permitted development rights that exist on other properties within the Green Belt.

The inspector concluded that Conditions 2 and 3 were not reasonable or necessary and thus the appeal succeeded in removing these conditions.

6.6

Application No:	20/01502/FUL (M)
Location:	Land At Chitral, Wyatts Green Road, Wyatts Green
Proposal:	Redevelopment of the site comprising demolition of existing commercial buildings removal of rubble and bunds, spoil heaps and tipped waste and construction of 17 new dwelling houses (use class C3), together with associated landscaping, vehicle and cycle parking and infrastructure works
Appeal Decision:	Appeal dismissed 23 June 2022

The main issues for this appeal were:

- i. whether the proposal would be inappropriate development in the Green Belt, and;
- ii. if the proposal would be inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

During the appeal lifetime a unilateral undertaking (UU) was submitted relating to the provision of six affordable houses as part of the proposal. As such the application was assessed under paragraph 149 g) of the NPPF in respect of the Green Belt.

The proposals would result in a 149% increase in volume and 21% increase in footprint compared to the existing built form with the addition of multiple two storey dwellings spread further across the site and at a higher height than the existing built form. Though views into the site would be limited, nonetheless the harm to the openness of the Green Belt would be substantial and as such would result in inappropriate development in the Green Belt.

Further consideration was given to the encroachment of proposed built form into areas that are not considered previously developed land, assessing this under paragraph 150 e) of the NPPF, however as per the above the proposal

would still have a much greater impact on the openness, including residential paraphernalia and surfacing.

In respect of Very Special Circumstances, the Inspector attached considerable weight to the provision of 6 affordable dwellings within the proposal and UU, as well as moderate weight to the benefit of tidying the land and removing the existing buildings. Further, improvement to biodiversity and surface water management was considered to attract moderate weight, though improvement to the living conditions of surrounding residents by virtue of the reduced noise of the proposal was not demonstrated and thus limited weight was given to this aspect. However, in summary these matters taken collectively do not outweigh the harm to the Green Belt and as such no Very Special Circumstances exist.

The appeal was dismissed.

6.7

Application No:	21/00298/FUL (NM)
Location:	158 Brentwood Road, Herongate
Proposal:	Construction of 1 no. 3-bedroom dwelling & landscaping
Appeal Decision:	Appeal dismissed 15 June 2022

There were four main issues. These were the effect of the proposed development on:

- i. the character and appearance of the area;
- ii. highway and pedestrian safety with specific regard to visibility;
- iii. the privacy of the occupiers of 162 Brentwood Road; and
- iv. whether the proposed development would provide an acceptable level of privacy and standard of outdoor space for future occupiers.

In terms of the character and appearance of the area, the proposal would result in a loss of open space to the side of the dwelling. Also, by reason of the proposals scale, positioning and proximity to the side and rear boundaries it would appear cramped within its plot with limited opportunities for mature landscaping/ screening.

In terms of highway and pedestrian safety, due to the heavily trafficked road and unjustified visibility splay this would have an unacceptable impact on the transport network in terms of highway safety.

In terms of the living conditions of neighbouring occupiers, no detrimental harm was considered to occur as a result of existing screening as well as both oblique angles of vision and the distance of outlook from the proposed windows.

In terms of the living conditions of future occupiers, similar to the above where views into proposed amenity spaces are oblique and limited this was considered acceptable.

In terms of planning balance, the Inspector attached significant weight to the impacts on the character and appearance of the area and highway safety and moderate weight to the provision of additional housing, finding the benefits not to outweigh the harm overall.

The appeal was dismissed.

6.8

Application No:	21/01646/HHA (NM)
Location:	216 Woodland Avenue, Hutton
Proposal:	Demolition of existing conservatory and construction of part single part two storey rear extension. Loft conversion to include dormer to rear
Appeal Decision:	Appeal dismissed 27 July 2022

In this appeal the Inspector concluded that the proposed roof would be awkward and unsightly, distorting the roof in a way that would be even less attractive than a conventional “hip-to-gable” conversion. Therefore, it would have a harmful impact on the streetscene, contrary to design policies.

The appeal was dismissed.

6.9

Application No:	21/01849/HHA (NM)
Location:	1 Linden Rise, Warley, Brentwood
Proposal:	Raise ridge and chimney, roof alterations to provide gable ends, construction of a rear dormer window and roof lights to the front
Appeal Decision:	Appeal dismissed 27 July 2022

The main issue for this appeal was the impact upon the character and appearance of the surroundings.

The proposal would see the roof form amended to include a ridge height increase and create gable side ends (rather than frontage) with a rear dormer window across the rear elevation. The Inspector considered that the pattern of

the estate avoids regimentation and different forms and materials have provided interest and variety within the street scene. In terms of the roof itself, the Inspector found that a reconfiguration would not necessarily be out of keeping with the surroundings. It would reflect other forms within the area and not be unduly incongruous or overbearing.

However, the proposed dormer window would have a “seriously harmful effect” on the appearance of the surroundings with a gabled side elevation being very obvious in views along the street with a box-shaped dormer an intrusive design element which sharply contrasted with the remaining roofscape of this building and area undermining the design integrity of the estate. It would be incongruous and create a top-heavy appearance.

The appeal was dismissed.

6.10

Application No:	21/01376/FUL (NM)
Location:	Paglesham, 23 Ridgeway, Hutton
Proposal:	Demolition of existing house and construction of replacement dwelling
Appeal Decision:	Appeal dismissed 28 June 2022

The main issues are the effect of the proposed development on the character and appearance of the site and its surroundings; and the living conditions of the occupants of No. 21 Ridgeway, with specific regard to outlook.

In terms of the design of the proposal, the Inspector found that due to the height and scale of the proposed dwelling spread across the plot this would appear unwieldy in comparison to neighbouring dwellings with limited articulation in the bulk at upper storey level. Further, the mix of insets and projections, particularly at the front, would be cumbersome resulting in an appearance inferior to the refined architectural embellishment of the existing dwelling and it could not be said to raise the standard of design in the area. Finally, the glazing would emphasize the verticality and scale of the dwelling.

In terms of the living conditions of the occupants at No. 21 Ridgeway, due to the scale and siting of the dwelling across two storeys with a steep pitched roof and large space of flank wall, this would be oppressive, overbearing and imposing when viewed from No. 21 resulting in significant harm to the living conditions of the occupiers at No. 21.

The appeal was dismissed.

6.11	Application No:	20/01923/TPO (NM)
	Location:	3 Nethergate, 39 Rayleigh Road, Hutton
	Proposal:	To fell existing TPO Ash tree
	Appeal Decision:	Appeal dismissed 20 July 2022

The Inspector considered that whilst there are numerous other mature trees close by, the appeal tree makes a meaningful and valuable contribution to the verdant townscape of the locality. Felling the tree, would have a significant harmful effect upon the character and appearance of the area and the appeal was dismissed.

6.12	Application No:	22/00550/HHA (NM)
	Location:	2 La Plata Grove, Brentwood
	Proposal:	Dormer window to front to create second floor
	Appeal Decision:	No further action 22 August 2022

The appellant submitted the appeal outside the allowed period and so the Planning Inspectorate turned away the appeal.

Consultation

- Individual applications include statutory consultation periods.

References to Corporate Strategy

- 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)

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9. There are no financial implications arising from the 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 considered and projected when setting the budget.

Legal Implications

Name & Title: Steve Summers, Strategic Director and Interim Monitoring Officer

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10. There are no legal implications arising from this report. The council as local planning authority meets its statutory duties as part of the appeals process, which can include legal representation where required dependent on the circumstances of individual applications.

Economic Implications

Name/Title: Phil Drane, Director of Place

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11. There are no economic implications arising from the report. The council as local planning authority is tasked with decision-making, which includes an applicant's right to appeal. Planning decision-making considers a range of themes to ensure that development benefits the borough, including economic growth.

Equality and Diversity Implications

Name/Title: Kim Anderson, Corporate Manager (Communities, Leisure and Health)

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12. There are no equality and diversity implications arising from this report. Individual planning applications may trigger the need for this to be assessed alongside similar considerations, such as a Health Impact Assessment.

Background papers

- Item 60, Planning and Licensing Committee, 28 June 2022, Planning Appeals Update (February – May 2022)

Appendices to report

None