

<b>Committee(s):</b> Planning Committee	<b>Date:</b> 17 January 2023
<b>Subject:</b> Planning Appeals Update (September – December 2022)	<b>Wards affected:</b> All
<b>Report of:</b> Phil Drane, Director of Place	<b>Public</b>
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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 received between September and December 2022. This is part of a regular series of updates brought to the Planning Committee for information. The most recent update was provided in September 2022 (Item 164).
2. The summaries below identify 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, or the weight they are willing to attach to material considerations, for example the tilted balance, in the context of other planning considerations.
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 an 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\*). The appeals reported in this

report were all non-major developments determined under delegated powers (i.e. no committee decisions).

5. This report contains reference to the appeal 'Start Date' given to an appeal by the Planning Inspectorate; the rough equivalent of the validation date. However, unlike the validation process undertaken by local planning authorities when receiving planning applications (which if an application is complete on submission it is given a validation date of the next day after submission even if the process takes a few days), the automated date stamp on the appellants form often indicates that the appeal form was submitted to the Inspectorate weeks or months before it is given a start date. It's worthy of note that the enforcement appeal summarised at the end of this list was determined approximately 23 months after the date stamp on the appellants appeal form.
6. The application documents and appeal decisions are available to view on the council's website at [www.brentwood.gov.uk/planning](http://www.brentwood.gov.uk/planning) and via Public Access.

## Appeal Decisions

7. The following appeal decisions have been received since the beginning of September 2022. Between September and December 2022 there were five appeal decisions issued by the Planning Inspectorate. Four were allowed (i.e. lost) (although one of these was a split decision), and one (Enforcement Notice) was upheld (i.e. won). That means that during the four-month period, 80% of appeals were allowed against the council's decision to refuse planning permission, significantly above the 31% performance indicator target. This will be kept under review as part of quarterly and annual performance indicator monitoring, noting that for the period previously reported (June – August 2022), only 9% of appeals (11) were allowed against the council's decision to refuse (see Planning Committee Item 164, 29 September 2022). This shows that the rates fluctuate across the year and so an annual figure provides more of a balanced picture.

7.1

<b>Application No:</b>	<b>22/00154/HHA (NM)</b>
<b>Location:</b>	22 Hunter Avenue, Shenfield,
<b>Proposal:</b>	Construction of an outbuilding to rear to include pitched roof and gable ends
<b>Appeal start date:</b>	10 June 2022 (Householder 'Fast track' appeal)
<b>Appeal decision:</b>	Appeal Allowed 14 October 2022

The main issues for consideration were: the character and appearance of the area; and the living conditions of the occupants of neighbouring dwellings. The proposed outbuilding differed from a previously approved scheme in terms of its height and roof materials and had been partially constructed at the time of the Inspectors visit.

Outbuildings were noted to be a common feature of the gardens in the locality although varied in height, proportions, materials and roof form. Despite the outbuilding raising above the boundary fences, it was considered to be comparable to nearby outbuildings and was not considered to appear overly dominant or at odds with the prevailing character of the area. In terms of the impacts upon neighbours living conditions, the location of the outbuilding was significantly set back from neighbouring buildings and feature a degree of separation from boundaries. It would be viewed in the context of other outbuildings and therefore would not appear overbearing or worsen outlook for neighbouring residents thereby not causing a sense of enclosure.

7.2

<b>Application No:</b>	<b>21/00704/FUL (NM)</b>
<b>Location:</b>	8 Springfield Avenue, Hutton
<b>Proposal:</b>	Single storey front extension with canopy roof, part two/part single storey rear extension incorporating first floor dormer, alterations to fenestration and subdivide property to create a 2-bed end of terrace house with parking and vehicular access onto Cotswold Gardens
<b>Appeal start date:</b>	28 March 2022
<b>Appeal decision:</b>	Appeal Allowed 10 November 2022

The main issues for consideration were the effect of the proposal on the character and appearance of the area. Due to the variance in roof type in the surrounding area, the Inspector considered the catslide roof and dormer addition to not be an unacceptable departure from the characteristic of the surrounding area, nor the mass and scale of the dwelling. Further, the overall size of the donor dwelling and proposed was not considered uncharacteristic of the area, considering those of the surrounding dwelling. As such, the appeal was allowed.

7.3

<b>Application No:</b>	<b>21/01762/HHA (NM)</b>
<b>Location:</b>	48 Woodway, Hutton
<b>Proposal:</b>	Two storey and single storey rear extension, front porch and dormer window to front. Alterations to fenestration.
<b>Appeal start date:</b>	7 April 2022 (Householder 'Fast track' appeal)
<b>Appeal decision:</b>	Appeal Allowed (Split decision) 22 November 2022

The development proposed was for a double and single storey rear extension, front porch and dormer window, with window proposed in the flank walls. The application had not been refused relating to the front porch and dormer window owing to the scale and size being subservient to the host dwelling and the Inspector agreed that these elements were acceptable. The reason for refusal related solely to the two-storey rear extension, which therefore was the sole focus of the appeal. The Inspector concluded that the rear extension would harm the living conditions of the occupants of No. 50. In doing so the Inspector agreed with the judgement of the local planning authority. It is notable that the Inspector in reaching his view was fully aware of both the lack of objection from the occupiers of number 50 but also the letter of support provided by those residents for the appellant.

This case illustrates one aspect of the contrasting powers of the Inspector and of local planning authorities, the Inspector was able to issue a split decision, allowing the appeal insofar as it related to the non-contentious elements but refusing the element the local planning authority found to be unacceptable. While the appeal was in part allowed, in effect it was entirely consistent with the views of the local planning authority.

7.4

<b>Application No:</b>	<b>22/00184/HHA (NM)</b>
<b>Location:</b>	56 Westwood Avenue, Shenfield
<b>Proposal:</b>	Hip to gable roof, dormer window to rear to create second floor, roof light to front.

<b>Appeal start date:</b>	26 June 2022 (Householder 'Fast track' appeal)
<b>Appeal decision:</b>	Appeal Allowed 23 November 2022

The development proposed to construct a hip to gable extension, rear dormer roof windows and fenestration alterations. The application site already benefitted from a two-storey side extension, and the proposal sought to construct the hip to gable extension from the existing extension. The reason for refusal was due to the scale design of the hip to gable and rear dormer which would result in a bulky and dominant addition within the roofscape. The inspector concluded that the hip to gable extensions as well as large rear dormers are a common feature within the street scene and would relate to the surrounding built environment. Therefore, the appeal was allowed on these grounds.

7.5

<b>Application No:</b>	20/00129/NINA1 (NM)
<b>Location:</b>	St Ninians, Alexander Lane, Hutton
<b>Development:</b>	Enforcement Notice  Unauthorised erection of a balcony not in accordance with drawing 13/23/03/C associated with approved planning permission 17/01195/FUL.
<b>Appeal start date:</b>	22 February 2021
<b>Appeal decision:</b>	Enforcement notice upheld  13 September 2022

The Enforcement Notice was served on 24 November 2020 and its requirements were threefold:

- a) Remove the unauthorised balcony attached to the third floor flat;
- b) Restore the building to the authorised design as set out in the approved drawing (13/23/03/C) associated with planning permission 17/01195/FUL; and
- c) Remove from the land all materials arising from compliance with steps 1 & 2.

By the time of the Inspector's site visit the unlawful development had been removed and on that basis the Inspector decided that the appeal on ground A (that permission should be granted for the unlawful development) did not fall to be determined. The appeal on ground G (that the time for compliance was too short) was allowed on the basis that as the first requirement had been complied with, the time to complete requirements two and three could be extended from six weeks to three months. Following a site visit, steps 2 & 3 have not achieved compliance. The appellant was notified on 28 December 2022 and given 28 days to comply. Failure may result in the commencement of prosecution proceedings.

### **Consultation**

8. Individual applications include statutory consultation periods.

### **References to Corporate Strategy**

9. 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 decision-making process.

### **Implications**

#### **Financial Implications**

**Tim Willis, Interim Director – Resources (S151 Officer)**

**Tel/Email: 01277 312500/tim.willis@brentwood.rochford.gov.uk**

10. 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**

**Andrew Hunkin, Interim Director – People & Governance (Monitoring Officer)**

**Tel & Email: 01277 312500/andrew.hunkin@brentwood.rochford.gov.uk**

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

### **Economic Implications**

**Phil Drane, Director – Place**

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

### **Equality and Diversity Implications**

**Kim Anderson, Corporate Manager (Communities, Leisure and Health)**

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13. There are no equality and diversity implications arising from this report.

### **Background papers**

- Item 164, Planning Committee, 29 September 2022, Planning Appeals Update (June – August 2022)
- Item 60, Planning Committee, 28 June 2022, Planning Appeals Update (February – May 2022)

### **Appendices to report**

- None