



PLANNING COMMITTEE

25 JULY 2023

REPORT TITLE:	Planning Appeals Update (March – June 2023)
REPORT OF:	Phil Drane, Director – Place

REPORT SUMMARY

This report provides the committee with a summary of recent planning appeal decisions in the borough.

RECOMMENDATION

R1. That the Committee notes the summary of cases provided.

SUPPORTING INFORMATION

1.0 REASONS FOR RECOMMENDATION

1.1 The cases reported may be useful or relevant when considering future applications.

2.0 OTHER OPTIONS CONSIDERED

N/A

3.0 BACKGROUND INFORMATION

3.1 This report provides a summary of recent appeal decisions that have been received relating to sites in the borough. This report is regularly presented to the committee and was last reported on 22 March 2023 (summary of appeals between December 2022 and February 2023, Item 423).

4.0 APPEAL DECISIONS

- 4.1 The following appeal decisions have been received between March and June 2023. There were 13 appeals considered (an additional one was submitted out of time and returned by the Planning Inspectorate). Out of those 13 appeals, nine were dismissed (69%) and four were allowed (31%).

Hunts Farm, Old Church Lane, Mountnessing

Application No:	20/00954/FUL (Appeal 1 of 2)
Proposal:	Removal of existing 2 bedroomed caravan with the benefit of lawful use and the retention of existing one bedroomed residential annexe to the main residence
Appeal Start Date:	16 February 2021
Appeal Decision:	Allowed (27 March 2023)

Application No:	18/00008/UNOPDE (Appeal 2 of 2)
Proposal:	Appeal against the unauthorised creation of a residential annexe/dwelling. The material change of use of land for the creation of: a) Builders yard with associated buildings; b) The stationing of storage containers; c) The stationing and storage of motor vehicles; and d) The creation of hardstanding within an agricultural setting.
Appeal Start Date:	19 February 2021
Appeal Decision:	Dismissed, Notice Upheld (27 March 2023)

- 4.2 The above two applications were both subject to Enforcement Notices, the notices were served on the land in December 2020, however due to the pandemic and resourcing issues at the Planning Inspectorate there was a delay in the case being dealt with. During this period, the new Brentwood Local Plan was adopted.
- 4.3 In regards to the appeal against the refusal of planning permission, the issues were considered to be whether the development was 'inappropriate development' and if so the effect on its openness; and, any resultant harm; and if inappropriate development, whether the harm by reason of inappropriateness and any other harm is clearly outweighed by other

considerations so as to amount to the very special circumstances needed to justify the development.

- 4.4 The Inspector considered that the building within which the annex had been constructed was a former timber pole barn and while the store part had remained single storey, the residential annex section had been heightened with the creation of an overlying pitched gable roof and the erection of a porch feature. Although the former barn was many years old, it had undergone alterations and extensions to facilitate its habitable use. He was however satisfied that the development would fall under paragraph 150 of the NPPF in that the development qualified as the reuse of a building of permanent and substantial construction but as extended had a greater impact on the openness of the green belt and was therefore inappropriate development.
- 4.5 In coming to his conclusion, the Inspector considered that notwithstanding the inappropriateness of the development, the removal of the two-bedroom mobile home would outweigh the harm in allowing the retention of the annex. In addition, while not directly related, appeal 2 would also require the removal of additional development on the land which would therefore further enhance openness.
- 4.6 In relation to appeal 2, the Inspector dismissed the appeal on all grounds but varied the terms of the enforcement notice to extend the period of compliance. The Council alleged 4 specific breaches of planning, including the change of use of the land without planning permission to a builders yard with associated buildings, and the creation of a residential annex. In dismissing the appeal and upholding the enforcement notice, the Inspector agreed that the breaches had occurred; and no ground a) appeal had been submitted and therefore it was not necessary to consider whether planning permission should be granted.
- 4.7 The requirements of the notice have been amended to Notice have been amended to read: “cessation of the use of the land as a builder’s storage yard, removal from the land of all builder’s materials, associated plant, machinery and equipment, and also the removal from the land of all associated buildings and structures facilitating the said use removal from the land of the various metal storage containers cessation of the use of land for the storage of motor vehicles unrelated to the lawful uses of the land; and break up and remove from the land the hardstanding laid, and the land returned to its former condition.”

Riverside, Albyns Lane, Navestock

Application No:	20/00107/UNLCOU
Proposal:	Appeal against: 1) the unauthorised development creating two separate residential dwellings and one commercial building; and 2) the material change of use of land for residential and commercial use.
Appeal Start Date:	1 March 2021
Appeal Decision:	Dismissed, Notice Upheld (4 April 2023)

- 4.8 The above application was subject to an Enforcement Notice, the notice was served on the land in December 2020, however due to the pandemic and resourcing issues at the PI there was a delay in the case being dealt with. As such the appeal took 2 years before the decision was issued.
- 4.9 The Notice was part upheld, however the Inspector granted permission for the commercial use on the site and determined that one of the residential units was considered immune from enforcement action. The appeal ground (a) was considered to fall against the Green Belt policies within the NPPF; whether it was inappropriate development, the effect on openness, if there was any other harm arising, and if inappropriate whether any very special circumstances exist necessary to justify the development.
- 4.10 The Inspector was not convinced the whole land to be PDL and therefore concluded that the development was inappropriate. 3 buildings on site were subject to enforcement action; Building A, a container, was moved onto the site for residential purposes in around 2010. The Inspector considered the evidence submitted in the form of statutory declarations and the absence of any compelling rebuttal by the Council and was satisfied that the container and its residential use enjoy immunity from enforcement action.
- 4.7 Building B and C he found did not enjoy immunity from enforcement action. Nevertheless, he considered that the building C used as a small-scale commercial enterprise, although unlawful, but the limited impact on openness was enough to outweigh the policy objection.
- 4.8 In so far as Building B was concerned, the building required planning permission for its retention. The Inspector concluded that because of the limited impact on the openness of the Green Belt, the building could remain. Notwithstanding his ruling on the retention of Buildings B and C, he did not consider that their uses (B for residential and C for commercial) as being lawful. For that to occur, planning permission would have to be obtained. As

no ground (a) appeal was before him, the use of each building was therefore unauthorised.

9 Shenfield Road, Brentwood, Essex

Application No:	21/00030/UNOPDE
Proposal:	Appeal against without planning permission, the unauthorised construction of a roof extension at second floor level refused on Appeal under planning inspectorate reference H1515/W/19/3242353
Appeal Start Date:	15 December 2021
Appeal Decision:	Dismissed, Notice Upheld (28 June 2023)

- 4.9 The above Enforcement Notice was issued in December 2021. However, due to the pandemic and resourcing issues at the Planning Inspectorate there was a delay in the case being dealt with. As such it was 18 months before the decision was issued.
- 4.10 Planning permission was refused, and a subsequent appeal dismissed to build a roof extension on the rear section of Landon House. Nevertheless, the applicant carried out the development. The Council issued an enforcement notice requiring its removal.
- 4.11 In dismissing the ground (a) appeal the Inspector concluded that the development is still harmful to the character of the conservation area and in conflict with policies BE14 and BE16. In dismissing the appeal on ground (f), the Inspector concluded that nothing other than removing the structure would remedy the breach, and the suggestion of the appellant to reduce the structure was not accepted.
- 4.12 The appeal was dismissed; the enforcement notice was upheld, and planning permission was refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended. Compliance with the notice to be achieved by 28 December 2023.

Land Off Eagle Lane, Kelvedon Hatch

Application No:	21/00142/FUL (Appeal 1 of 2)
Proposal:	The use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use

Appeal Start Date:	10 March 2022
Appeal Decision:	Dismissed, Costs Refused (13 June 2023)

- 4.13 The main issues included whether the proposal would be inappropriate development in the Green Belt and any effect on the openness of the Green Belt; National policy and the objectives of the development plan in respect of gypsy and traveller accommodation and whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by very special circumstances to justify the development.
- 4.14 The inspector considered that the site was not considered to be previously developed land and the appeal was assessed against paragraph 149e of the NPPF, termed as limited infilling in villages. The Inspector described the surrounding area having an increasingly rural feel. As such it was concluded that the site itself lies outside of the village and given that the proposal, comprising of mobile homes, bears little relationship to the surrounding built form, and along with the size and shape of the site, reinforces the view that the site cannot be considered as a small gap in an otherwise built up frontage.
- 4.15 In relation to openness, the introduction of two caravans/mobile homes, utility/day room, along with a substantial area of hardstanding for the siting of two touring caravans, would alter the openness of the area, any screening would not ameliorate the harm to the openness in this regard and would be contrary to national and local policy.
- 4.16 The Inspector was satisfied that the appellant and his family reasonably satisfy the Planning Policy for Traveller Sites (PPTS) definition. In terms of personal circumstances and human rights, the Inspector considered that the evidence put forward was more of an aspiration to live at the site, rather than need. The site is not currently occupied for habitable purposes, therefore, a refusal of planning permission would not lead to the loss of a family home.
- 4.17 On balance, the apparent unmet need of Gypsy and Traveller accommodation in the borough, did not outweigh the resultant impact on the Green Belt. The aims of the local plan to safeguard permitted sites and potentially subdivide existing pitches to intensify numbers, very special circumstances had not been demonstrated and so the appeal did not succeed.
- 4.18 The claim for costs was not awarded to the Council, whilst the situation for the late cancellation of the hearing originally scheduled for October was unfortunate, this was not considered unreasonable behaviour resulting in unnecessary or wasted expense. The Inspector was also not convinced that

the council's case was compromised by the lack of the agreement in the Statement of Common Ground.

Application No:	21/00493/FUL (Appeal 2 of 2)
Proposal:	Construction of two dwellings, with vehicular access and boundary treatments.
Appeal Start Date:	10 March 2022
Appeal Decision:	Dismissed, Costs Refused (13 June 2023)

- 4.19 The main issues included whether the proposal would be inappropriate development in the Green Belt and any effect on the openness of the Green Belt and whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by very special circumstances to justify the development; effect on local character and effect on living conditions of adjacent occupiers.
- 4.20 The inspector's findings in relation to Green Belt issues were similar to the appeal for stationing of caravans, in that the proposal would adversely impact on the openness of the Green Belt, and that the proposal would be harmful to the Green Belt, contrary to both the Framework's advice and also LP policy MG02.
- 4.21 In relation to character and living condition of neighbouring occupiers, the character of the area would be significantly affected by the pedestrian design of the dwellings. In considering the orientation of the dwellings, the Inspector was satisfied that there would not be any impact on the existing residents.
- 4.22 Irrespective of the arguments put forward by the appellant in relation to the council's five year housing supply, which the appellant argued to be out of date, nonetheless, given the Green Belt location, the tilted balance will not be engaged.
- 4.23 The submission of two dwellings was made some 8 weeks after the application for two mobile homes, with the witness statements for the appellants stating they could not live in a house. The Inspector considered that the application for two dwellings was speculative and the personal circumstances for the first appeal above, would not apply in this case. No very special circumstances were demonstrated and the appeal should not succeed.

- 4.24 The claim for costs was not awarded to the council, whilst the situation for the late cancellation of the hearing originally scheduled for October was unfortunate, this was not considered unreasonable behaviour resulting in unnecessary or wasted expense. The Inspector was also not convinced that the council's case was compromised by the lack of the agreement in the Statement of Common Ground.

Potential House, 149-157 Kings Road, Brentwood

Application No:	21/01680/FUL
Proposal:	Extend existing 3rd floor and add new 4th floor to create 8x flats and associated works.
Appeal Start Date:	14 June 2022
Appeal Decision:	Dismissed (17 March 2023)

- 4.25 The proposal included an extension of the existing third floor and an addition of a new fourth floor to create 8 flats, together with associated works. The main issues included the impact on the character and appearance of the area; the living conditions for future occupants and neighbours; and provision of cycle and refuse storage.
- 4.26 The inspector found that the extensions had been designed with sensitivity to the character and materials of buildings in the locality and considered there was an acceptable effect on the character and appearance of the area. The proposal would also have an acceptable effect on the living conditions of occupiers of neighbouring properties. This was not the case for the living conditions of the future occupants of the development. A daylight assessment submitted only reviewed the adjoining dwellings and not the proposed units. The inspector acknowledged that the scheme had been amended since the refusal of a previous refusal of a planning application to meet the national space standards. However, they were not convinced that the living conditions of the future occupants would be acceptable and noted that whilst a daylight assessment submitted did not include the proposed units, the proximity of the neighbouring building indicated that daylight to the proposed units would be compromised. In addition, two units were proposed to have perforated metal over windows which would obstruct outlook from these rooms creating an unacceptable and oppressive sense of enclosure.
- 4.27 In regard cycle storage, the proposed wall/ceiling mounted cycle storage brackets provided in each unit were determined to be reasonable as the proposed development was an extension and not a redevelopment and there

was no opportunity of providing secure cycle storage at ground floor level. This lack of space at ground floor posed a problem for refuse storage with the inspector not satisfied with the lack of substantive evidence to demonstrate adequate refuse storage.

- 4.28 The inspector concluded that the proposed development would fail to provide a satisfactory standard of living accommodation for future occupiers, with particular regard to daylight and outlook and would not provide adequate refuse storage, contrary to Policy BE14 of the Brentwood Local Plan and paragraph 130 of the National Planning Policy Framework.

Meadow Farm, Beggar Hill, Fryerning

Application No:	21/01341/FUL (Appeal 1 of 2)
Proposal:	Change of use of stables building (Building E), B8 to provide 1x self-contained dwellinghouse, C3.
Appeal Start Date:	15 July 2022
Appeal Decision:	Allowed, Partial Costs Awarded (24 March 2023)

- 4.29 The Inspector considered the main issues to relate to whether the development was inappropriate within the Green Belt and the effect of the development on the character and appearance of the area and provision satisfactory living conditions for future occupiers, by way of private outdoor amenity space.
- 4.30 The Inspector considered that the development described in the submitted drawings identified a replacement building, not the change of use as described in the description, and the appeal was determined as a replacement building.
- 4.31 The replacement building was assessed within para 149g of the NPPF *“(limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would: – not have a greater impact on the openness of the Green Belt than the existing development).”* The site has an existing stable building, which was permitted in 2009, given the evidence and observations on site, the site constitutes previously developed land. In terms of openness, the Inspector concurs with the officer's original assessment, given the existing built form on the site, the proposal would not harm the openness of the Green Belt.

- 4.32 In respect of the private amenity area, the Inspector considers that the site would be provided with a meaningful area for use as a private amenity space, having a more substantial area to the front of the existing buildings. Policy HP06 of the local plan has a more flexible approach to the provision of amenity areas. Therefore, the appeal was allowed subject to conditions.
- 4.33 The award of costs was partially awarded to the appellant. The Inspector found that the council did not act unreasonably with regard to its interpretation of the proposed private amenity space and the planning judgement reached as to compliance with Policy CP1(ii) or Appendix 1 of the Brentwood Replacement Local Plan. However, the appellants statement of case specifically addressed the relevance to Policy GB8 and the resultant research involved, indicates unnecessary expense has been incurred to a limited extent. Partial awards of costs are justified.

Application No:	21/01340/FUL (Appeal 2 of 2)
Proposal:	Demolition of storage barn (Building C), B8 use and reconstruction and change of use to provide 1 x self-contained dwellinghouse.
Appeal Start Date:	15 July 2022
Appeal Decision:	Allowed, Partial Costs Awarded (24 March 2023)

- 4.34 The Inspector considered the main issues to relate to whether the development was inappropriate within the Green Belt and the effect of the development on the character and appearance of the area and provision satisfactory living conditions for future occupiers, by way of private outdoor amenity space.
- 4.35 The replacement building was assessed within para 149g of the NPPF *“(limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would: – not have a greater impact on the openness of the Green Belt than the existing development).”* The site has an existing storage barn, used for domestic storage and equestrian purposes. Given the evidence and observations on site, the site constitutes previously developed land. In terms of openness, the Inspector concurs with the officer's original assessment, given the existing built form on the site, the proposal would not harm the openness of the Green Belt.
- 4.36 In respect of the private amenity area, the Inspector considers that the site would be provided with a meaningful area for use as a private amenity space, having a more substantial area to the front of the existing buildings. Whilst

the space for Building C would be limited, it would be in proportion for a two bedroom dwelling. Policy HP06 of the local plan has a more flexible approach to the provision of amenity areas. Therefore, the appeal was allowed, subject to conditions.

- 4.37 The award of costs was partially awarded to the appellant. The Inspector found that the council did not act unreasonably with regard to its interpretation of the proposed private amenity space and the planning judgement reached as to compliance with Policy CP1(ii) or Appendix 1 of the Brentwood Replacement Local Plan. However, the appellants statement of case specifically addressed the relevance to Policy GB8 and the resultant research involved, indicates unnecessary expense has been incurred to a limited extent. Partial awards of costs are justified.

Barans, Horsemanside, Navestock

Application No:	22/00479/FUL
Proposal:	Construction of 3x horse stables (Retrospective)
Appeal Start Date:	4 October 2022
Appeal Decision:	Allowed (20 March 2023)

- 4.38 The Inspector considered the main issues to relate to whether the development was inappropriate within the Green Belt and the effect of the development on the character and appearance of the area.
- 4.39 The Inspector considered that the use of the stables for horses would meet the exceptions outlined within para 149b of the NPPF “(*the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation ...; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it*).”
- 4.40 Furthermore, with the backdrop of the building characterised by built development, they considered the appeal site was difficult to discern from a public right of way. Coupled with existing screening, they concluded that there would be a negligible effect on the openness of the Green Belt.
- 4.41 In respect of the character of the area, the Inspector concluded there were existing Equestrian uses nearby which form part of the existing landscape. The introduction of what they considered a modest stable building would not inherently be harmful to the site’s countryside setting. Therefore, the appeal was allowed.

Land Rear of 17 Junction Road, Warley, Brentwood

Application No:	22/00709/FUL
Proposal:	Construction of 2 x single storey residential dwellings, with associated amenity space and landscaping.
Appeal Start Date:	15 November 2022
Appeal Decision:	Dismissed (15 May 2023)

- 4.42 The inspector considered the main issues related to the development for two dwelling houses to the rear of 17-19 Junction Road was the effect on the character and appearance of the area, the living conditions of the occupiers of No.15, 17, 19, 21, and where the proposal would provide good quality living conditions for the future occupiers of the site. The dwellings would cover a significant area of the overall plot, with relatively little space between them and two outer walls set upon boundary lines with existing properties. The dwelling would be uncomfortably cramped within the plot. The Inspector agreed that the neighbouring dwellings No.21 and No.23 being set further back than the rest of the street did not create a change to the strong and consistent linear pattern of two storey building fronting the road with spacious garden environments. The Inspector agreed that the development would not be highly visible from the public realm, however it does not make its design, appearance and effect on the character and appearance of the area acceptable. The appeal cases and local examples submitted hold little weight as the Inspector concluded them to be of limited relevance.
- 4.43 The side wall of proposed House 1 would have a dominant and overbearing effect on the occupiers of No.15, and result in harm to the occupiers' living conditions. However, the size, shape and location of the private outdoor amenity spaces for the new dwellings would provide adequate living conditions for the future occupiers of the site.
- 4.44 The inspector concluded the development conflicts with the development plan, policies BE14, HP03 and NE07.

29 Primrose Hill, Brentwood

Application No:	22/01367/HHA
Proposal:	Raising of ridge height to create a part first floor rear extension

Appeal Start Date:	8 February 2023
Appeal Decision:	Dismissed (26 May 2023)

- 4.45 The proposal was for a first floor rear extension to the existing bungalow and the main issues included the impact on the character and appearance of the local area.
- 4.46 The inspector noted that the extension was at the rear of the dwelling but due to land levels the extension would be visible from the lower parts of Primrose Hill, sitting much higher than the existing garage and established hedge. Whilst the character of the appeal site is different to the 2 or more storey buildings in the locality, the proposed extension would create an unbalanced and awkward-looking dwelling with convoluted roof forms that would appear to be squeezed into a small plot. The range of roof forms in Primrose Hill were highlighted by the appellant, but the inspector commented that these properties did not share the same position, prominence and constraints of the appeal site.
- 4.47 The inspector concluded that the proposal would have a harmful impact on the character and appearance of the local area, contrary to Policy BE14 of the Brentwood Local Plan, the National Design Guide 2021 and the National Planning Policy Framework.

2 La Plata Grove, Brentwood

Application No:	22/01297/HHA
Proposal:	Loft conversion with reduced front Dormer and rear dormer.
Appeal Start Date:	3 February 2023
Appeal Decision:	Dismissed (26 May 2023)

- 4.48 The inspector considered the main issues related to the reduced front dormer and rear dormer was the effect of the development upon the character and appearance of the local area. The front dormer would introduce an anomaly to an otherwise uniform street scene in a highly visible and prominent location creating an incongruous addition which would cause harm to the established character and appearance of the local area.
- 4.49 The inspector concluded the development conflicts with the development plan, read as a whole.

98 Worrin Road, Shenfield

Application No:	22/00849/FUL
Proposal:	Demolition of existing dwelling, construction of 4-bedroom dwelling
Appeal Start Date:	N/A
Appeal Decision:	No Further Action (7 June 2023)

4.50 The appeal was submitted out of time. It was returned by the Planning Inspectorate and no further action will be taken.

5.0 FINANCIAL IMPLICATIONS

Name & Title: Tim Willis, Director – Resources (and Section 151 Officer)

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

5.1 There are no financial implications 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.

6.0 LEGAL IMPLICATIONS

Name & Title: Claire Mayhew, Acting Joint Director – People & Governance (and Monitoring Officer)

Tel & Email 01277 312500 / Claire.mayhew@brentwood.rochford.gov.uk

6.1 There are no legal implications arising from this report.

7.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

7.1 None

8.0 RELEVANT RISKS

8.1 None

9.0 ENGAGEMENT/CONSULTATION

9.1 Formal consultation takes place as part of individual planning applications.

10.0 EQUALITY & HEALTH IMPLICATIONS

Name & Title: Kim Anderson, Corporate Manager - Communities, Leisure and Health

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10.1 There are no equality & health implications arising from this report. Health impact assessments may be required for individual planning applications.

11.0 ECONOMIC AND CLIMATE IMPLICATIONS

Name & Title: Phil Drane, Director - Place

Tel & Email: 01277 312500 / phil.drane@brentwood.rochford.gov.uk

11.1 There are no direct economic implications arising from the report. Individual development schemes subject to the appeals process may deliver local economic benefits.

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APPENDICES

None

BACKGROUND PAPERS

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.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Planning Committee, Item 435, 'Planning Appeals Update (December 2022 – February 2023)'	14/03/2023
Planning Committee, Item 319, 'Planning Appeals Update (September – December 2022)'	17/01/2023
Planning Committee, Item 164, 'Planning Appeals Update (June – August 2022)'	29/09/2022
Planning Committee, Item 60, 'Planning Appeals Update (February – May 2022)'	28/06/2022
Planning and Licensing Committee, Item 294, 'Planning Appeals Update (December 2021 – January 2022)'	22/02/2022
Planning and Licensing Committee, Item 253, 'Planning Appeals Update (July – November 2021)'	15/12/2021
Planning and Licensing Committee, Item 90, 'Planning Appeals Update (February – July 2021)'	27/07/2021