

APPEALS AGAINST PLANNING DECISIONS AND ENFORCEMENT ACTION

TOWN AND COUNTRY PLANNING ACT 1990

This item is intended to update Members on appeals against planning decisions and enforcement action. Information is provided on appeals lodged, proposed hearing and inquiry dates, appeal decisions and when appropriate, details of recent cases in interest.

1. Decisions Notified By The Secretary of State

Ref. No.	Details	Decision and Date
S/11111/04/F	Cambridgeshire Salad Producers Ltd CSP Ltd, Pampisford Road Great Abington Change of use to B1 and or B8 use (Delegated Refusal)	Dismissed 05/04/2006
S/2316/04/F	CMA Ltd Manor Farm Business Park Shingay-cum-Wendy Alterations and conversion of buildings to live/work dwelling (mixed uses classes C3 & B1) (Officer Recommendation to Refuse)	Dismissed 11/04/2006
S/2505/04/F	Mr & Mrs A Brown Schole Road Willingham Siting of 2 gypsy caravans (retrospective) utility block and mobile medical unit for disabled person (Non-Determination)	Allowed 12/04/2006
S/1005/05/F	Selective Developments 2 Pepys Way Girton Erection of 4 dwellings following demolition of existing bungalow. (Delegated Refusal)	Dismissed 13/04/2006
S/1485/05/F	Camping & Caravan Club 19 Cabbage Moor Great Shelford Change of use to allow for the siting of 15 static caravans (Delegated Refusal)	Dismissed 18/04/2006
S/1470/04/F	Mr W Willett Adj Appletree Close, Histon Road Cottenham Use of land as extension to mobile home park (no increase in numbers) incorporating landscape belt (Delegated Refusal)	Dismissed 19/04/2006

2. Summaries of recent decisions of interest

CMA Ltd – Change of use of buildings to live/work unit – Manor Farm Business Centre – Shingay – Appeal dismissed

1. This is the first appeal in the district involving a live/work unit. The main issues were the effect on the character and appearance of the surrounding countryside and whether the proposal would amount to a sustainable form of development. The existing buildings are in use as offices and storage. Both government policy (e.g. PPG13) and development plan policies (e.g. EM9) support the principle of the proposed use.
2. The inspector accepted that the site lies in an isolated location in open countryside. The group of buildings that make up the existing converted Business Centre still retain the character and appearance of farm buildings within the wider landscape. The site maintains an open appearance surrounded by fields and inconspicuous fencing. In contrast the creation of a new residential garden would present a change that was harmful to the character of the open rural landscape. Boundary walls and fences would emphasise the domestic appearance of the proposal. This would be an unacceptable intrusion into and erosion of the surrounding area.
3. It was accepted that the buildings would be suitable for conversion and that the dwelling would in part contain office space as part of the overall business area. Given the existing number of vehicle trips to the site as a whole (which includes a day nursery), the inspector was satisfied that any overall increase in vehicle trips would be negligible.
4. The critical issue, however, was to facilitate genuine home working opportunities. The application was speculative and the amounts of live versus workspace had not been defined. This was a fundamental drawback. Without any such control on floorspace, one or other of the uses – particularly the residential element - could become dominant. This would undermine one of the key principles of sustainable development, namely the maintenance of high levels of economic growth and employment. While the use of suitable conditions was discussed, these could not satisfactorily control the flexibility envisaged by the appellant.
5. A subsidiary issue relating to on-site security was not considered to be of sufficient weight to outweigh the harm caused by the proposal.

Mr & Mrs J Brown – Siting of two caravans, utility block and mobile medical/chalet unit for a disabled person – Schole Road, Willingham – Appeal allowed

1. This appeal was submitted after a similar appeal against an enforcement notice had been dismissed in June 2005. The appeal was against the Council's non-determination of a planning application submitted after the enforcement notice had been issued. The original appeal was considered by written representations whereas the planning appeal was considered at a public inquiry. Cllr Manning attended and spoke at the inquiry.
2. The earlier appeal had been dismissed on the grounds of harm to the character and appearance of the area, an undesirable concentration of sites and highway dangers. While the inspector was fully aware of the family's needs, including those of their severely disabled daughter (Kelly-Marie), he did not consider they outweighed the harm and conflict with the Council's policies.
3. The main policy change between the two appeals was the publication of Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites issued in February 2006. The appellant also gave extensive evidence on her personal circumstances.
4. The new inspector identified four main issues. These were the extent of any conflict with Policy HG23, the provision of and need for additional gypsy sites in the district, the personal needs of the Brown family and the accommodation needs and alternative accommodation options for the family.

Conflict with Policy HG23

5. Local residents had objected on the grounds of increased noise and disturbance from increased traffic using the road. There were no complaints about the use of the site as such. The inspector saw no evidence to suggest there was any effect on the amenity of adjoining residents. Policy HG23 (2) states that a concentration of sites will be avoided and the Parish Council had expressed fears about an over-concentration of sites in the village. There are a number of other sites close by including the authorised 'Bibby' and 'Wesson' sites in Schole Road. Although the previous inspector had concluded that the Brown site would lead to a concentration of sites, the latest inspector disagreed. She concluded that a further small site would not have any material impact on the local community. Indeed she found that the local Parish and District Councillor had considerable sympathy for the family's predicament.
6. Local concern was that if this site was approved, it would encourage additional unauthorised occupation by other gypsies and the village could face the same situation as experienced in Cottenham in recent years. Paragraph 54 of Circular 01/06 states that sites should respect the scale of, and not dominate, the local community. The inspector considered this was the situation in this case.
7. The inspector agreed with her predecessor that the development would (at least in the early years) have a significant adverse effect upon the character and appearance of the area. However, once hedgerow planting had matured over time, the site would be satisfactorily assimilated into its surroundings. There was nonetheless conflict with criteria (3) and (4) of the policy.
8. The previous inspector had found that the poor condition of Schole Road would cause highway dangers and make the road less safe, convenient and enjoyable for other road users. In the absence of any objection from the local highway authority, the Council's main concern was the impact on the convenience and enjoyment for pedestrians and horse riders. The latest inspector found that, as traffic speeds along Schole Road are necessarily slow and the use would only generate a limited number of extra vehicles, the likely impact on other road users was also likely to be minimal.
9. The conflict with Policy HG23 was therefore restricted to the impact on the character and appearance of the area. Nonetheless, it was still necessary to consider whether there were other material considerations, which outweigh this harm.

Provision of and need for additional gypsy sites in the District

10. The Council's comprehensive strategy for gypsies, the ongoing attempts to provide sites and the recent travellers' needs survey were discussed at length. The importance of meeting needs at a regional level rather than just locally was also significant and one that arises from the advice in Circular 01/06. Nonetheless, the inspector found that "... even if the regional needs assessment and pitch allocation process reduces the total needs requirement for South Cambridgeshire, the gap between the supply of and demand for pitches in the short to medium term is substantial". There was nothing to suggest that there were other available sites, including the land at Chesterton Fen, which would provide a realistic alternative.

Personal Circumstances

11. Mr and Mrs Brown were previously living on an authorised site at Smithy Fen. They were the last English family to leave after the large influx of Irish travellers in early 2003. The site at Willingham is roughly equidistant from the hospital at Huntingdon and a special needs school at Ely. In the inspector's view, "... the personal circumstances of the Brown family are exceptional, even amongst the gypsy community, because of the intolerable situation they found themselves in at Smithy Fen and the acute needs and strains of the family arising from Kelly Marie's difficulties". These should be given considerable weight as a material consideration in this case.

Accommodation needs and alternative options

12. The inspector found that the family have a clear need for a site within the Cambridge/Huntingdon/Ely area which is suitable for them to station a double mobile home with adequate washing and bathing facilities for all the family. She was satisfied that the family has made a proper and sustained search for an alternative site and that there was no evidence to indicate that a suitable and affordable alternative site will become available in the foreseeable future. Dismissal of the appeal would logically lead to the Council pursuing enforcement action. While both the Council and local councillor had indicated that the family may be given the maximum amount of time to relocate, this humanitarian act would still provide no certainty for the family. It would only add to the existing high levels of stress and would be a highly unsatisfactory outcome.

Other matters

13. While most of the evidence presented to the inspector was the same as for the previous appeal, the latest inspector found there were material differences. These included "... the amount, range and detail of the evidence in the current appeal..." In particular, this amounted to the nature and seriousness of Kelly-Marie's condition, her domestic and personal needs, the family's accommodation needs, the lack of alternative accommodation and the Council's proposals for addressing the need for sites. There was no direct input from either Mr or Mrs Brown in the previous appeal and the inquiry format had allowed a greater understanding of the various issues.
14. The inspector concluded that on the evidence available to her, the harm caused to the character and appearance of the area is outweighed by other material considerations. The appeal was therefore allowed subject to conditions. Permission is personal to Archie and/or Julie Brown and their resident dependents; no more than 3 caravans shall be stationed on the land at any one time; no vehicle over 3.5 tonnes shall be stationed, parked or stored on the site; details of landscaping and foul water drainage are required; and no external lighting shall be provided without the prior agreement of the local planning authority.

P R Denny – Use of building for retail purposes – Unit 135 Cambridge Road, Milton – Costs decision against the Council following withdrawal of enforcement notice

1. On 7th September 2004 the appellant obtained temporary planning permission to use part of the premises for the sale of pine furniture. He subsequently began to operate from a larger floor area and an enforcement notice was issued on 6th April 2005 requiring the unauthorised sales and showroom to cease. The reason for the notice was that the increase in retail floorspace would increase the traffic generation to the site, which because of limited on-site parking would lead to on-street parking and impact on highway safety. Enforcement action was taken following consultation with local members.
2. An appeal was lodged to be heard by way of a public inquiry. Following further investigations and the submission of a detailed traffic assessment on behalf of the appellant in December 2005, officers were concerned that it was no longer expedient to pursue enforcement action. The assessment concluded there was insufficient evidence to suggest that any on-street parking would have an adverse effect on highway safety. The local highway authority did not dispute the evidence provided by the appellant. Following discussions with local members and the parish council, the enforcement notice was withdrawn on 13th January 2006.
3. The appellant subsequently submitted an application for costs against the Council. This was on the grounds that the Council had acted unreasonably in issuing the enforcement notice leading to unnecessary expense for the appellant.
4. The appellant's case was that the Council had issued the notice without any evidence to justify the reasons for taking enforcement action. He claimed that his occupation of more floorspace than he had been granted permission for was an honest mistake (which he

blamed on his professional agents). He had asked for a site visit to discuss the matter, but the Council had refused, contrary to longstanding advice from central government. The appeals officer had subsequently visited the site and intimated that planning permission might be forthcoming for the use. By this time, the appellant had spent considerable funds in mounting his appeal.

5. The Council's response was that its behaviour had not been unreasonable. The Council had expressed its concerns about highway safety from the outset before any application was made. Irrespective of the appellant's intentions, the Council had only granted a temporary permission for a very limited area. While the Council may have declined to discuss the matter further with the appellant, it had sufficient information to issue the enforcement notice. It was only after a number of visits to the site once the business had been trading for some time and the receipt of the detailed highway's evidence, that the Council felt it justified to withdraw the notice.
6. In allowing the costs application, the Planning Inspectorate highlighted the advice in PPG18, which advises that where a small business is concerned, local authorities should first discuss the operation with the owner. When an enforcement notice is withdrawn, the Secretary of State will have regard to the reasons for withdrawal in order to assess whether any material change of circumstances has occurred since the notice was issued. The Inspectorate's decision letter goes on to state "it is difficult to escape the conclusion that the Council did not take sufficient care in gathering and evaluating the evidence on which they based their judgement that this breach of planning control would unacceptably affect public amenity". The Council have not shown that they had reasonable grounds for considering it expedient to issue the notice. As a result, the appellant had incurred unnecessary costs.
7. Details of the costs application are still awaited.

3. Appeals received

Ref. No.	Details	Date
S/1209/05/F	Mr & Mrs Sharpe 1 Church Street Little Shelford Erection of dwelling and reorganisation of restaurant car park (Officer Recommendation to Refuse)	27/03/2006
E512	Kane & Lindsey Astin The Old Well, 55-57 Station Road Stow-cum-Quy Enforcement of removal of gazebo, timber decking and fence	29/03/2006
E512A	Kane & Lindsey Astin The Old Well, Station Road Stow-cum-Quy Enforcement of removal of gazebo, timber decking and fence.	29/03/2006
E524	L Dockerill Land adj to the level crossing, Mill Lane (and A1301) Sawston Enforcement against use of the land for unauthorised storage of plant and materials	29/03/2006
S/0026/06/F	Mr M Hart Adj 90 Chalklands	30/03/2006

	Linton 2 dwellings (Officer Recommendation to Approve)	
S/2278/05/F	W M Cornish Land off Haverhill Road Horseheath Change of use from agricultural to garden land (Officer Recommendation to Refuse)	30/03/2006
S/1626/05/O	Mr E Kingsley R/o 5 Barretts Yard Fulbourn House (Officer Recommendation to Refuse)	31/03/2006
S/1580/04/F	Mr A Martin The Star PH, 29 High Street Melbourn Childrens slide and climbing frame (Officer Recommendation to Refuse)	03/04/2006
S/1585/05/F	Vogan & Co Ltd Fulbourn Silo, Wilbraham Road Fulbourn Extension to existing storage area integral to mill (Delegated Refusal)	03/04/2006
S/2377/05/F	Mr M Steele Orchard End, Church Lane Kingston Extension to bungalow to form two storey dwelling & erection of garage (Officer Recommendation to Refuse)	06/04/2006
S/2322/05/F	Mr L J Haestier/Warmwell Homes Ltd 14 Green End Comberton Erection of house and garage following demolition of existing Bungalow (Officer Recommendation to Approve)	11/04/2006
S/1544/05/F	Mr S Hebditch North House, Dunsbridge Turnpike Shepreth Erection of industrial unit (class B2) following demolition of existing unit (Officer Recommendation to Refuse)	12/04/2006
E518	Mr T Spicer Adj 12 The Common West Wrattling Enforcement against unauthorised extension of area of hard standing	12/04/2006

S/2204/05/O Charles Nightingale 13/04/2006
 2 Mingle Lane
 Great Shelford
 Erection of house including part demolition of existing house
 (Officer Recommendation to Refuse)

4. Local Inquiry and Informal Hearing dates scheduled before the next meeting on 10th May 2006

Ref. No.	Details	Date/Time/Venue
None		

5. Appeals withdrawn or postponed

Ref. No.	Details	Reason and Date
S/0754/05/F	The Land Partnership Ltd 53 Cottenham Road Histon Erection of 7 houses and garage for existing dwelling	Withdrawn By Appellant 04/2006
S/6283/05/F	Mr M Procter Madeira House, 17 The Maltings Cambourne Change of use of flat to offices (class B1)	Withdrawn By Appellant 05/04/2006

6. Advance notification of future Local Inquiry and Informal Hearing dates (subject to postponement or cancellation)

Ref. No.	Details	Date
S/1137/04/F	Optima (Cambridge) Ltd Croydon House Farm Croydon Conversion of agricultural buildings to 4 home/work dwellings (mixed use classes C3 & B1) car parking and alterations to access (Hearing)	14/06/2006 Offered/
S/2446/04/O	Mr T Day R/o 97 New Road Haslingfield Dwelling (Hearing)	15/06/2006 Offered/
S/1207/04/F	Mr & Mrs Allen R/o 32 Fen End Willingham Dwelling and garage (Hearing)	16/06/2006 Offered/
S/1663/04/F	Cambridge Wind Farm Ltd Land South West of Huntingdon Road (A14) Boxworth Wind farm comprising 16 wind turbines, anemometry mast, substation and associated infrastructure (Local Inquiry)	17/10/2006 Confirmed