

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/1851/04/F	Dudley Developments 139 Cambridge Road Great Shelford 8 dwellings following demolition of existing (Delegated refusal)	Dismissed 22/08/2005
S/0246/04/RM	Cofton Ltd, George Wimpey East Anglia, Kings Oak, Phase 2, Home Farm Longstanton Erection of 200 dwellings and ancillary works (amended at the inquiry to comprise 196 dwellings) (Non-Determination)	Allowed 23/08/2005
E 487	Mr Rahman R/o 23 Church Street Willingham Enforcement against change of use of premises from use class B1c (light industrial) to class A3 (sale of hot food for consumption on or off the premises) and delivery of hot food. (Enforcement)	Dismissed 24/08/2005
S/2239/04/LB	Mrs L R Maddison Lordship Cottage, Fardells Lane Elsworth Change of thatching material on front elevation (Delegated refusal)	Dismissed 31/08/2005
E 490 A	Mr Carter Berry House, 33 High Street Waterbeach Enforcement of removal of fence (Enforcement)	Allowed 08/09/2005

S/1217/04/F	Mr C Crickmore Travellers Rest Caravan Park, Chittering Waterbeach Appeal against condition 3 of permission, limiting opening of the site to 8 months per year. (Officer Recommendation to Approve)	Dismissed 15/09/2005
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2. Summaries of recent decisions of interest

R Poulter – Total demolition of grade I listed barn – Golden Gables, Sanders Lane, Fulbourn – Appeal allowed

1. Listed building consent was refused to demolish the remains of this dilapidated late-mediaeval timber-framed thatched barn. The main issue was whether there was a sufficient case to justify demolition rather than preservation.
2. The barn was used for garaging and domestic storage. These uses ceased following its collapse in February 2004. Two bays of the original six fell. Since the collapse, three engineers reports had been submitted. These were commissioned by the appellant, his insurers and lastly by the Council. In considering the case for demolition, it was necessary to consider three specific issues.
3. The first concerns the condition of the building and the cost of repair and maintenance. This is in relation to its importance and value derived from continued use. The conclusions of the three reports differed. Having examined the building himself, the inspector stated "... I prefer to rely on the findings and conclusions of the engineers commissioned by the Appellant and the Appellant's insurers. I consider that my preference is supported by the Council's Conservation officer, who recommended approval of the application, and by the Cambridgeshire Historic Buildings Trust who have declined to undertake reinstatement of the barns on the grounds of cost". Moreover, English Heritage made no recommendations to oppose demolition.
4. The inspector found the insurer's estimates of the cost of repair of between £200,000 and £300,000 to be more realistic than the Council's figure of £90,000 plus VAT. The appellant had already spent £10,000 on repair and maintenance works since 1989.
5. The second concern was the extent to which adequate efforts had been made to retain the building in use, possibly by securing a compatible alternative use. This includes exploration of the sale of the building. This is inextricably linked to the third matter, which requires consideration of the merits of an alternative use for the site. While the appellant has not considered an alternative use for the barn, it lies only some 2.5 metres from the dwelling on the site. This constraint means that any use not connected with the dwelling would be problematic. The Council had also expressed an informal opinion that an alternative use would not be supported. The barn therefore has no market value and illustrates why the barn has not been marketed. The costs of repair to provide a garage and domestic store would not be viable and in any event the introduction of a substantial amount of new timber would affect the architectural integrity of the building.

6. In concluding that the appeal should be allowed, the inspector acknowledged the "... generous grant of £30,000 the Council is prepared to offer towards repairs to enable the present use of the barn to be revived." This would not be that significant, however, given the total cost of repairs estimated on behalf of the appellant.
7. Conditions were imposed including a requirement for demolition within one year, the making of an archaeological record of the building and the salvaging of reusable elements.

Coftron Ltd, George Wimpey East Anglia and Kings Oak Homes Ltd – Erection of 200 dwellings – Phase 2, Home Farm, Longstanton – Appeal allowed in accordance with revised scheme - Appeal for costs by the appellants dismissed

1. This was an appeal against non-determination of reserved matters. A duplicate scheme had been refused on the grounds of excessive density and an unsatisfactory design and layout. The appeal was determined by way of a public inquiry. The Council was represented by counsel and employed an architect to deal with design issues. The Parish Council were also represented.
2. During the course of the two-day inquiry, the appellants' and the Council's architectural advisors discussed possible amendments to the layout. On the second day of the inquiry, a revised layout for 196 dwellings was tabled. The Council supported this in terms of the design and layout and so this issue was not pursued at the inquiry.
3. The first main issue was whether allowing the appeal would prejudice the implementation of phase 3, bearing in mind the original master plan and a restriction on total numbers imposed by the outline planning permission (OPP). The (OPP) restricts the total number of dwellings to 500. 91 dwellings have already been approved as part of phase 1. The Council had already approved a scheme for 153 dwellings on phase 2. 200 dwellings would exceed the density allowed for phase 1
4. The Council argued that the outline planning permission gave it limited discretion to increase the overall limit of 500 dwellings. The implied density of 24 dwellings per hectare (dph) across the whole site would be significantly lower than the minimum densities advocated by PPG3. This would result in at least 630 dwellings. The Council's main concern was that by allowing 200 dwellings on phase 2, phase 3 could only be developed at 18.5 dph and this would have significant implications for its design and layout. The appellants argued that Phase 2 should be developed on its own merits taking into account the advice on density in PPG3.
5. The inspector found there was nothing within the terms of the OPP that restricts density or the mix of houses on any phase. Neither did the master plan or subsequent development brief. While Phase 2 may be developed at a slightly higher density than phase 1, this would not be discernible on the ground. The original conception of a gradation of density across the site was not supported by the advice in PPG3. While the proposal would conflict with the intention of the development brief, the inspector concluded that " I attach greater weight to efficiency in the use of land as required by PPG3".

6. He also considered that the fall back position of 153 dwellings was not an efficient use of land. In considering what might happen to phase 3, the inspector also found that developing the site at less than 19 dph would also be wasteful. To this end, he suggested that it would be possible to develop the remaining area at PPG 3 densities by using a smaller area of land to accommodate the balance of dwellings available. Alternatively, it would be open to the developers to seek an increase in the total number of dwellings, or a new permission on the remainder of the site. Whatever course of action is taken, this would not justify dismissing this appeal. Neither would it prejudice the implementation of the OPP.
7. On the question of design and layout, a satisfactory sense of place was now created.
8. Other matters were raised during the inquiry. This included the need for affordable housing should numbers exceed 500. While the inspector accepted that a fresh permission for the whole site might require equal distribution of community provision throughout the area to be developed, this was not an issue here. The appellants had submitted evidence to prove Longstanton is a sustainable development, but the inspector did not accept this is necessarily so.
9. The revised application for 196 dwellings was therefore allowed subject to approval of a landscaping scheme and restrictions on doors/gates to car ports in the interests of highway safety.
10. The appellants' application for costs was on the basis that design issues could have been resolved through negotiation well in advance of the inquiry. The Council had argued that the density of phase 2 should be similar to phase 1. It was manifestly unreasonable to object on the basis it marginally exceeded phase 1. Phase 3 would always be at a low density even if 153 dwellings were erected. The Council had not produced substantial evidence to demonstrate harm. The proofs were late. If full costs were not awarded, a partial award should be made.
11. In response, the Council explained that while some of its design objections had been overcome in the weeks leading up to the inquiry, others remained. The Council apologised for the late submission of proofs, but the appellants had still had time to approach the Council and discuss design issues. The appellants had made no proper approach to the Council until the day of the inquiry. There was no evidence that the Council was unwilling to co-operate. The appellants had now conceded every point put by the Council. They had altered their position not once, but twice and the Council's position had remained consistent throughout. Issues of density were one of professional judgement when considering the differences between different schemes.
12. The inspector found that the Council had not been unreasonable, resulting in an unnecessary appeal. It was entitled to be concerned about how phase 3 might be developed. It was reasonable to argue that the density of phase 2 should not exceed phase 1 in the context of the outline application. The Council had supported its position with substantial evidence at the inquiry. There was no evidence that the appellants had attempted to resolve design differences prior to the inquiry. The lateness of proofs had not disadvantaged the appellants or put them to additional expense as a result.

Comment: The main decision may be regarded as disappointing, particularly as the inspector recognised the difficulty it will put the Council in if an application is made to increase the number of dwellings above 500.

However, he acknowledged this may trigger a need for further infrastructure and community provision and that Longstanton is not a very sustainable location. There is also no doubt that going to inquiry resulted in a better scheme as a result of the changes agreed by the architects. An application for phase 3 is currently in abeyance and decisions will need to be made as to how to proceed with what is a low-density scheme and one that the inspector considered would be a potentially wasteful use of resources.

Mr C Crickmore – Appeal against condition restricting use of redeveloped caravan park for total of 8 months a year – Travellers Rest Caravan Park, Ely Road, Chittering – Appeal dismissed

1. Members will recall that the original application was approved, but on the basis that this was for a total of no more than 8 months in any one year. The appellant had requested 11 months. In order that the use could be monitored, the owner/operator was to provide the dates during which the site would be open.
2. The reason for the condition was to ensure that the caravan park is genuinely tourist related and does not become a permanent residential caravan park. While the appeal was dismissed, the inspector did not agree with the purpose of the condition, but found other reasons to oppose a permanent permission.
3. The inspector noted that the Council was concerned with the possibility of an almost continuous residential development on the site. This would run contrary to countryside policies. He found that the proposed condition was badly worded as it did not offer the Council any scope to approve/refuse the dates put forward. If this was for an 11-month season, this could lead to a continuous 22-month season if they were to run back-to-back. The condition therefore lacked precision and did not satisfy the tests set out in government guidance. If necessary, the inspector felt he could substitute another condition that had more clarity. He was also satisfied that a further condition already part of the planning permission that restricts the use to “holiday purposes” only was enforceable.
4. It was noted that the appeal site adjoins the rear gardens of adjoining properties and access to the site from the A10 passes a number of dwellings on School Lane. The inspector was concerned that activities associated with the new caravan site would have some impact on neighbours’ living conditions. In view of the historical permission for the park, he considered that an 8-month season was acceptable. However, a fair balance had to be struck between the legitimate business aspirations of the appellant and the reasonable expectations of neighbours to enjoy the peace and quiet of their properties.
5. The inspector therefore concluded that 8 months was the most that should be allowed. There was no substantial evidence before him that other caravan sites in the area were open for 11 months a year. In any case, the circumstances between various sites may differ.

Comment: This is a case where neither officers, nor members considered the protection of neighbours’ amenities to be a determining factor against the proposal. The inspector’s reasoning means that adjoining residents can still expect some degree of protection, even though this may only be for part of the year.

3. Appeals received

Ref. No.	Details	Date
S/0137/05/F	Graftonbury Properties Ltd Wimbish Manor Estate, Fowlmere Road Shepreth Erection of house and garage (Delegated refusal)	23/08/2005
S/2193/01/F	Mr I Quince Land at Station Road Gamlingay Agricultural Mobile home and access (Officer Recommendation to Approve)	15/09/2005
S/2194/01/F	Mr I Quince Land at Station Road Gamlingay Erection of egg production unit and storage building together with access (Officer Recommendation to Approve)	15/09/2005
S/2518/04/F	Houston Crest Properties (UK) Ltd Land at Landbeach Lakes, Ely Road Landbeach Hotel (Delegated refusal)	14/09/2005

4. Local Inquiry and Informal Hearing dates scheduled before the next meeting on 2nd November 2005.

Ref. No.	Details	Date/Time/Venue
S/1109/04/F	Beaugrove Ltd. Crail, High Street Croydon Erection of two houses following demolition of existing house (Hearing)	11/10/2005 Monkfield Room 10:00am
E499	Mr F Cooke Hilltrees, Babraham Road Stapleford Removal of motor vehicles etc (Local Inquiry)	18/10/2005 Swansley Room 10:00am

5. Appeals withdrawn or postponed - None

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

Ref. No.	Details	Date
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 (Hearing)	08/11/2005 Confirmed
S/0592/04/F & - S/2062/04/F	R W S Arnold Bennell Farm, West Street (Comberton) Toft Erection of B1 offices (Hearing)	09/11/2005 Confirmed
E502	Mr M Walker 2 Denny End Road Waterbeach Construction of a garage without planning permission (Hearing)	22/11/2005 Confirmed
S/1909/04/O	Mr & Mrs Cole 66 Cambridge Road Great Shelford 3 houses and garages (Hearing)	10/01/2006 Offered/
S/2533/04/O	Mr & Mrs Cole 66 Cambridge Road Great Shelford 2 houses and garages (Hearing)	10/01/2006 Offered/
S/0917/05/O	Mr & Mrs G Cole 66 Cambridge Road Great Shelford 4 dwellings following demolition of existing dwelling (Hearing)	10/01/2006 Offered/
S/6258/04/RM	MCA Developments Land South of Great Cambourne Cambourne Alterations in land form (dispersion of soil from building works.) (Local Inquiry)	09/05/2006 Confirmed