

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/0343/05/PNT	Hutchison 3G Uk Ltd London Road/Church Street Stapleford 12 metre high telecommunications monopole and associated development (Delegated Refusal)	Dismissed 28/09/2005
S/0166/05/F	Huchison 3G Uk Ltd North East Farm, Cambridge Road Eltisley 20M Telecommunications tower and associated development (Officer Recommendation to Approve)	Allowed 28/09/2005
S/0266/04/RM	Potton Developments Ltd West Road Gamlingay Erection of 4 houses each with annexe (Officer Recommendation to Approve)	Dismissed 29/09/2005
S/0518/05/O	T G Ravenscroft R/o Cranmore, Royston Road Litlington Bungalow & garage (Delegated Refusal)	Dismissed 06/10/2005
S/2154/04/PNT	Orange Personal Communications Rampton Road Longstanton 5 metre high slimline telecommunications monopole and associated development (Delegated Refusal)	Allowed 06/10/2005
S/1579/04/F	Orange PCS Ltd Land Northwest of Whitehouse Lane, off Huntingdon Road Girton 5m high telecommunications mast to replace existing mast and associated development. (Delegated Refusal)	Allowed 07/10/2005

S/1692/04/F	Mr R Dias 44 Station Road Histon Use of premises for hot food takeaway between 11am & 2.30pm (Delegated Refusal)	Allowed 10/10/2005
S/2240/04/O	Mr G Jennings Harlton Road Haslingfield Agricultural Bungalow (Delegated Refusal)	Dismissed 10/10/2005
S/1698/04/F	T M S Management Ltd Ashwell & Morden Station Yard Steeple Morden Erection of 37 dwellings to include 21 live/work units (Officer Recommendation to Refuse)	Dismissed 10/10/2005
S/2279/04/F	K J Holdings Ltd 3 Thornton Way Girton Extension and conversion into bed-sit accommodation (7 units). (Delegated Refusal)	Dismissed 10/10/2005
S/0138/05/F	Graftonbury Properties Ltd Wimbish Manor Estate, Fowlmere Road Shepreth Conversion of redundant garage/store into dwelling (Delegated Refusal)	Dismissed 10/10/2005

2. Summaries of recent decisions of interest

Orange PCS Ltd – 25m high telecommunications mast to replace existing development - Land at NIAB, Huntingdon Road, Girton – Appeal allowed

Orange PCS Ltd – 15m high slimline telecommunications monopole and associated development – Land at Rampton Road, Longstanton – Appeal Allowed

Hutchinson 3G UK Ltd – 20m high lattice telecommunications tower and associated development – Land at North East Farm, Eltisley – Appeal allowed

Hutchinson 3G UK Ltd – 12m high telecommunications monopole and associated development – Land at London Road/Church Street, Stapleford – Appeal dismissed

1. These four appeals were all determined by the same inspector under the written representations procedure. The Committee refused the proposal at Eltisley; the other three proposals were refused under delegated powers.

2. The site at Girton lies within the Green Belt. The main issues were compliance with Green Belt policy, the impact on the character and appearance of the area and whether there were any very special circumstances that justify setting aside any presumption against the development. The issue in the other appeals was the impact on the character and appearance of the area.
3. At Girton, the inspector found that the addition of some 2.4 metres to the height of the existing mast and the additional dish and antennae would result in some loss of openness to the Green Belt. However, given the nature of the existing mast, he found the loss of openness would be minimal. It would in fact, be difficult to imagine a scheme that would have a smaller volume of extra construction than this scheme. The additional cabins would only be seen from the footpath that runs past the site and their wider impact would also be limited. Having looked at the site from a nearby garden over 100 metres away and from the adjoining playing fields, he did not consider the slightly increased prominence of the structure to be harmful. It was accepted by both parties there was a need to provide additional network coverage in the area and the inspector was satisfied that no less intrusive sites were available. The proposal would also allow mast sharing in accordance with government advice.
4. The site at Longstanton is a highway verge alongside Rampton Road within an avenue of deciduous trees. The inspector found the monopole would not appear intrusive, even in winter. He accepted that the site was the best available within the appellants' search area. The Council had not been able to put forward other alternative sites. The site lies within the proposed new settlement of Northstowe and within an area that has been identified as an area of open space. As a more suitable site might come forward in time, it was prudent in the circumstances to grant a temporary (five years) consent.
5. The site at Eltisley is also within a deciduous tree belt. Although the top of the mast and antennae would stand clear of the trees, the inspector concluded it would still be reasonably well screened from three sides. While it would be more conspicuous from the north, the nearest dwellings were over 1 km away. Overall, he considered the mast would not be particularly prominent in the countryside. As with the Longstanton appeal, the appellant demonstrated that no other alternative sites were available in the search area and Council had been unable to suggest any other suitable specific alternative sites.
8. All three appeals were allowed subject to agreement with the local planning authority on the colour of the equipment.
9. At Stapleford, the site is located on public land at a key focal point opposite the post office. The inspector found the equipment would appear as unsightly, incongruous features in the landscape, particularly when entering the village from the south. They would add to unsightly street clutter in an important part of the village and would spoil the outlook from both residential and commercial properties near by. No landscaping or screening could disguise the impact of the proposal. As with the other appeals, the Council argued that other sites may be available, but had not specifically suggested where these should be. In this case, however, the inspector found it "... very difficult to believe that some other site suitable for a streetworks installation such as this could not be found in a less prominent position..."
10. In deciding the appeals, resident's fears about the effect on health were discounted. In each case, the appellants had confirmed the proposed installations meet the relevant (ICNIRP) guidelines for public exposure.

Comment: In allowing the three appeals and not the fourth, the inspector has distinguished between the type of installation required. In the first three, he was satisfied that in spite of their generally open location, away from buildings, better alternative sites would be hard to find. The Council was also hampered in each case, for being unable to suggest specific alternatives. This is a matter that needs to be fully considered when other applications are deemed harmful. The site in Stapleford is entirely different however, as in this case, the inspector accepted the Council's position that there is likely to be a more suitable location for a "streetworks" installation.

Mr R Dias – Sale of hot food for takeaway from the premises – 44 Station Road, Histon – Appeal allowed. Application for costs by the appellant dismissed.

1. The application was to allow the use of the premises as a hot food takeaway service between the hours of 11 a.m. and 2.30 p.m. Permission was refused because of the effect on neighbour's living conditions through noise and disturbance. The appeal was considered by way of a hearing. Cllr Batchelor, ex-Councillor Nicholas and Inspector Paul Ormerod from Histon Police Station supported the appellant. Cllr Mason and Histon Parish Council opposed the application.
2. The inspector was made aware of the complex history of the site. This includes an appeal for lunchtime and evening takeaway use that was dismissed in January 2002 and a temporary (one year) planning permission for lunchtime use that expired at the end of February 2004. As part of his lawful hot food delivery service, the appellant stated that he delivers food, perhaps 10 times a day and mostly in the evenings, to customers' vehicles in neighbouring streets. The inspector found he had no reason to doubt that this activity has been carried on throughout the past 12 years.
3. The inspector had particular regard to the previous appeal and accepted the general impacts that takeaways can cause. He also noted the "particular vulnerability of the houses opposite the site". However, he concluded that it was clear the previous inspector was mainly concerned with the effects of noise and disturbance during the evenings. In this respect the current proposal solely for lunchtime use differed from the appeal scheme.
4. Complaints from local residents about anti-social behaviour were found to have occurred during the evenings. A resident who had complained to the Council's enforcement officer had since said there were now no further problems. Inspector Ormerod advised the only complaints the Police had on record were from incidents in the early hours and indeed it was the appellant who had first alerted the Police about one particular disturbance. In short, there was no evidence to suggest that the one-year trial period had led to any complaints. The Council responded by arguing this had not been a realistic trial as the appellant had acknowledged that the level of trade had been low. There was clearly the potential for significantly greater lunchtime trade at this location.
5. The inspector accepted that the nature of the enterprise could change. Indeed, in addition the appellant's business ("Romano's"), the head chef was also operating "The Flying Tandoori" from the site. He reasoned, however, that it was necessary to take account of what had actually happened during the one-year period. There was no compelling indication that a lunchtime takeaway would generate customers in large numbers, even if it were more widely advertised. He did not think the premises would generate the same level of passing trade that would be associated with a similar business in a suburban location or on a major traffic route. The size of the premises limited the potential for the site to develop into a fast food outlet and there were other facilities nearby also offering food at lunchtimes. He was not persuaded that car parking or the slamming of doors, radios etc would be intrusive against the general background activity on Station Road.
6. The Parish Council and some local residents were also concerned about highway safety and the free flow of traffic. Neither the local highway authority nor the previous appeal inspector found any such harm. In the absence of any expert evidence to the contrary, and based on his own observations, the inspector considered that concerns regarding the free flow of traffic or parking difficulties were insufficient to justify rejecting the proposal.
7. Planning permission was therefore allowed subject to confirmation that the takeaway use shall only operate between the hours of 11 a.m. and 2.30 p.m.

8. In his application for costs against the Council, the appellant argued there had been no disturbances attributable to lunchtime trade. The Council had never challenged his long-established practice of selling hot food. Furthermore, the Council had failed to consult the highway authority, which has no objections. Council officers had been unwilling to speak to him, though subsequently an enforcement officer visited him. Several thousands of pounds had been spent obtained legal advice on whether the Council had acted unreasonably or not.
9. The Council replied that it did not rely on highway grounds for refusal. There had therefore been no need to consult the highway authority. Relationships with the appellant had broken down and there was a standing instruction that only the legal officer speaks to the appellant. The reasons for refusing the application were complete and precise, the alleged harm called for a subjective judgement and the Council was duty bound to rely on the previous appeal decision. The appellant had not convinced the Council that his previous temporary permission had been fully utilised and the scale of any future use could not be controlled. The appellant could have asked for a further temporary consent but had chosen not to. There was no evidence that the appellant had paid lawyers for advice and the Council had not been given any opportunity to respond to any such advise.
10. The inspector agreed there had been no need to consult the highway authority. Even if the Council had been prepared to discuss the proposal, the hearing would still have been necessary. While the appeal was allowed, the inspector accepted that the potential for noise and disturbance, the vulnerability of neighbouring properties and possible intensification of use were all matters of judgement which the Council had to take into account. It was not unreasonable for the Council to have taken a different view. No award of costs was justified.

Comment: The appellant has finally secured a permanent consent after several applications. Following the grant of a temporary permission, the lack of any substantive complaints during that time meant that the inspector felt that he was justified in approving the application.

3. Appeals received

Ref. No.	Details	Date
S/1143/05/F	Mr & Mrs Wood R/o 13 High Street Great Eversden Conversion of barn to dwelling and erection of garage (Delegated Refusal)	21/09/2005
S/0140/05/F	D Kennedy & K Meaby The Bungalow, Cambridge Road Girton Extension (Delegated Refusal)	22/09/2005
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 (Officer Recommendation to Refuse)	30/09/2005

S/0984/05/F	Intermax Ltd 5 Meeting Lane Melbourn Extension to dwelling and erection of garage and store/studio (Delegated Refusal)	07/10/2005
S/1515/05/O	Warmwell Homes Ltd 14 Green End Comberton 2 dwellings and garages following demolition of existing dwelling (Delegated Refusal)	07/10/2005

4. Local Inquiry and Informal Hearing dates scheduled before the next meeting on 7th December 2005

Ref. No.	Details	Date/Time/Venue
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 Monkfield room 10.00am
E502	Mr M Walker 2 Denny End Road Waterbeach Construction of a garage without planning permission (Hearing)	22/11/2005 Swansley room 10.00am

5. Appeals withdrawn or postponed

Ref. No.	Details	Reason and 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)	Hearing postponed by appellant

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

Ref. No.	Details	Date
S/1909/04/O	Mr & Mrs Cole 66 Cambridge Road Great Shelford 3 houses and garages (Hearing)	10/01/2006 Confirmed

S/2533/04/O	Mr & Mrs Cole 66 Cambridge Road Great Shelford 2 houses and garages (Hearing)	10/01/2006 Confirmed
S/0917/05/O	Mr & Mrs G Cole 66 Cambridge Road Great Shelford 4 dwellings following demolition of existing dwelling (Hearing)	10/01/2006 Confirmed
S/2505/04/F	Mr and Mrs A Brown Schole Road Willingham Siting of 2 gypsy caravans, utility block and mobile medical Unit for disabled person (Local Inquiry)	07/02/2006 Confirmed
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