

Subject: Appeals Update

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1.0 Introduction

1.1 This report summarises the outcome of key planning appeals received in the first four months of 2021/22, covering 1st April to 31st July 2021. A summary of overall performance in such respects is provided in the 6-monthly performance report forming part of the agenda to this meeting.

2.0 Planning appeal decisions

2.1 During the above period the Planning Service received several appeal decisions of note. These are summarised below with any key points discussed so to assist with the future consideration of planning proposals.

20/02214/FUL (Appeal Ref: APP/Y0435/D/20/3264453)

Demolition of existing garage, two storey front and rear extensions, first floor window opening in the side elevation, replacement windows, canopy on the front, render and re-roofing of dwelling at 106 East Street, Olney

2.2 The appeal was considered through written representations and **dismissed** on 14th May 2021.

2.3 This was a delegated decision to refuse permission due to the extension resulting in unacceptable overshadowing of a neighbouring property. The inspector acknowledged that there was already some overshadowing. However, the appeal proposal would worsen this situation and unduly restrict the level of daylight to both the neighbours' courtyard area and dwelling.

20/02966/CLUP (Appeal Ref: APP/Y0435/X/21/3267010)

Certificate of Lawfulness for loft conversion with dormer extension to rear roofslope and rooflights to front roofslope at 10 Lockwood Chase, Oxley Park, Milton Keynes

2.4 The appeal was considered through written representations and **allowed** on 26th May 2021.

2.5 This was a delegated decision that stated a Certificate of Lawfulness could not be issued. The proposed dormer was assessed as being on a side elevation and not of a similar visual appearance to the windows in the existing dwellinghouse, thus not satisfying allowances of the General Permitted Development Order (GPDO). Therefore, an express grant of planning permission would be required. The inspector concluded that the dormer was built on the rear elevation and the materials used in the side and face of the dormer would match the existing materials.

15/00619/FUL (Appeal Ref: APP/Y0435/W/20/3252528)

Outline planning application for physical improvements to the Bottledump roundabouts and a new access onto the A421 (priority left in only) to accommodate the development of land in Aylesbury Vale District (reference 15/00314/AOP) on land at Buckingham Road, Tattenhoe Roundabout, Standing Way to Bottledump Roundabout, Milton Keynes ('Salden Chase')

- 2.6 The appeal was considered through a two-week public inquiry in May and **allowed** on 26th July 2021.
- 2.7 This related to a decision made by DCC, contrary to the officer recommendation, at the meeting on 7th November 2019. There was a solitary reason for refusal that identified there was insufficient evidence to mitigate the harm of the development in terms of increased traffic flow and impact on the highways and Grid Road network.
- 2.8 The inspector considered the design standards for mitigation, transport assessment (TA) and modelling, future initiatives and development, the travel plan, access design, and mitigation proposed at junctions where concerns had been raised. Ultimately, he concluded that the proposal accords fully with the relevant policies in Plan:MK and that mitigation would adequately address the highways impacts. The decision letter states that *"the appeal proposal, which would facilitate the SWMK development, with the identified mitigation in place would result in an overall improvement to the highway network"*. In addition, *"the proposal would not have an unacceptable impact on highway safety or on the flow of traffic and congestion on the Grid Road network. The residual cumulative impacts on the road network would not be severe and there are no highways related grounds for refusing planning permission"*.
- 2.9 Of particular note is the inspector's comments about:
- the design standards that should be applied to roads within the Grid Road network. He identified that Grid Roads are not trunk roads. Therefore, *"it would be inappropriate and disproportionate to expect any design of mitigation at the roundabout junctions to be to the DMRB [Design Manual for Roads and Bridges] standards, particularly as I have no substantive evidence to show that there are any significant safety issues that need to be addressed"*.
 - the potential for future development and investment, as identified through the Mobility Strategy for Milton Keynes 2018-2036 (LTP4) and 2050 Growth Strategy. The inspector identifies that none of the impacts from these planned initiatives had been allowed for in the forecast traffic. He was *"satisfied that at least some of them would be likely to come forward in the short to medium term, or at least by 2033, which is the projected year for the appellant's assessment. As such, the assessment will have most likely overestimated the traffic volumes and need for mitigation"*.
- 2.10 The Council's associated application for costs was refused. This was made as the applicant had effectively submitted an entirely new TA through the appeal in order to justify the proposal. With the support of Counsel, this was considered to represent unreasonable behaviour that resulted in the Council incurring additional costs in defending the appeal. Whilst the inspector accepted that the appellant had served extensive new evidence after making the appeal and

that this resulted in adjournments and additional work, he concluded the evidence was necessary and related to the proposed mitigation which had been developed because of updated modelling.

- 2.11 Inevitably, there has been considerable cost to the Council in defending this refusal, with the need for external highway consultants in addition to Counsel and extensive officer time.

20/00551/FUL (Appeal ref: APP/Y0435/W/21/3272728)

Erection of new Temple and Community Hall (Use Class D1) and associated works including access, parking and landscaping on land at St Agnes Way, Tattenhoe, Milton Keynes

- 2.12 The appeal was **turned away** on 26th May 2021.

- 2.13 This related to a decision by DCC on 5 November 2020, which was contrary to the officer recommendation. The reasons for refusal related to:

- the negative impact on residential amenity caused by the number of people attending activities that would be provided; and
- an inappropriate impact on the operation, safety and accessibility of the local highway.

- 2.14 Whilst an appeal was submitted requesting an informal hearing, the appellant did not provide all of the essential supporting documents before the 6-month deadline expired. Therefore, the inspectorate confirmed that they were unable to consider the appeal. This means that the above reasons for refusal remain 'untested'.

19/02771/FULMMA (Appeal ref: APP/Y0435/W/20/3252373)

The variation of the conditions 1 (Approved Plans), 12 (HGV Operating Hours) and 19 (External Lighting) of planning permission ref. 18/02341/FUL at 1 Yeomans Drive, Blakelands

- 2.15 The appeal was considered through a two-day hearing in March and a **split decision** was issued on 8th May 2021.

- 2.16 This application was refused under delegated powers in January 2020 and the Council's reasons for refusal related to:

- the proposed variation to Condition 12 (HGV operating hours); and
- a failure to secure Public Art and Carbon Neutrality contributions by legal agreement.

- 2.17 Being a variation of conditions (s73) application, the principle of the development could not be revisited, and the Inspector only considered the impact of the matters being varied. The appeal was allowed in respect of the proposed variations to conditions 1 (approved plans) and 19 (external lighting) only. The Council had not raised any issue with these matters, and they did not form part of the reasons for refusal.

- 2.18 However, the Inspector agreed with the Council's reason for refusal relating to the variation of condition 12, stating *"the proposed amendment to the operating hours would result in an adverse effect upon the living conditions of the occupiers of neighbouring properties...the appeal in respect of Condition 12 should be dismissed"*. In relation to condition 19 he concluded

“that the proposed amendments to the lighting condition would not result in an adverse effect upon the living conditions of the occupiers of neighbouring residential properties”.

- 2.19 Permission was granted subject to a s106 Unilateral Undertaking to secure financial contributions in respect of Public Art and Carbon Neutrality (the same sums as secured under 18/02341/FUL). This, in effect, resolved the Council’s second reason for refusal.

3.0 Enforcement appeal decisions

Appeal Ref: APP/Y0435/C/20/3263233

Land adjacent to 25, 27 and 29 Keel Way; 6,7,9,11,13 and 15 Gomez Close; and 44, 46, 48 and 50 Randall Drive, Oxley Park, Milton Keynes

- 3.1 The appeal was considered by written representations and **allowed** on 23rd July 2021, with the enforcement notice quashed.
- 3.2 Following refusal of an application for the change of use to residential garden land (ref: 20/00787/FUL) by DCC on 2nd July 2020, an Enforcement Notice was issued on 15th October 2020. The requirements of the notice were to:
- a) Cease the use of the Land for private garden amenity space; and
 - b) Remove any enclosures or paraphernalia associated with private garden use.
- 3.3 The appeal was made under grounds (a), that permission should be granted, and (d), on ground (d) is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.
- 3.4 As is commonplace with enforcement appeals, it is expedient to consider ground (d) before ground (a) given the need for permission would fall away if ground (d) was successful. The question to be determined by the inspector was whether the use commenced and continued for a 10-year period before the notice was issued.
- 3.5 Letters and photographs provided by the appellant included Street View images captured in October 2010 showing the site with a closely mown, lawned appearance, and with newly-planted boundary treatment around many (but not all) of the plots. However, Land Registry data demonstrated that some of the plots were not occupied by December of that year.
- 3.6 Whilst the inspector identified that the photographic evidence does not conclusively prove the use of each plot as garden over the relevant period, he concluded, on the balance of probability, that the appellant’s version of events was the most likely.

4.0 Current appeal casework

- 4.1 The Planning Service is currently dealing with the following appeals of note or awaiting decisions from the Inspectorate.

19/00124/FUL: 42 Portland Drive, Willen, Milton Keynes

This is a linked planning and enforcement appeal, arising from the refusal of permission by the Committee in July 2019 and associated EN relating to the development. The public inquiry was held in January 2021, with a site visit carried out in July. The Inspector has recently sought views from the main parties on recent changes to the NPPF, and a decision is still awaited.

20/00678/FULMMA: Bletchley Landfill Site, Guernsey Road, Bletchley

Permission was sought for the variation of conditions 2 (operational life), 3 (restoration sequence) and 5 (final restoration of the site) attached to planning permission MK/806/95 so to extend the operational life of the site by 15 years with final restoration of the whole site to be completed within a further 24 months. Permission was refused by the Committee, in line with officer recommendation, in September 2020. The appellant lodged an appeal in March 2021 with this proceeding by inquiry. An associated appeal against refusal of permission for a lagoon at the site (ref. 20/00849/FUL) was lodged in April and the two appeals subsequently linked to be heard at the same inquiry.

Shortly before the inquiry was due to open, the Secretary of State ruled that the conditions appeal was Environmental Impact Assessment (EIA) development and required an Environmental Statement (ES). Hence, whilst the inquiry opened on 6th July and evidence in relation to the lagoon appeal was heard over two days, it was adjourned thereafter for the ES to be prepared and consulted upon by the Inspectorate. Submissions on the ES are due shortly, with the inquiry scheduled to reconvene on 19th October and will sit for the remaining 8 days.

20/01834/FUL: Land adjacent to Main Road and Cranfield Road, Astwood

Permission was sought for the erection of 5 dwellings. The DCP refused permission contrary to officer recommendation in February 2021, citing conflict with the emerging Neighbourhood Plan as the main reason. The appeal is proceeding by exchange of written representations, with statements having now been exchanged and a site visit awaited.

The appeal is also accompanied by an application for an award of costs, predicated on the basis of unreasonable behaviour of the Council in refusing permission on the above basis.

20/02959/OUT: Land to the rear of 65 Newport Road, Hanslope

Outline permission was sought for residential development of up to 9 dwellings (8 net) and associated access road and works, but refused under delegated powers. Whilst in Open Countryside under Plan:MK, the Hanslope Neighbourhood Plan draws the settlement boundary to include the site; this Plan becoming part of the development plan more recently. The refusal instead focussed on the visual and landscape character impacts of the proposed layout and scale, stating the development *“would give rise to adverse disruption to the existing linear arrangement of dwellings in this area. By adding a new layer of housing with a much higher density than existing dwellings on Newport Road, it would also result in a significant adverse harm to the existing suburban character of the area. In addition, as the proposed development*

would break from the existing residential parcel and encroach into the open greenfield...". The appeal is proceeding by written representations and a decision is awaited.

20/02598/FUL and 21/00604/FUL 38 Coberley Close, Downhead Park, Milton Keynes

Prior to consideration of a revised application by DCP, two appeals had been lodged under the fasttrack process against the previous refusals. These appeals remain under consideration by the Inspectorate with the appellant seeking a position on whether their original or intervening proposals are acceptable.

20/01529/FUL: Five Acres Nursing Home, Hanmer Road, Simpson, Milton Keynes

Permission was refused by DCP in November 2020 for the conversion of the former nursing home into a 28-unit House in Multiple Occupation (HMO). Five reasons for refusal were issued, with the proposal primarily considered to result in a high concentration of HMOs in the immediate area contrary to the SPD and policy. Furthermore, the proposal was refused over concerns relating to noise and disturbance from occupiers and vehicles coming and going; intrusion into root protection zones of a number of significant trees, detrimental to their health and amenity and biodiversity; inadequate off street parking; and intensification of the use of the access impacting upon the ease of movement for pedestrians and cyclists. The appeal is proceeding by written representations, with a site visit and decision awaited.