

APPEAL PROGRESS REPORT

PURPOSE OF THE REPORT

The purpose of this report is to inform Members of appeals lodged and determined in the period 1st April 2018 to 31st May 2018.

RECOMMENDATION

That the report is noted.

INTRODUCTION

Members are requested to note the appeal decisions of either the Secretary of State or the relevant Inspector that has been appointed to determine appeals within the defined period.

In line with the parameters above the report sets out the main issues of the appeals and summarises the decisions. Where claims for costs are made and/or awarded, either for or against the Council, the decisions have been included within the report.

BACKGROUND INFORMATION

When a planning application is refused, the applicant has the right to appeal within six months of the date of decision for non-householder appeals. For householder applications the time limit to appeal is 12 weeks. Appeals can also be lodged against conditions imposed on a planning approval and against the non-determination of an application that has passed the statutory time period for determination.

Where the Council has taken enforcement action, the applicant can lodge an appeal in relation to the served Enforcement Notice. An appeal cannot be lodged though in relation to a breach of condition notice. This is on the basis that if the individual did not agree with the condition then they could have appealed against the condition at the time it was originally imposed.

Appeals are determined by Inspectors appointed by the Secretary of State and administered independently by the Planning Inspectorate.

MONITORING

Monitoring of all appeal decisions is undertaken to ensure that the Council's decisions are thoroughly defended and that appropriate and defensible decisions are being made under delegated powers and by Planning Committee. The lack of any monitoring could encourage actions that are contrary to the Council's decision,

possibly resulting in poor quality development and also costs being sought against the Council.

FINANCIAL & LEGAL CONSIDERATIONS

An appeal may be determined after a Public Inquiry, a Hearing or most commonly written representations. It is possible for cost applications to be made either by the appellants against the Council or vice versa if it is considered that either party has acted in an unreasonable way.

It is possible for decisions, made by Inspectors on appeal to be challenged through the courts. However, this is only if it is considered that an Inspector has erred in law, for instance by not considering a relevant issue or not following the correct procedure.

A decision cannot be challenged just because a party does not agree with it. A successful challenge would result in an Inspector having to make the decision again following the correct procedure. This may ultimately lead to the same decision being made.

It is possible for Inspectors to make a 'split' decision, where one part of an appeal is allowed but another part is dismissed.

SUMMARY OF APPEALS IN PERIOD OF 1 APRIL TO 31 MAY 2018

No. APPEALS PENDING	23
No. APPEAL DECISIONS RECEIVED	7
No. ENFORCEMENT APPEALS LODGED	0
No. ENFORCEMENT APPEAL DECISIONS RECEIVED	1
No. OFFICER DECISIONS ALLOWED	0
No. MEMBER DECISIONS ALLOWED	0

Site Address:	The Farmhouse 215 Beechwood Avenue
Reference Number:	FUL/2017/0563
Description:	Retention of the existing marquee on a temporary basis for 2 years
Decision Level:	Delegated
Decision:	Refusal on 15/05/2017
Appeal Decision:	<i>Dismissed on 18/04/2018</i>

Site Address:	The Farmhouse 215 Beechwood Avenue
Reference Number:	ENF/2017/00012
Description:	Without planning permission, the erection on the land of a marquee/ pavilion to the north western facing elevation of the building fronting Canley Road
Decision Level:	Delegated
Decision:	Issued on 30/03/2017
Appeal Decision:	<i>Dismissed - enforcement notice upheld on 18/04/2018</i>

Summary of Decision

The main issues in the planning appeal are; the effect of the development on the character and appearance of the area and the effect of the development on the vitality and viability of City and District shopping centres. The main issue in the enforcement appeal is whether the time given to comply with the notice is too short.

The application seeks retention of the marquee for a 2 year period. It is situated adjacent to Canley Road. The Inspector notes that planning permission was granted for a two storey and single storey extension in 2013 that has been constructed and that there is an extant permission for a further single storey extension. The appellant states that the marquee is only needed until a revised design for the single storey extension has been granted and built.

The Inspector notes that the marquee is situated on the roadside elevation of the building and that this grassed area provides a spatial separation between the restaurant building and the roadside. He considers the marquee appears incongruous in the streetscene, disrupting the designed layout of the restaurant building by diminishing the space between the building and the roadside and the space for the established structural landscaping and that the marquee, even on a temporary basis harms the character and appearance of the area by virtue of its siting, design, appearance and materials, in conflict with Policy DE1.

Looking at the issue of vitality and viability, the Inspector notes that the appeal site lies within an employment park and outside a defined centre. He does not consider that the temporary marquee is caught by the provision of Policy R3 and R4, as the approved extensions must have satisfied the relevant policies that existed at the time and the appeal proposal only seeks a short term solution and concludes that the development does not harm vitality and viability and does not conflict with Policies R3 and R4. Notwithstanding this, he concludes that this is outweighed by the harm caused to the character and appearance of the area.

In looking at the enforcement appeal, the appellant contends that a 2 year compliance period would be reasonable to allow the building works to be completed. However, the Inspector notes that his conclusion on the planning appeal is that harm to the character and appearance of the area should not be allowed to continue even for a short duration and considers the compliance period of one month to be proportionate having regard to the competing issues of the private interests of the business against the public interest of enforcing against the development.

Site Address:	St James Church Leamington Road
Reference Number:	TEL/2017/2104
Description:	Installation of 17.5 metre high telecommunications mast and equipment cabin
Decision Level:	Delegated

Decision:	Refusal on 06/11/2017
Appeal Decision:	<i>Dismissed on 19/04/2018</i>

Summary of Decision

The refusal referred to Policies within the Coventry Development Plan 2001 (CDP) but the Inspector notes that these have been superseded and the appeal is considered on the basis of the adopted Coventry Local Plan 2016 (CLP) Policies. The main issues are the effect of the proposal on the character and appearance of the area with particular regard to the setting of St James Church – a Grade II listed building.

The Inspector notes that at 17.5m tall the mast would be higher than the trees in the trees in the churchyard and although the photomontage submitted by the appellant shows how the mast would be screened by these trees and dwelling when approaching along the Leamington Road from the south, he considers that the mast would be a highly visible feature above the ridgeline of St James church when approaching along Leamington Road from the north and consequently would appear as a discordant feature which would harm the significance of this heritage asset.

Although the appellant's statement refers to alternative sites, the Inspector notes that there is little supporting evidence of those alternatives and therefore cannot conclude that there are no suitable alternative sites. He notes that the scheme would contribute towards the Government's objective of delivering high quality communications infrastructure in an area where additional capacity and improved coverage is required and that the installation would be shared by different operators, but is not persuaded that there are not less harmful sites available and concludes that the public benefits do not outweigh the harm its siting and appearance would cause to the area and particularly the setting of St James Church.

Site Address:	246 Hipswell Highway
Reference Number:	FUL/2017/1846
Description:	Change of use from retail (use class A1) to hot food take-away (use class A5)
Decision Level:	Delegated
Decision:	Refusal on 13/09/2017
Appeal Decision:	<i>Dismissed on 20/04/2018</i>

Summary of Decision

Since the application was determined the new Local Plan has been adopted. The Inspectors decision has regard to the new Local Plan policies. The main issue is the effect on the living conditions of neighbouring residents in Hipswell Highway and Longfellow Road with regards to potential noise and disturbance and to potential smell and odour.

The premises are located within a parade of 10 shops with predominantly flats above. 7 of the units are in A1 use with a restaurant and hot food takeaway. The

Inspector notes that as the premises is located in a shopping parade there would be a certain level of background noise above that you would expect in a wholly residential area and although the development is small, the level of activity associated with the development which would include the comings and goings of customers and people talking, would be difficult to control.

In this regard, the Inspector notes that there is no parking directly in front of the premises which would increase the likelihood of noise and disturbance from people talking as they walk to the premises and that disturbance would also be generated from car doors opening and closing, engines running and music playing. He concludes that the proposal would harm the living conditions of neighbouring residents with regard to noise disturbance and would therefore conflict with Policy R6 of the CLP.

The Inspector notes that a well maintained extraction system can minimise odour to an acceptable level but that residual odour can be omitted which would create nuisance to occupants of nearby residential properties. In addition he notes the presence of other catering establishments in the parade and considers the cumulative effect would be likely to result in an unacceptable nuisance for residents. In this regard he concludes that the proposal would harm the living conditions of neighbouring occupants in terms of odour, in conflict with Policy R6.

Site Address:	41 Holmfield Road
Reference Number:	FUL/2017/2282
Description:	Erection of bungalow
Decision Level:	Delegated
Decision:	Refusal on 06/11/2017
Appeal Decision:	<i>Dismissed on 27/04/2018</i>

Summary of Decision

The appeal is considered on the basis of the Local Plan which has been adopted since the application was determined. The main issues are; the effect of the proposed development on the character and appearance of the area and whether future occupants of the proposed bungalow would experience satisfactory living conditions.

The Inspector notes that dwellings in the area are generally laid out in two storey terraces of regular style, design and proportions. Whilst No.41 Holmfield Road is on a corner plot it reflects the established pattern of development. Its rear garden abuts Druid Road to one side which contains a garage. This would be demolished to make room for the bungalow. The Inspector considers the bungalow would be sited close to 3 of the sites boundaries and its front face would step markedly forward of the building line of nearby terraced properties and to the side gable of No.41. He concludes that it would appear cramped on its plot and its forward siting and single storey form would appear incongruous in the streetscene, contrary to Policies DE1, H3 and H9 and guidance with the NPPF.

Looking at living conditions, the Inspector notes the bungalows outdoor amenity space would be fairly small and much of this space would be overlooked from the windows in No.41. In view of the bungalows layout, the south facing patio doors would also be overlooked from the rear windows of No.41 and in this regard he concludes that future occupants would not experience a satisfactory private living environment, in conflict with Policy H3.

The Inspector notes that the site is in an accessible location and whilst this scheme follows a previously dismissed scheme has considered the proposal on its merits. He concludes that the scheme would significantly harm the character and appearance of the area and that it would result in poor living conditions for future occupants.

Site Address:	6 Cross Cheaping
Reference Number:	FUL/2017/2072
Description:	Change of use from Use Class A2 (Professional Services) to Use Class A5 (Hot Food Takeaway) and associated external flue
Decision Level:	Delegated
Decision:	Refusal on 13/10/2017
Appeal Decision:	<i>Dismissed on 10/05/2018</i>

Summary of Decision

The appeal has been considered against the recently adopted CLP and Area Action Plan (AAP). The main issues are the effect of the proposal on; the character and appearance of the area, including whether or not it would preserve or enhance the character or appearance of the Lady Herbert's Garden and the Burgess Conservation Area and the living conditions in the adjacent flats with particular regard to noise and vibration.

The appeal premises comprise a ground, first and second floor unit. The extraction flue would be located to the rear where the building is attached to its neighbours on Ironmonger Row. The Inspector notes that the proposed flue's scale, form and materials would give it a stark appearance and it would be visible in part from Palmer Lane and would be visually prominent when viewed from the Conservation Area; a feature which would jar with the more intimate and historic character on parts of Palmer Lane, harming the setting of the Conservation Area.

The Inspector notes the Council's ambitions to regenerate Palmer Lane and considers the proposals would conflict with this. He also considers the proposals would conflict with Policies DE1 and DE3 which require proposals to respect and enhance their surroundings, contribute positively to the local identity and character, and improve environmental conditions in the area. Furthermore, it would not satisfy Policy HE2's stance of conserving and where appropriate, enhancing the historic environment and it would conflict with AAP Policy CC13's requirement for development in areas adjoining conservation areas to enhance their setting.

In looking at living conditions, the Inspector notes that there is student accommodation on the third floor and that the scheme was not accompanied by a detailed noise and vibration assessment. Because of this he considers it is unclear how the proposed use would affect the living conditions in the adjacent residential accommodation or what the noise level would be when measured from the nearest habitable rooms. On this matter the Inspector cannot conclude that the proposal would accord with Policies DS3 and DE1 which seek to secure development that improves quality of life, and respects its surroundings.

The Inspector concludes that the scheme would harm the significance of the Lady Herbert's Garden and the Burgess Conservation Area, and it would not accord with objectives for the area's regeneration. He is also not satisfied that the living conditions in the adjacent residential accommodation would not be harmed as a result of noise.

Site Address:	2 Sixpence Close
Reference Number:	HH/2017/2228
Description:	Erection of two storey extension to front
Decision Level:	Delegated
Decision:	Refusal on 22/11/2017
Appeal Decision:	<i>Dismissed on 24/05/2018</i>

Summary of Decision

The appeal has been determined on the basis of the newly adopted Local Plan and the SPG Extending your Home which has been carried forward. The main issue is the effect of the proposal on the character and appearance of the existing building and the surrounding area.

The appeal property is a large two-storey detached house on a modern estate. The proposal would introduce a two-storey front gable extension which would sit between two existing gable features on the front of the house. The Inspector notes that although the extension would be set at a lower height than the adjoining gables, its siting, forward of one of the existing gables is a concern and he finds the two storey proposal would be an unduly dominant and incongruous feature on the front elevation and would not enhance the design of the host building.

Although not a corner plot the Inspector considers that the site holds a prominent location when entering Sixpence Close and finds the prominence of the proposal would be to diminish unacceptably the character, appearance and integrity of the host building with consequent harm to the character and appearance of the surrounding area, failing to accord with Policy DE1 of the CLP.

Site Address:	129 Dickens Road
Reference Number:	HH/2017/2403
Description:	Erection of two storey side and rear extension, single storey rear extension and detached garage

Decision Level:	Delegated
Decision:	Refusal on 20/11/2017
Appeal Decision:	<i>Dismissed on 25/05/2018</i>

Summary of Decision

The main issue is the effect of the proposal on the character and appearance of the existing building and the surrounding area.

The appeal site is a 2-storey semi-detached corner property with its front elevation facing north onto The Scotchill, and side elevation facing east onto Dickens Road. There was no objection to the proposed detached garage and the Inspector saw no reason to disagree. The issue is with the proposed two storey side extension.

The proposal would continue the ridgeline onto the side extension to form a hipped roof. The Inspector considers this would elongate the appearance of the dwelling and unsatisfactorily unbalance the proportions and design of the original dwelling house and would be particularly discordant when viewed against the row of adjoining properties along The Scotchill. He goes on to note that the proposal would be sited forward of the established building line along Dickens Road and consequently would introduce a prominent feature in the street scene.

The Inspector considers the combination of the scale of the rear and side 2-storey extension would generally erode the extent of undeveloped space around the main building on this prominent corner location and cause harm to the street scene in Dickens Road. He notes other extensions in Dickens Road and Addison Road but considers them different from the proposed development and concludes that the proposal would harm the character and appearance of the existing building and the area, contrary to the aims of Policy DE1 of the CLP.

PLANNING APPEAL PROGRESS REPORT – SUMMARY TABLE

CURRENT APPEALS LODGED

Application Reference & Site Address	Case Officer	Type	Proposal	Progress & Dates
FUL/2017/1984 3 Staircase Lane	<i>Robert Penlington</i>	Written Representations	Works to TPO Tree – Oak – Remove all dead wood from the tree and cut back overgrown branches that are encroaching the house to a distance of 4 metres away from the front of the property	Lodged date: 09/10/2017 Start date: 04/01/2018 Questionnaire/Statement: 31/01/2018
TP/2017/1283 3 Staircase Lane	<i>Robert Penlington</i>	Written Representations	Oak tree – shorten x12 low branches by 4m from dwellings 1 & 3 Staircase Lane	Lodged date: 04/01/2018 Start date: 04/01/2018 Questionnaire: 31/01/2018
TP/2017/2277 6 Innis Road	<i>Robert Penlington</i>	Written Representations	Oak (T1) – 20% crown reduction	Lodged date: 15/01/2018 Start date: 10/01/2018 Questionnaire: 16/01/2018
FUL/2017/2958 105 Far Gosford Street	<i>Anne Lynch</i>	Written Representations	Installation of ATM machine	Lodged date: 08/02/2018 Awaiting start date
FUL/2017/2618 1 Burns road	<i>Nigel Smith</i>	Written Representations	Erection of dwelling	Lodged date: 13/02/2018 Start date: 13/03/2013 Questionnaire: 19/03/2018

FUL/2017/1589 33 Walsgrave Road	<i>Nigel Smith</i>	Written Representations	Attic extension to existing first floor apartment including rear dormer windows	Lodged date: 19/02/2018 Start date: 13/03/2018 Questionnaire: 19/03/2018
FUL/2017/1978 Harry Stanley House Armfield Street	<i>Shamim Chowdhury</i>	Written Representations	Demolition of Harry Stanley House and construction of 15 affordable homes, associated external works and car parking	Lodged date: 21/02/2018 Start date: 11/04/2018 Questionnaire: 18/04/2018
ADV/2017/3183 1 John Wigley Way	<i>Shamim Chowdhury</i>	Written Representations	Display of 15m high illuminated star tower sign	Lodged date: 09/03/2018 Start date: 20/06/2018
S73/2017/3114 36 Cannon Hill Road	<i>Mary-Ann Jones</i>	Written Representations	Variation of condition no.2 (to allow and increase the number of occupants from 8 persons to 9 persons) imposed on permission reference FUL/2015/3420 for the change of use from single dwelling (Use Class C3) to a house in multiple occupation for 8 occupants (Use Class Sui Generis) granted on appeal 19/09/2016	Lodged date: 12/03/2018 Start date: 20/06/2018
OUT/2017/1853 r/o 90-96 Kenilworth Road	<i>Liam D'Onofrio</i>	Written Representations	Outline application for the erection of 3 bungalows, discharging access, layout and landscaping (in part)	Lodged date: 12/03/2018 Start date: 12/04/2018 Questionnaire/Statement: 19/04/2018
FUL/2017/1899 24, 26, 26a and 28 Lockhurst Lane	<i>Anne Lynch</i>	Written Representations	Change of use of 24-28 Lockhurst Lane from a nursery to a mixed use development comprising an A1 (shop), A2 (financial and professional services) , a hair and beauty salon (sui generis) and a mixed B1/B8 us (office/ storage)	Lodged date: 16/03/2018 Start date: 31/05/2018
HH/2018/0110 25 Gretna Road	<i>Mary-Ann Jones</i>	Written Representations	Erection of rear conservatory & Garden Shed (Retrospective)	Lodged date: 02/04/2018 Start date: 08/05/2018 Questionnaire: 10/05/2018 Statement sent: 10/05/2018

ADV/2018/0082 <i>Friars House Manor House Drive</i>	<i>Liam D'Onofrio</i>	Written Representations	Display of 2 vinyl signs (retrospective)	Lodged date: 04/04/2018 Awaiting start date
HH/2017/3070 <i>58 St Pauls Road</i>	<i>Ayesha Saleem</i>	Written Representations	Erection of double storey side, single storey rear extension with dormer windows to side and rear	Lodged date: 09/04/2018 Start date: 14/05/2018 Questionnaire/Statement: 21/05/2018
FUL/2017/2059 <i>88 Poppleton Close</i>	<i>Anne Lynch</i>	Written Representations	Change of use from C3 residential to 7 bedroom HMO for 7 occupiers (sui generis) (retrospective)	Lodged date: 12/04/2018 Awaiting start date
HH/2017/1550 <i>83 Mantilla Drive</i>	<i>No officer allocated</i>	Written Representations	Extension to existing garage	Lodged date: 17/04/2018 Appeal out of time – no action taken
FUL/2017/2864 <i>7 Hasilwood Square</i>	<i>Mary-Ann Jones</i>	Written Representations	Erection of detached bungalow	Lodged date: 08/05/2018 Awaiting start date
FUL/2017/2362 <i>25 Humber Road</i>	<i>Anne Lynch</i>	Written Representations	Change of use from dwelling (C3) to 7 bed house in multiple occupation (sui generis) for 7 occupants, loft conversion and front and rear extensions (retrospective)	Lodged date: 10/05/2018 Awaiting start date
FUL/2017/2906 <i>37 Acorn Street</i>	<i>Mary-Ann Jones</i>	Written Representations	Subdivision of existing retail shop and part change of use from retail shop (Use Class A1) to hot food take away (Use Class A5)	Lodged date: 11/05/2018 Awaiting start date
HH/2018/0072 <i>280 Allesley Old Road</i>	<i>Peter Anderson</i>	Written Representations	Installation of dropped kerb for vehicular access	Lodged date: 14/05/2018 Start date: 12/06/2018
HH/2018/0244 <i>705 Tile Hill Lane</i>	<i>Ayesha Saleem</i>	Written Representations	Demolition of existing outbuilding and erection of new outbuilding to rear with single-storey rear link extension and erection of first floor side and two storey rear extensions	Lodged date: 16/05/2018 Awaiting start date

FUL/2017/2559 <i>19 Hendre Close</i>	<i>Nigel Smith</i>	Written Representations	Erection of one dwelling	Lodged date: 16/05/2018 Awaiting start date
HH/2018/0217 <i>23 St Pauls Road</i>	<i>Shamim Chowdhury</i>	Written Representations	Raising of roof height to create new rooms in loft (to be built together with No.21, separate application submitted for No.21) first floor rear extension and rear dormer	Lodged date: 21/05/2018 Start date: 01/06/2018
HH/2018/0657 <i>142 Lincroft Crescent</i>	<i>Ayesha Saleem</i>	Written Representations	Erection of single storey rear extension	Lodged date: 25/05/2018 Start date: 01/06/2018 Questionnaire: 06/06/2018

APPEAL DECISIONS RECEIVED

Application Reference Site Address	Case Officer	Type	Proposal	Appeal Decision & date
FUL/2017/0563 <i>the Farmhouse 215 Beechwood Avenue</i>	<i>Anne Lynch</i>	Written Representations	Retention of existing marquee on a temporary basis for 2 years	Decision : DISMISSED 18/04/2018 decision type: <i>Delegated</i>
TEL/2017/2104 <i>St James Church Leamington Road</i>	<i>Nigel Smith</i>	Written Representations	Installation of 17.5 metre high telecommunications mast and equipment cabinet	Decision : DISMISSED 19/04/2018 decision type: <i>Delegated</i>
FUL/2017/1846 <i>246 Hipswell Highway</i>	<i>Anne Lynch</i>	Written Representations	Change of use from retail (use class A1) to hot food take-away (use class A5)	Decision : DISMISSED 20/04/2018 decision type: <i>Delegated</i>
FUL/2017/2282 <i>41 Homfield Road</i>	<i>Shamim Chowdhury</i>	Written Representations	Erection of a bungalow	Decision : DISMISSED 27/04/2018 decision type: <i>Delegated</i>
FUL/2017/2072 <i>6 Cross Cheaping</i>	<i>Shamim Chowdhury</i>	Written Representations	Change of use from Use Class A2 (Professional Services) to Use Class A5 (Hot Food Takeaway) and associated external flue	Decision : DISMISSED 10/05/2018 decision type: <i>Delegated</i>
HH/2017/2228 <i>2 Sixpence Close</i>	<i>Anne Lynch</i>	Written Representations	Erection of two storey extension to front	Decision : DISMISSED 24/05/2018 decision type: <i>Delegated</i>
HH/2017/2403 <i>129 Dickens Road</i>	<i>Anne Lynch</i>	Written Representations	Erection of two storey side and rear extension, single storey rear extension and detached garage	Decision : DISMISSED 25/05/2018 decision type: <i>Delegated</i>

ENFORCEMENT APPEAL DECISIONS RECEIVED

Ref. and site address	Case Officer	Type	Works	Decision and date
ENF/2017/00012 Land at The Farmhouse PH, 215 Beechwood Avenue	Marcus Fothergill	Written representations	The Erection on the Land of a marquee / pavilion to the northwestern facing elevation of the building fronting onto Canley Road	Enforcement notice upheld 18/04/2018