

## **APPEAL PROGRESS REPORT**

### **PURPOSE OF THE REPORT**

The purpose of this report is to inform Members of appeals lodged and determined in the period 1<sup>st</sup> April 2017 to 30<sup>th</sup> June 2017.

### **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 30 JUNE 2017**

<b>No. APPEALS PENDING</b>	<b>17</b>
<b>No. APPEAL DECISIONS RECEIVED</b>	<b>19</b>
<b>No. ENFORCEMENT APPEALS LODGED</b>	<b>3</b>
<b>No. ENFORCEMENT APPEAL DECISIONS RECEIVED</b>	<b>1</b>
<b>No. OFFICER DECISIONS ALLOWED</b>	<b>7</b>
<b>No. MEMBER DECISIONS ALLOWED</b>	<b>1</b>
<b>No. COSTS APPLICATIONS AWARDED</b>	<b>1</b>

Site Address:	16 Regency Drive
Reference Number:	TP/2016/2133
Description:	Oak (T1) – Crown reduce by 30% (approx. 3m)
Decision Level:	Delegated
Decision:	Refusal on 20/10/16
Appeal Decision:	<i>Dismissed on 06/06/2017</i>

### Summary of Decision

The main issue in this case is the impact of the proposed crown reduction works on the character and appearance of the Kenilworth Road Conservation Area (CA) and whether sufficient justification has been demonstrated for the works.

The oak tree (T1) is a substantial double trunked tree some 17m in height located on the eastern boundary of 16 Regency Drive. The appellant applied to reduce the oak's canopy by approximately 30% or 3m to ensure clearance of the dwelling and reduce debris falling on the drive and gutter and mitigate the oak's shading effect.

The Inspector notes that the tree is imposing and has substantial presence in the local area and the canopy has retained its naturalistic form, concluding that the tree makes a considerable and positive contribution to the character and appearance of the CA.

Looking at the issues raised by the appellant, the Inspector notes that the section of canopy overhanging the roof has a clearance of about 1m and that the Council's Tree Officer indicated that pruning works to maintain a 1-2m clearance would be acceptable. The Inspector considered that there was no evidence before her to indicate why a greater clearance would be necessary. The argument that debris from the tree imposes an additional maintenance burden was given little weight. The oak is situated to the north-east of No.16 and the Inspector acknowledged that the oak would cause some overshadowing for a limited period of the day but did not consider that it would shade the rear garden or south facing elevation and was not satisfied that the crown reduction works proposed would significantly increase daylight or reduce overshadowing.

There was some disagreement as to whether the tree is a veteran oak but the Inspector notes it is clearly mature and of considerable age. Although the crown reduction works proposed would be beyond the limits of the previous crown reduction works that have been carried out, this would not necessarily mean the oak would recover from further crown reduction works and consequently the Inspector concludes that the works would be likely to reduce longevity of the tree. Whilst the works would not necessarily result in the immediate loss of the oak, they would be likely to have an adverse effect on its longevity and would therefore be contrary to Policy GE14 of the CDP.

In conclusion, the Inspector was not satisfied that an essential need to prune the oak had been demonstrated and whilst the works may have limited benefits to the occupiers of No.16, this would not outweigh the harm to the character and appearance of the CA that would result if the appeal were allowed.

Site Address:	Land off Wood Hill Rise
Reference Number:	FUL/2016/2733
Description:	Erection of three dwellings with associated car parking
Decision Level:	Planning Committee
Officer Recommendation	Approve
Decision:	Refusal on 15/12/2016
Appeal Decision:	<i>Allowed on 12/04/2017</i>

#### Summary of Decision

The main issue is the effect of the development upon the character and appearance of the area.

The appeal site is a rectangular plot of vacant land located at the end of Wood Hill Rise. The wider area is residential and part of a planned estate development and the Inspector notes that whilst the original layout remains largely intact, the area is not notable or sensitive in architectural or streetscape terms.

The proposal is to erect three detached dwellings with off-street parking, served via a short driveway. The dwellings would be set back from Wood Hill Rise and the Inspector notes that they would not be unduly prominent and their proportions and plots sizes would be consistent with adjacent properties.

The Inspector carefully considered the allegation that the development would constitute over development of the site but considered that the area is not noted for large plots and the proposed site plan shows there would be adequate spacing between dwellings as well as outdoor amenity space and parking provision. As the Council had not pointed to any conflict with local standards in these areas the Inspector found this stance to be illogical.

The Inspector noted the concerns of neighbouring residents and concluded that whilst there would be a change in the outlook for neighbouring occupiers, the scale of that change would be modest and not at a level that could reasonably be described as overbearing or unusual in a built-up area and thus there would be no unacceptable effect on the living conditions of local residents.

In conclusion, the Inspector found that, in the absence of a cogent case to support the Council's reason for refusal and bearing in mind the same conclusion was reached in the case of the 2016 appeal, the development would accord with Policies BE2 and H12 of the CDP.

An application for the award of costs was made and was allowed. The Inspector found that the Council had behaved unreasonably as it persisted in objecting to elements of a scheme that an Inspector had previously indicated to be acceptable. In addition the reason for refusal failed to stand up to scrutiny on appeal and the Council failed to provide sufficient evidence necessary to substantiate the reason for refusal.

The costs claim has not yet been made, when costs are known this will be reported to Planning Committee.

Site Address:	101 Marlborough Road
Reference Number:	HH/2016/2638
Description:	Erection of rear extension and alterations
Decision Level:	Delegated
Decision:	Refusal on 09/01/2017
Appeal Decision:	<i>Dismissed on 12/04/2017</i>

#### Summary of Decision

The main issue is the effect of the proposed first floor rear extension on the living conditions of the residents of no.99 Marlborough Road in respect of outlook, daylight and sunlight.

The proposal is to increase the height of no.101's single storey outrigger so it is a similar height to the 2-storey outrigger at no.103. The Inspector notes that the rear facing first floor window at no.99 would be in close proximity to the extended first floor and the raised flank wall and new roof would appear dominating and

overbearing and increase a sense of enclosure. It would also exacerbate a sense of enclosure from the side-facing windows in no.99's outrigger and would significantly worsen the outlook from no.99 harming their living conditions.

The Inspector also notes that there would be a significant reduction in daylight to nearby windows on account of the higher flank wall and raised roof resulting in harm to the residents of no.99 in respect of outlook and daylight. Whilst sunlight would only be blocked to a limited extent, the Inspector concludes that this would add weight to the harm already identified.

In conclusion the Inspector comments that the proposals would conflict with Policies H4 and BE2 of the CDP, the advice contained within the NPPF and the Extending your home – A design Guide (SPG) and that the harm identified to the living conditions at no.99 is significant and overriding.

Site Address:	54 Shilton Lane
Reference Number:	FUL/2016/1533
Description:	Demolition of existing cattery and outbuildings with erection of 14 serviced assisted living units with associated parking and landscaped grounds together with change of use of existing dwelling to administrative and communal accommodation
Decision Level:	Delegated
Decision:	Refusal on 23/08/2016
Appeal Decision:	<i>Allowed on 19/04/2017</i>

#### Summary of Decision

The main issues are; the effect of the proposal on the character and appearance of the area and whether it would provide satisfactory living conditions for future occupiers with regard to outdoor amenity space.

The appeal site is rectilinear, extending a substantial distance to the rear of the main residential property that forms 54 Shilton Lane. The site contains a number of buildings including the main cattery block, sited close to the north-eastern boundary. Surrounding the site is a large area of open space known as Sowe Common.

The site is bounded on three sides by stout hedgerows with occasional mature trees which provide good screening to the cattery block and the rest of the site. The Inspector accepts that the buildings comprising row A of the development would be taller than the cattery building but note they would be single storey and the existing vegetation would be sufficient to substantially screen them even when not in leaf. Furthermore the buildings would be clad in cedar which would weather to blend with the surrounding vegetation. In view of this he is not persuaded that the proposals visual effects would be materially greater than those which already exist.

The Inspector does not consider that the two rows of buildings would be obtrusive by way of their regimented layout as it would not be readily apparent from outside

the confines of the site. He accepts that the two lines of buildings extending back into the site would represent a different pattern of development from that nearby but the site is already set apart by the presence of the cattery building and the sites level of screening would prevent any significant harm in this respect.

The Inspector's attention was drawn to a previous appeal but on the basis of the evidence he felt that previous appeal proposal was entirely different to the one before him and considered the appeal on its own merits. In view of this the Inspector did not consider that the proposals would conflict with Policy BE2 or H12 of the CDP.

With regard to Policy GE8 the Inspector notes that permission has been granted for an additional cattery building and therefore the Council had already accepted a reduction in the amount of undeveloped space within the site and was satisfied that the proposal would not materially reduce the amount of urban green space in the area in comparison to the permitted cattery building scheme which would be in accordance with Policy GE8.

The Inspector considered that on balance the overall amount of private and communal amenity space would provide satisfactory living conditions for future occupiers and the development would not conflict with Policy H9.

The appeal was allowed, with conditions imposed relating to drawing numbers, drainage works, laying out of car parking, tree protection, sound insulation and occupancy restriction.

Site Address:	Land at Beake Avenue
Reference Number:	S73/2016/0411
Description:	Removal of condition 16 subsections (ii) and (iii) – relating to noise mitigation measures – imposed upon planning permission OUT/2013/0012 for residential development.
Decision Level:	Delegated
Decision:	Refusal on 10/05/2016
Appeal Decision:	<i>Allowed on 21/04/2017</i>

#### Summary of Decision

The application sought planning permission for a residential development of up to 135 dwellings without complying with a condition attached to planning permission ref. OUT/2013/0012. The condition in dispute is no.16 which states:

No dwelling hereby approved shall be occupied unless the following noise mitigation measures have been implemented:

- (i) A 3m high landscaped bund with a continuous 2.5m high close boarded timber fence to be constructed along the top of the bund to the east of the site in the location shown on the Parameters Plan
- (ii) All windows to habitable rooms with a significant view of the adjacent commercial use to the east or Beake Avenue to the west to be fitted with

- acoustic glazing with the windows having acoustic trickle vents so that the units have an overall minimum specification Rw 38dB sound reduction
- (iii) All windows to habitable rooms with a significant view of the adjacent commercial use to the east shall be fitted with acoustic mechanically assisted ventilation units incorporating fans with acoustic covers inserted in the external walls ensuring that the acoustic performance of the external wall is not compromised
  - (iv) No residential façade within 40m of the commercial use to the east of the site

These mitigation measures shall be retained unless otherwise agreed in writing by the local planning authority.

The reason for the condition is:

To ensure a satisfactory residential environment for future occupiers and to reduce the likelihood of complaints against the existing industrial uses in accordance with Policies EM5, OS6 and H9 of the Coventry Development Plan 2001.

The main issue is whether the condition is necessary and reasonable to protect the living conditions of the occupiers of the development.

The appeal site comprises a recently constructed residential development with an industrial estate a short distance from the eastern site boundary. The properties covered by condition no.16 face towards the eastern boundary which is demarked by a bund and acoustic fence. The condition required the installation of acoustic trickle vents to these houses but standard trickle vents were installed. The Inspector noted that most of the houses were occupied and on his site visit did not observe any noise.

A noise report submitted with the application found that even with windows open the requirement of the relevant British Standard for bedrooms was met and further survey work concluded that internal noise levels fell within acceptable tolerances. The Council accepted these results but persisted in its objections on the basis that it cannot be certain the factory was operating its noisiest equipment on night surveys. The Inspector considered that this line of argument would rely on considerable conjecture and that there was no evidence to support the argument that the surveys were not representative of normal conditions. He considered that the Council's submissions lacked technical or anecdotal evidence and as such concluded that condition 16 is unnecessary.

Site Address:	Land at Grange Farm off Grange Road
Reference Number:	FUL/2016/0822
Description:	Demolition of farm outbuildings and construction of 107 dwellings and associated access road and creation of pedestrian / cycle link to the canal towpath
Decision Level:	Delegated
Decision:	Refusal on 01/06/2016
Appeal Decision:	<i>Allowed on 03/05/2017</i>

Summary of Decision

Amended plans were received at appeal and the Inspector took the view that the amendment would not materially alter the nature of the proposals and that third parties had been consulted on these amendments and therefore the appeal decision would be determined on consideration of these amendments and a revised description of development was agreed.

A planning obligation to secure necessary highway works and affordable housing was placed before the Inspector at Inquiry.

The Council confirmed that subject to additional highway information the amended plans and a completed legal agreement securing a package of highway mitigation measures, it was satisfied that its first reason for refusal had been addressed.

Air quality information was submitted which confirmed that the development would not breach the UK Air Quality Strategy Standards and on this basis the Council confirmed it would not defend its second reason for refusal.

It was also agreed that on the basis of further interrogation of viability and subject to the provisions of a completed legal agreement to secure affordable housing that the Council would not defend its last reason for refusal and a statement of common ground invited the Inspector to allow the appeal subject to a list of conditions.

Notwithstanding the agreement reached between the parties the inspector noted that there were outstanding objections from third parties and considered the main issues to be: Whether the appeal proposal would preserve the setting of the grade II listed buildings, Grange Farmhouse, 175 and 177 Grange Road; its effect on the nearby locally listed outbuildings; Whether the appeal proposal would preserve or enhance the character or appearance of the Coventry Canal Conservation Area; and whether the appeal proposal would result in satisfactory living conditions for future occupiers with regard to noise and disturbance.

In his conclusion the Inspector notes that, "As a result of the proposed development, I have identified some small harm to the setting of the listed buildings nearby. In addition, as I have found that those listed buildings positively contribute to the Coventry Canal Conservation Area, it would fail to preserve its character and appearance. Even though I have identified that such harm would be less than substantial, I accord considerable weight and importance to it. For the same reasons, the appeal development would be contrary to UDP Policies BE9, BE11 and BE14"

However the Inspector notes that whilst he has identified conflict with the development plan, he must consider whether there are other material considerations which would outweigh that conflict. In this regard he considers that the environmental benefits including new tree and hedge planting would provide an opportunity to enhance biodiversity.

He also notes that there would be social benefits with the provision of additional housing of which 75% would be affordable along with the provision of new accessible open space and a new pedestrian and cycle route which would improve



accessibility in the locality and he attaches more than considerable weight to this particular with regard to the provision of housing.

The Inspector also notes that there would be some economic benefits from the proposed development from employment and additional spending power from the construction phase and from future occupiers. He concludes that “To all of the benefits of the appeal, I accord more than considerable weight. They present public benefits as referred to in paragraph 134 of the Framework, which in the circumstances of this appeal, would outweigh the considerable weight and importance that I attach to the heritage harm that I have identified. Further, together, they are material considerations, sufficient in this case to outweigh the development plan conflict identified and therefore the appeal should be allowed.”

Site Address:	38 Upper Precinct
Reference Number:	ADV/2016/2100
Description:	Internally illuminated fascia sign
Decision Level:	Delegated
Decision:	Refusal on 10/10/2016
Appeal Decision:	<i>Allowed on 05/05/2017</i>

#### Summary of Decision

The main issue is the effect of the advertisement on amenity. The appeal site is located within the Upper Precinct which has been added to the Historic Environment Record and therefore the Council considered that the site must be considered as a non-designated heritage asset.

The Council’s objection to the signage was that it covers part of three Horton Stone pilasters. The Inspector notes that some changes have occurred over time to the area with two complete pilasters having been overlaid.

He concludes that “the location of the signage on the building, including the covering of part of the pilasters at the appeal property would not have any adverse effect on the amenity of the Precinct or the wider area. ....(particularly) as the part of the covered pilasters which is covered by the advertisement relate to are within a larger shop front for one unit as opposed to a boundary between retail units... and would not be detrimental to the interests of amenity.”

Site Address:	38 Upper Precinct
Reference Number:	FUL/2016/2086
Description:	New shopfront glazing/entrance
Decision Level:	Delegated
Decision:	Refusal on 10/10/2016
Appeal Decision:	<i>Allowed on 05/05/2017</i>

#### Summary of Decision

The main issue is the effect of the development on the character and appearance of the area. The appeal site is located within the Upper Precinct which has been

added to the Historic Environment Record and therefore the Council considered that the site must be considered as a non-designated heritage asset.

The Council's objection to the signage was that it covers part of three Horton Stone pilasters. The Inspector notes that some changes have occurred over time to the area with two complete pilasters having been overclad.

The Inspector concludes that "To my mind the over-cladding of the pilasters in the appeal development, including the re-covering of the former Bank pilaster, would not have any adverse impact on the character or appearance of the Precinct or the significance of this non-designated heritage asset. This is particularly the case as the covered pilasters are within a larger shop front for one unit as opposed to a boundary between retail units.....(and) would not give rise to harm to the character and appearance of the Precinct or the wider area."

Site Address:	69 Palmerston Road
Reference Number:	HH/2016/2828
Description:	Erection of proposed side extension
Decision Level:	Delegated
Decision:	Refusal on 19/01/2017
Appeal Decision:	<i>Allowed on 12/05/2017</i>

#### Summary of Decision

The main issue is the effect of the development on the living conditions of occupiers of 71 Palmerston Road, with particular regard to outlook and light.

The development comprises a 2m depth extension to the rear of No.69 with a side wall close to the boundary wall which delineates the plots of No.69 and 71, directly opposite No.71's kitchen door and side window at a distance of 1.9m.

The Inspector notes that although the development depth would exceed 3.3m (contrary to the SPG), the development is a lateral extension of an existing structure and would not project in a rearward direction beyond the footprints of No.69 and either of its neighbours. She notes that although the larger windows on the side elevation of no.71 appear to serve a habitable room, this would not directly face the development and its immediate outlook would remain unchanged.

The Inspector notes that although the kitchen side windows face the development a 45 degree line taken from its centre would clear the outermost corner of the development conforming to the 45 degree guidance in the SPG. There is also a large window perpendicular to No.71's flank wall which faces the garden and the development would project into this view one side, but the Inspector considers that the view from this window is already significantly enclosed and tunnelled by the boundary wall and associated shrubs and as such is not satisfied that this would have a significant adverse effect on living conditions.

The Inspector concludes that the relative orientation of no.'s 69 and 71 would reduce the likelihood of the development causing significant overshadowing to

No.71 and having considered all of the above the development would not be contrary to Policy H4 of the CDP.

Site Address:	577 Foleshill Road
Reference Number:	FUL/2016/3011
Description:	Erection of front extension to form covered external sales area.
Decision Level:	Delegated
Decision:	Refusal on 02/02/2017
Appeal Decision:	<i>Dismissed on 15/05/2017</i>

Site Address:	577 Foleshill Road
Reference Number:	FUL/2016/1206
Description:	Erection of side extension (external covered sales area)
Decision Level:	Delegated
Decision:	Refusal on 06/09/2016
Appeal Decision:	<i>Dismissed on 15/ 05/2017</i>

#### Summary of Decision

There were two appeals at the site and the Inspector considered the proposals together to avoid duplication.

The main issue is the effect of the proposals on the character and appearance of the host property and area. The host property is a semi-detached property in use as a restaurant and located on a prominent corner position on Foleshill Road at the junction with Backwell Road. Although the host property and its neighbour have undergone extensions the Inspector notes there is a degree of symmetry between the properties that makes a positive contribution to the street scene.

The front extension would extend the previous front extension resulting in an overall projection between 3.8m and 4m which the Inspector considered would dominate the front of the property to a harmful degree and due to its scale, design and extent of projection from the front of the building would be prominent and somewhat incongruous in the street scene.

The side extension would be in line with the existing front extension on the front elevation and extend up to the back of the pavement on Blackwell Road and would obscure views of the bay window on this elevation. The Inspector considered that having regard to its open canopy design and proximity to the back of the pavement, the side extension would appear as a discordant prominent feature which would harm the character and appearance of the host property and the area.

The Inspector concluded that the “proposed extensions whether viewed separately or together would appear obtrusive and would have a prominent appearance which would unbalance this pair of semi-detached properties to a harmful degree. Consequently, neither of them either singularly or together would make a positive contribution to either the host property or the area .....and would cause unacceptable harm.”

Site Address:	6 The Firs
Reference Number:	FUL/2016/2635
Description:	Demolition of an existing dwelling and erection of two new dwellings
Decision Level:	Delegated
Decision:	Refusal on 05/01/2017
Appeal Decision:	<i>Dismissed on 26/05/ 2017</i>

### Summary of Decision

The main issue is the effect of the proposal on the significance of a non-designated heritage asset and the character and appearance of the surrounding area.

No.6 The Firs is an arts and crafts style detached dwelling set in a large plot with roadside hedgerow in a prominent corner location. In May 2016 an Article 4 Direction was served on the appeal property to prevent its demolition without planning permission and the property has been locally listed by the Council owing to its historical and architectural interest.

An appeal has already been dismissed for development at the site which involved demolition of the property, where the Inspector considered that the demolition of the dwelling and removal of hedgerow would result in the loss of an important and architectural significant building in the street scene. The Inspector in this case agrees with the previous Inspector on this matter. No substantive structural or financial evidence was presented previously, but this was submitted as part of this appeal.

The structural report states that the house is suffering from subsidence and that underpinning is required along with masonry reinforcement above openings, bow ties to stabilise the front elevation and a new roof with tiles and that the repair works are not cost effective and that it would be more cost effective to demolish and rebuild the property. The inspector finds no reason to dispute that the repair works listed are necessary.

Quotations suggest it would cost in excess of £222,000 to make the property safe and habitable and the Inspector accepts these figures. However, he notes that no detailed costs for demolition and the construction of the proposed dwellings are provided and shares the Council's concern that it has not been demonstrated that the proposed demolition and rebuild is the most cost effective option and is unable to conclude that there is no realistic alternative to secure the buildings survival.

The design of the two proposed dwellings has been revised in an attempt to address the previous concerns, but the Inspector notes that the comparatively narrow width of the dwellings and the linear form of the garden curtilages remains and considers the proposal would appear discordant when viewed in the context of generously sized properties and plots next to the site and would not overcome the harm identified by the previous Inspector.

The Inspector summarizes that the "the proposals would involve the provision of two energy efficient dwellings on a brownfield site in an existing built up area with

good links to local services and facilities. These benefits attract some weight in favour of the appeal. However, a private matter such as a potential fall in property value can be afforded limited weight only in support of the appeal. In addition, the absence of harm to neighbouring living conditions and other material consideration are neutral factors only when considered in the planning balance. Combined, the benefits associated with the appeal would be outweighed by the weight afforded to the loss of the locally listed building and to the harm identified to local character and appearance.” He concludes that the proposals would have a harmful effect on the significance of the non-designated heritage asset and on the character and appearance of the surrounding area, contrary to Policies BE2, BE14 and GE14 of the CDP and paragraphs 60 and 135 of the Framework.

Site Address:	98 Moseley Avenue
Reference Number:	S73/2016/1612
Description:	Variation of condition 2 – to amend opening hours to 0900 – 0200 hours everyday – imposed upon permission FUL/2014/3794 for change of use to hot food takeaway.
Decision Level:	Delegated
Decision:	Refusal on 19/08/2016
Appeal Decision:	<i>Dismissed on 06/06/2017</i>

#### Summary of Decision

The application sought planning permission for change of use from A1 to A5 and installation of fume extraction duct to rear without complying with a condition attached to planning permission ref FUL/2014/3794. The condition in dispute is no.2 which states:

No customers shall be permitted to be on the premises and no hot food deliveries shall be carried out from the premises other than between the hour of 09:00 and 00:00 hours (midnight) on any day.

The reason given for the condition is:

The premises are closely adjoined by residential properties and the City Council considers it necessary to strictly control the nature and intensity of use of the premises in the interests of the amenities of the area in accordance with Policies OS6 & EM5 of the Coventry Development Plan 2001.

The appellant wishes to extend the opening hours to between 09:00 and 02:00 hours of the following day, every day of the week. The main issue is the effect that these proposed opening times would have on the living conditions of nearby residents with regard to noise and disturbance.

The appeal relates to a ground floor commercial premises within Barker Butts local centre where neighbouring properties have commercial uses at ground floor and a night club on the opposite side of Moseley Avenues. However, the Inspector notes that the surrounding area is predominantly residential in character and there are residential properties close to the appeal site. He comments that hot food takeaways generate significant levels of activity and whilst residential occupiers

near the site would be used to higher levels of activity than if the area were purely residential, it is likely that general activity in the area will reduce as the evening progresses, particularly between midnight and 02:00.

The Inspector considers that the presence or likelihood of activity until 02:00 hours would be likely to have a significant and unacceptable effect on the living conditions of nearby residents and the significant unacceptable social effects of the proposal outweigh any economic benefits. He concludes that the opening times permitted by Condition No.2 are necessary and reasonable to protect the living conditions of nearby residents within regard to noise and disturbance.

Site Address:	400 Swan Lane
Reference Number:	FUL/2016/2579
Description:	Erection of chalet bungalow
Decision Level:	Delegated
Decision:	Refusal on 15/12/2016
Appeal Decision:	<i>Dismissed on 09/06/2017</i>

#### Summary of Decision

The main issues are the effect of the proposed development on: the character and appearance of the area; and the living conditions of the future occupiers of the proposal with regard to outlook, sunlight and daylight.

The appeal site is part of the rear garden of 400 Swan Lane, situated at the junction of Swan Lane and Swancroft Road. The rear boundary of the site adjoins the A444. The majority of dwellings close to the appeal site are 2-storey semi-detached dwelling with generous rear gardens providing a sense of spaciousness.

The proposed dwelling is a 1 ½ storey chalet bungalow positioned at the far end of No.400's rear garden with the main elevations facing the rear elevation of No.400 and the A444. The rear and side elevations would be in close proximity to the rear and side boundaries of the site. The Inspector considers the proximity of the proposed building to the boundaries would give the development a cramped form untypical of the area and its close proximity to the A444 would emphasise its incongruity with the existing pattern of development with no active street frontage and would be harmful to the character and appearance of the area.

The Inspector notes that the rear elevation would be in close proximity to the 2.4m high boundary wall with the A444, which would be overbearing and oppressive in relation to the outlook from the habitable room windows facing it. There would be an appreciable level of overshadowing from these walls and daylight would be restricted, with the Inspector concluding that future occupiers of the development would not have satisfactory living conditions with regard to outlook, daylight and sunlight.

The Inspector finds that the development would have a significantly harmful effect on the character and appearance of the area and that future occupiers of the proposal would not have satisfactory living conditions in conflict with the CDP.

Site Address:	3 Castle Close
Reference Number:	HH/2016/2780
Description:	Erection of two storey rear and single storey front extension
Decision Level:	Delegated
Decision:	Refusal on 26/01/2017
Appeal Decision:	<i>Allowed on 12/06/2017</i>

#### Summary of Decision

The main issue is the effect of the development on the living conditions of occupiers of No.5 Castle Close with particular regard to light and outlook. The reason for refusal relates solely to the rear extension and the Inspector confines her reasoning to this element of the proposals.

No.3 is perpendicular to two dwellings whose rear elevations partially oppose No.3's flank wall, in particular No.5 whose rear facing windows are between 9m and 12m from the proposed extension.

The Inspector agrees with the council that the extension would intrude into views from No.5 and would represent a significant lengthening of the existing flank wall but considers that of the two first floor rear windows directly opposite the extension, one has obscure glazing indicating it is a bathroom and the outlook from the other window would not be significantly affected by the development and that there would not be a significant loss of outlook from the window of the kitchen projection.

The Inspector disagrees with the Council's argument that No.5 would be hemmed in by the development and considers that although there would be some enclosure to the outlook this would not have such an adverse effect on the living conditions of its occupiers to warrant dismissal of the appeal and that there would be no significant loss of light for occupiers of No.5.

The Inspector concludes that the development would not be contrary to Policy H4 of the CDP and allows the appeal subject to conditions relating to: conformity with approved drawings; use of matching materials; and installation of obscure glazing to bedroom 3.

Site Address:	81 Far Gosford Street
Reference Number:	ADV/2016/3001
Description:	Display of two illuminated signs to and ATM (retrospective)
Decision Level:	Delegated
Decision:	Refusal on 21/03/2017
Appeal Decision:	<i>Appeal not valid on 13/06/2017</i>

#### Summary of Decision

The appeal was not received until more than 8 weeks after the notice of decision and therefore was not valid.

Site Address:	41 Holmfield Road
Reference Number:	FUL/2016/2273
Description:	Erection of a bungalow
Decision Level:	Delegated
Decision:	Refusal on 13/12/2016
Appeal Decision:	<i>Dismissed on 16/06/2017</i>

### Summary of Decision

The main issues are the effect of the dwelling on the character and appearance of the area; the effect on the living conditions of the occupants of neighbouring residential properties, with regard to privacy; and whether it would provide adequate living conditions for future occupants with regard to privacy and outlook.

The appeal site is in a residential area characterised by 2-storey terraced rows. The site forms part of the garden of No.41 Holmfield Road with the proposed dwelling fronting onto Druid Road. Properties on Druid Road are set back from the highway with gardens to the front and the wide street giving a sense of spaciousness. The dwelling would be orientated so the side elevation would face Druid Road and the Inspector considers that the dwellings lack of frontage with the road would appear incongruous which would be exacerbated by the dwellings position closer to the road than other properties. He states that “the siting of the dwelling in this location would represent a form of back-land development that would conflict with the well-established pattern of development in the area, failing to respect the relationship existing properties have with each other and their adjacent roads.” And that the dwelling would significantly harm the character and appearance of the area.

In looking at living conditions, the Inspector notes that a separation distance of 10m would be achieved and as a consequence of this there would be intervisibility between the rear windows of the two dwellings to such an extent that it would have an unacceptable harmful effect on the usability of the habitable rooms these windows serve and significant overlooking of the rear garden areas. On this matter the Inspector concludes that the proposal would result in an unacceptable harmful effect on the privacy of the occupants of No.41 Holmfield Road and would fail to provide adequate privacy for future occupants of the proposed dwelling.

In conclusion, The Inspector states that “The proposed dwelling would be located in a sustainable location with good access to services and facilities. Furthermore, it would be located within a well-established residential area. However, these matters, individually or cumulatively do not outweigh the harm I have identified and as a consequence does not represent sustainable development.”



Site Address:	43 Cornelius Street
Reference Number:	HH/2016/1498
Description:	Provision of car park platform at the front (retrospective application)
Decision Level:	Delegated
Decision:	Refusal on 14/09/2016
Appeal Decision:	<i>Dismissed on 22/06/2017</i>

### Summary of Decision

The appeal decision relates to the above planning application (Appeal A) and enforcement notice ENF/2016/00032 (Appeal B & C)

The main issues in relation to all three appeals are: the effect of the development on the character and appearance of the area; the effect on the living conditions of adjacent residents; and the effect on highway safety.

Cornelius Street is a residential road sloping down from its junction with Mile Lane. The appeal site is a mid-terraced property located at a prominent point on the outward curve of a dog-leg. The ground floor level of the dwelling is set below that of the carriageway and for the most part in the area dwellings do not benefit from driveways with low garden walls forming the predominant means of enclosure along both sides of the street.

The front garden has been substantially removed at the appeal site to form a vehicular access into the front garden and due to the significant level drop from the carriageway to the house a substantial retaining structure has been erected to form a level parking area. The Inspector finds that this development has caused harm to the established character and appearance of the area due to the loss of the majority of the front wall, the loss of any usable greenspace within the garden and the bulky and unattractive appearance of the retaining structure which represents poor design, contrary to Policies H4 and BE2 of the CDP.

The Inspector notes that the back edge of the parking platform sits directly to the front windows of the appeal dwelling and neighbouring property at No.45 and that due to its proximity and raised height the use of the parking space will result in an increased degree of overlooking into the adjacent living room which has caused substantial harm to the living conditions of adjacent residents.

With regard to highway safety the Inspector notes that few dwellings on Cornelius Street benefit from driveways and on street parking is at a premium, but see little benefit from the development in terms of overall provision as the creation of a single space within the front of the property is off-set by the loss of a kerbside space. He is satisfied that vehicles could access/ egress the site despite the limited visibility and that the development would not unduly increase the risk to other road users or pedestrians. The Inspector further notes that two other off-road parking spaces have been created in the front gardens of No's 27 and 31 Cornelius Street but comments that there are some differences in that at No 27 the space is set to the side of the central front doorway and at No.31 a coniferous hedge has been

planted to provide a screen, which is not a solution that would be appropriate at the appeal site.

The Inspector concludes that the presence of two similar raised parking area does not alter his views on the development. "The prevailing character of the area remains one of dwellings set back behind small front gardens and the creation of a raised parking area at the appeal site causes harm to that character for the reasons given. In addition, the development has caused harm to the living conditions of neighbouring residents and that harm could not be overcome by the imposition of conditions."

For these reasons the Inspector dismisses the appeal and upholds the enforcement notice. The requirements of the enforcement notice are: (a) Permanently remove the raised car parking platform in its entirety and reinstate land levels within the front (eastern facing) garden to levels similar to those which were in situ previously and; (b) Permanently remove from the land all building materials and waste arising from compliance with this requirement.

Site Address:	10 Smithford Way
Reference Number:	ADV/2015/3660
Description:	Display of 2 exterior fascia signs (1 internally illuminated) and vinyl window graphics.
Decision Level:	Delegated
Decision:	Refusal on 2/09/2016
Appeal Decision:	<i>Dismissed on 29/06/2017</i>

#### Summary of Decision

The main issue is the effect of the advertisement on the visual amenity of the locality. The appeal site comprises a café on Smithford Way. Retail signage in the surrounding area is predominantly at single storey height, generally below the height of the canopy.

The Inspector notes that the sign is unlike any other in the vicinity in that it is of a temporary material, at a two storey height and is unrelated to the appeal premises as it spans the width of the neighbouring retail unit making it a prominent and incongruous feature when viewed from the adjoining pedestrianised section of Smithford Way and Market Way.

The Inspector does not agree that the windows were unsightly prior to the erection of the sign and considers concerns regarding footfall levels and empty units but concludes that these factors do not justify or remove the harm to visual amenity identified.

## PLANNING APPEAL PROGRESS REPORT – SUMMARY TABLE

### CURRENT APPEALS LODGED

Application Reference & Site Address	Case Officer	Type	Appellant	Proposal	Progress & Dates
<b>FUL/2016/2686</b> 38 <b>Stoke Row</b>	<i>Anne Lynch</i>	Written Representations	Mr Cheema	Existing outbuilding converted to annexe and single storey side extension to extend existing bedrooms on existing dwelling and provide additional bedrooms in annexe to create 10 bedroom House In Multiple Occupation	Lodged date: 09/04/2017 Start date: 22/05/2017 Questionnaire/Statement: 09/06/2017
<b>FUL/2016/2506</b> 75-77 <b>Albany Row</b>	<i>Not yet allocated</i>	Written Representations	Mr Murphy	Change of use to A1 retail (retrospective application)	Lodged date: 25/04/2017 Start date: Awaiting start date
<b>FUL/2017/0518</b> 1 <b>Aldrin Way</b>	<i>Liam D'Onofrio</i>	Written Representations	Mrs Zhang	Change of use to HMO with 8 bedrooms (sui generis) and erection of single storey rear and side extension and proposed new roof over garage area	Lodged date: 25/04/2017 Start date: 01/06/2017 Questionnaire/Statement: 08/06/2017
<b>HH/2017/0496</b> 63 <b>Mayflower Drive</b>	<i>Alan Lynch</i>	Written Representations	Ms Corfield	Erection of two storey side extension	Lodged date: 03/05/2017 Start date: 19/06/2017 Questionnaire/Statement: 22/06/2017
<b>HH/2017/0636</b> 115 <b>Butt Lane</b>	<i>Alan Lynch</i>	Written Representations	Mr & Mrs Froggett	Erection of single storey rear extension	Lodged date: 08/05/2017 Start date: 30/05/2017 Questionnaire/Statement: 05/06/2017
<b>HH/2017/0292</b> 26 <b>Despard Road</b>	<i>Alan Lynch</i>	Written Representations	Mr Lee	Erection of 2 storey side extensions, single storey rear extension and rear dormer	Lodged date: 10/05/2017 Start date: 30/05/2017 Questionnaire/Statement: 05/06/2017
<b>FUL/2017/0205</b> 20 <b>Exminster Road</b>	<i>Liam D'Onofrio</i>	Written Representations	Mr Holcroft	Proposed three-bedroom dwelling on land adjacent to 20 Exminster Road	Lodged date: 12/05/2017 Start date: 27/06/2017 Questionnaire/Statement: 03/07/2017

<b>FUL/2016/2988</b> 81 Far Gosford Street	<i>Andrew Cornfoot</i>	Written Representations	Cardtronics UK Ltd	Installation of an ATM (retrospective) and external roller shutter	Lodged date: 22/05/2017 Start date: 23/06/2017 Questionnaire/Statement: 14/07/2017
<b>HH/2017/0159</b> 10 South Avenue	<i>Anne Lynch</i>	Written Representations	Mrs Pangli	Erection of front fence and gates (retrospective)	Lodged date: 02/06/2017 Start date: 15/06/2017 Questionnaire/Statement: 11/07/2017
<b>HH/2017/0333</b> 103 and 105 Longfellow Road	<i>Andrew Cornfoot</i>	Written Representations	Mr Singh	Two storey rear extensions to both dwellings and single storey rear extension to 105 Longfellow Road	Lodged date: 14/06/2017 Awaiting start date
<b>FUL/2017/2994</b> 71-73 Rochester Road	<i>Nigel Smith</i>	Written Representations	MR & Mrs Peggs	Change of use from residential elderly care home to House in Multiple Occupation (two cluster flats with 21 bedrooms) with minor external alterations	Lodged date: 16/06/2017 Awaiting start date
<b>FUL/2017/0563</b> 215 The Farmhouse Beechwood Avenue	<i>Anne Lynch</i>	Written Representations	Mr Mohammed	Retention of the existing marquee on a temporary basis for 2 years	Lodged date: 12/06/2017 Awaiting start date
<b>FUL/2017/0814</b> 17 Grafton Street	<i>Anne Lynch</i>	Written Representations	Mr Yunis	Change of use to seven-bedroom HIMO and erection of rear roof dormer (retrospective)	Lodged date: 26/06/2017 Awaiting start date
<b>LDCP/2017/0763</b> 27 Camden Street	<i>Anne Lynch</i>	Written Representations	Mr Tee	Lawful development certificate for use of the land for general storage of vehicles and materials and ancillary repair of stored vehicles	Lodged date: 29/06/2017 Awaiting start date
<b>FUL/2017/0745</b> 27 Camden Street	<i>Anne Lynch</i>	Written Representations	Mr Tee	Retention of storage buildings, fencing and hard surfacing	Lodged date: 29/06/2017 Awaiting start date

## APPEAL DECISIONS RECEIVED

Application Reference Site Address	Case Officer	Type	Appellant	Proposal	Appeal Decision & date
<b>TP/2016/2113</b> <i>16 Regency Drive</i>	<i>Robert Penlington</i>	Written Representations	Heer	Oak (T1) – Crown reduce by 30% (approx. 3m)	Decision : <b>DISMISSED</b> <b>06/04/2017</b> decision type: <i>Delegated</i>
<b>FUL/2016/2733</b> <i>Land off Wood Hill Rise</i>	<i>Nigel Smith</i>	Written Representations	Mr Hughes Diamond Construction Ltd	Erection of three dwellings with associated car parking	Decision : <b>ALLOWED</b> <b>12/04/2017</b> decision type: <i>Planning Committee</i> <b>(An application for the award of costs was ALLOWED)</b>
<b>HH/2016/2638</b> <i>101 Marlborough Road</i>	<i>Alan Lynch</i>	Written Representations	Mr Singh Hayre	Erection of rear extension and alterations	Decision : <b>DISMISSED</b> <b>12/04/2017</b> decision type: <i>Delegated</i>
<b>FUL/2016/1533</b> <i>54 Shilton Lane</i>	<i>Nigel Smith</i>	Written Representations	Mr Thompson	Demolition of existing cattery and outbuildings with erection of 14 serviced assisted living units with associated parking and landscaped grounds together with change of use of existing dwelling to administrative and communal accommodation.	Decision : <b>ALLOWED</b> <b>19/04/2017</b> decision type: <i>Delegated</i>
<b>S73/2016/0411</b> <i>Land at Beake Avenue</i>	<i>Nigel Smith</i>	Written Representations	Mr Birchley Taylor Wimpey (Midlands) Limited	Removal of condition 16 subsections (ii) and (iii) – relating to noise mitigation measures – imposed upon planning permission OUT/2013/0012 for residential development	Decision : <b>ALLOWED</b> <b>21/04/2017</b> decision type: <i>Delegated</i>
<b>FUL/2016/0822</b> <i>Land at Grange Farm off Grange Road</i>	<i>Nigel Smith</i>	Public Inquiry	Westleigh Partnerships Ltd	Demolition of farm outbuildings and construction of 107 dwellings and associated access road and creation of pedestrian / cycle link to the canal towpath	Decision : <b>ALLOWED</b> <b>03/05/2017</b> decision type: <i>Delegated</i>
<b>ADV/2016/2100</b> <i>38 Upper Precinct</i>	<i>Rebecca Grant</i>	Written Representations	Mrs Mather JD Plc	Internally illuminated fascia sign	Decision : <b>ALLOWED</b> <b>05/05/2017</b> decision type: <i>Delegated</i>

<b>FUL/2016/2086</b> 38 Upper Precinct	Rebecca Grant	Written Representations	Mrs Mather JD Plc	New shopfront glazing/entrance	Decision : <b>ALLOWED</b> <b>05/05/2017</b> decision type: <i>Delegated</i>
<b>HH/2016/2828</b> 69 Palmerston Road	Pavan Flora-Choda	Written Representations	James	Erection of proposed side extension	Decision : <b>ALLOWED</b> <b>12/05;2017</b> decision type: <i>Delegated</i>
<b>FUL/2016/3011</b> 577 Foleshill Road	Nigel Smith	Written Representations	Mr Iftikhar	Erection of front extension to form covered external sales area	Decision : <b>DISMISSED</b> <b>15/05/2017</b> decision type: <i>Delegated</i>
<b>FUL/2016/1206</b> 577Foleshill Road	Nigel Smith	Written Representations	Mr Iftikhar	Erection of side extension (external covered sales area)	Decision : <b>DISMISSED</b> <b>15/05/2017</b> decision type: <i>Delegated</i>
<b>FUL/2016/2635</b> 6 The Firs	Shamim Chowdhury	Written Representations	Mr Beverley	Demolition of an existing dwelling and erection of two new dwellings	Decision : <b>DISMISSED</b> <b>26/05/2017</b> decision type: <i>Delegated</i>
<b>S73/2016/1612</b> 98 Moseley Avenue	Nigel Smith	Written Representations	Mr Rahal	Variation of condition 2 – to amend opening hours to 0900 – 0200 hours everyday – imposed upon permission FUL/2014/3794 for change of use to hot food takeaway	Decision : <b>DISMISSED</b> <b>06/06/2017</b> decision type: <i>Delegated</i>
<b>FUL/2016/2579</b> 400 Swan Lane	Liam D'Onofrio	Written Representations	Mr Borsellino	Erection of a chalet bungalow	Decision : <b>DISMISSED</b> <b>09/06/2017</b> decision type: <i>Delegated</i>

<b>HH/2016/2780</b> 3 Castle Close	<i>Alan Lynch</i>	Written Representations	Mr Uddin	Erection of two storey rear and single storey front extension	Decision : <b>ALLOWED</b> <b>12/06/2017</b> decision type: <i>Delegated</i>
<b>ADV/2016/3001</b> 81 Far Gosford Street	<i>Andrew Cornfoot</i>	Written Representations	Cardtronics UK Ltd	Display of two illuminated signs to an ATM (retrospective)	Decision : <b>Appeal not accepted as outside timescales for submission</b> <b>13/06/2017</b> decision type: <i>Delegated</i>
<b>FUL/2016/2273</b> 41 Holmfield Road	<i>Shamim Chowdhury</i>	Written Representations	Mr Singh	Erection of a bungalow	Decision : <b>DISMISSED</b> <b>16/06/2017</b> decision type: <i>Delegated</i>
<b>HH/2016/1498</b> 4 Cornelius Street	<i>Shamim Chowdhury</i>	Written Representations	Mr Fallahkohan	Provision of car park platform at the front (retrospective application)	Decision : <b>DISMISSED</b> <b>22/06/2017</b> decision type: <i>Delegated</i>
<b>ADV/2015/3660</b> 10 Smithford Way	<i>Pavan Flora-Choda</i>	Written Representations	Mr Knee	Display of 2 exterior fascia signs (1 internally illuminated) and vinyl window graphics	Decision : <b>DISMISSED</b> <b>229/06/2017</b> decision type: <i>Delegated</i>

## ENFORCEMENT APPEAL DECISIONS RECEIVED

Ref. and site address	Case Officer	Type	Appellant	Works	Decision and date
ENF/2016/00032 43 Cornelius Street	Marcus Fothergill	WR	Mr Fallahkohan	Erection of an elevated car parking platform to the front garden	Enforcement notice upheld 22/06/2017

Note: WR – Written Representations

IH – Informal Hearing

PI – Public Inquiry

HAS – Householder Appeals Service