

**West Wiltshire District Council
Planning Committee 5th January 2006**

Agenda item no.

**PLANNING APPEALS UPDATE REPORT
24th November - 15th December 2005**

New appeals received

Ref. no.	Site	Town/ Parish	Description	Del or Com	Officer recom.	Appeal type
05/01575/FUL	28 St Marys Close, Hilperton	Hilperton	Dwelling	DEL	Refuse	WR

Appeal Decisions Received

Ref. No.	Site	Town/ Parish	Description	Del or Com	Officer recom.	Appeal Type	Appeal Decisn
04/01471/FUL	Land North of Paxcroft Way, Trowbridge	Trowbridge	Residential development without complying with condition 11 on 01/01970/OUT	COM	Non -D	WR	Withdrawn
04/00874/FUL	Land adj Canal, The Slipway, Staverton	Staverton	Application to change condition	COM	Legal	INQ	Withdrawn
04/00875/FUL	Land adj Canal, The Slipway, Staverton	Staverton	Proposed residential development for 34 dwellings plus associated landscaping, public open space, roads and parking	COM	Legal	INQ	Allowed*
05/00288/FUL	Land Southwest of Elmfield, Staverton	Staverton	Erection of 22 dwellings, associated landscaping, public open space, footpaths, roads, access, vehicle manoeuvring and parking	COM	Permit	HRG	Withdrawn
05/00626/FUL	Phase 7b Marina Drive, Staverton	Staverton	Erection of 69 dwellings with associated parking, internal access roads, landscaping and other works	COM	Permit	INQ	Allowed*

- additional notes on decision below

- INQ = Inquiry HRG = Hearing

WR = Written Representations

Del = Delegated decision

Com = Committee decision

❖ Points of interest arising from decisions

04/00874/FUL and 04/00875/FUL Land adj Canal, The Slipway, Staverton – The concurrent appeal for the variation of the condition restricting the height of the buildings to two storey was withdrawn at the beginning of the Inquiry. With regard to the remaining appeal for the residential development of the site, the Inspector identified the main issue to be the harmful effect to the setting of the canal from the three storey buildings close by. He found that each stretch of the canal has its own character and he accepted that the overall character of this part is not a truly urban stretch of canal with buildings abutting the towpath. However, he felt that this stretch of the canal gives the impression, even in winter, of a lively and partly commercial waterway no longer set in the open countryside. He described each of the proposed three storey buildings and acknowledged that there are no other three-storey buildings as close to the canal, but each scheme must be judged on its merits. He concluded that the proposed location of the three storey housing on this site would not adversely affect the existing character and setting of this stretch of the canal would not be contrary to the objective of the local.

Costs – The appellants applied for both full and partial costs against the Council.

The Inspector concluded that although he had come to a different view on the merits of the case:

- Neither the S73 permission nor the development brief sanctions 3 storey buildings anywhere on the site without recourse to any other material considerations. It was not unreasonable, in the absence of any contact from the appellant, to refuse the second application.
- The Council's refusal, which could not be overcome by condition, was clear in the decision notice and substantiated at the inquiry
- The appellant was told in December 2004 of the matters which were no longer being contested.

Therefore no full award can be justified

In respect of the claim for partial costs for procedural matters, he also found that

- The Council set out their case clearly in the statement of case in December 2004 with no mention of any other design issues
- Applicants own Statement of case, in January 2005, has only one heading i.e. development exceeding two storeys, and makes no mention of any other design matters.
- Appellants could have contacted the Council if in doubt before incurring the expense of the design consultant
- Most of the design consultant evidence repeats and reinforces that of Mr Bawtree [their principal planning witness]

Therefore a partial award of cost is not justified

05/00626/FUL Phase 7b Marina Drive, Staverton – The Inspector identified the main issue was whether the route for the Staverton Bypass should be safeguarded across phase 7b of the Staverton Marina development. He concluded that construction of Staverton Diversion remains a desirable planning aspiration, however, the weight accorded to this consideration is limited by the very high degree of uncertainty that the construction of the road would actually come about within any known timescale. This is further diminished by the potential viability of an alternative route. With regard to the proposed development of phase 7b, he felt it was entirely compliant with the development plan and would fulfil the objectives of making efficient use of urban land. The disadvantages that safeguarding the route would have on the development of phase 7b are the overriding and determining factor in the appeal.

Costs – The Appellants applied for costs against the Council. The Inspector accepted that “WWDC were entitled to differ from the very strong advice of their officers, reinforced by that of their statutory consultees and the Local Plan Inspector. However they relied on a reason for refusal admittedly flawed in its terms in using para 3.14.18 as a safeguarding provision, quite contrary to the basis of its recent adoption. Such action plainly demanded the most vigorous substantiation at appeal. Yet the case the Council put forward contained little more than an historic review of the evolution and ultimate demotion of the SD [Staverton Diversion] to a mere ‘aspiration’ – or ‘unsubstantiated desire’ as the applicants put it. WWDC made no attempt to adduce reasoned highway or traffic evidence to justify the SD. The only such information came from the unrepresented SPC [Staverton Parish Council], an individual elected WWDC member and other interested persons. I accordingly find that WWDC failed to substantiated their sole reason for refusing to approve details of reserved matters in this case.” He therefore awarded full costs against the Council. These will be submitted by the appellant in due course but have not been received to date.

Forthcoming hearing or Inquiries Dec 2005 – Feb 2006

Ref. no.	Site	Town/ Parish	Description	Appeal type	Venue	Date
04/2221/FUL	Land at Hackett Place, Hilperton	Hilperton	Erection of public house with ancillary staff flats, car parking, landscaping and access arrangements	INQ	CC	7 Feb 2006
05/00194/FUL	Land at Hackett Place, Hilperton	Hilperton	Erection of public house with ancillary staff flats, car parking, landscaping and access arrangements	INQ	CC	7 Feb 2006
05/00349/FUL	Land Rear Of And 36 Silver Street Lane, Trowbridge	Trowbridge	Redevelopment of the site for 22 residential properties with associated access, parking, amenity space and landscaping	INQ	CC	21 Feb 2006
05/01709/FUL	Land at Hackett Place, Hilperton	Hilperton	Erection of public house with ancillary staff flats, car parking, landscaping and access arrangements	INQ	CC	7 Feb 2006