Planning Inspectorate

Appeal Decision

Hearing held on 10 November 2026

Site visit made on 11 November 2026

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2026

Appeal Ref: APP/G1630/C/26/3378929
Unit 2, Elmstone Business Park, Tewkesbury Road, Elmstone, Hardwicke, Cheltenham GL51 9SY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Clavell & Hind against an enforcement notice issued by Tewkesbury Borough Council.
- The notice was issued on 17 June 2026.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a building and associated operational works for use as a mixed use brewery and drinking establishment.
- The requirements of the notice are: (1) Demolish and remove the buildings & hard surfaces within the area cross hatched black. (2) Restore the Land to its condition prior to the breach taking place. (3) Remove all debris/waste materials resultant from compliance with the above steps.
- The period for compliance with the requirements is: 6 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision

1. The appeal is allowed, the enforcement notice is corrected and quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Applications for Costs

2. An application for costs was made by Clavell & Hind against Tewkesbury Borough Council. This application will be the subject of a separate Decision. I subsequently closed the Hearing in writing to enable written responses to be provided.

Preliminary Matters

3. A Case Management Conference was held virtually on 1 October 2026 with the main parties. This was purely procedural, and the merits of the appeal were not discussed.

4. Since the appeal was lodged, the main parties have worked together to agree common ground, also aided by such things as the publication of a new National Planning Policy Framework (the Framework) and the submission of a site-specific flood risk assessment. This has meant the Council has withdrawn its objections to the planning merits of the development, for reasons I will summarise below.

5. As a consequence, I changed the appeal procedure with the agreement of the main parties to a Hearing to expedite the appeal.

6. The appellant has also confirmed in writing that it withdraws the ground (b) and (c) appeals as well as its nullity and invalidity arguments, subject to my consideration, below, of certain detailed matters concerning the enforcement notice and on the basis that I am content to grant planning permission.

7. Injustice does not arise from any of the above matters.

The Enforcement Notice

8. The main parties had disagreements concerning the framing of the alleged breach of planning control in section 3 of the notice. Without prejudice to their respective positions, the main parties have however agreed a description of development that had occurred as a matter of fact when the notice was issued, and which amounts to development for the purposes of s55 of the Act. The main parties have requested that their description be adopted for the purposes of the deemed planning application.

9. During the Hearing, I refined this description of development into a format that could be substituted for section 3 of the notice, and which then gives rise to the deemed planning application. It then follows that the requirements in section 5 of the notice would be substituted in order to dovetail. The precise wording for sections 3 and 5 of the notice were therefore agreed with the main parties during the Hearing, and which can be found in my Formal Decision below.

10. It has also been brought to my attention that the address for the land to which the notice relates should only refer to Unit 2.

11. Matters then pertaining to the appropriate fee for the deemed planning application do not preclude my determination of the appeal as I have a valid ground (a) appeal before me.

12. The main parties agreed during the Hearing that the above matters therefore constitute corrections to the notice which can be undertaken without causing injustice.

The ground (a) appeal

Main Issues

13. The agreed main issues are:

- whether there is a significant adverse impact on the overall vitality and viability of existing town centres; and,
- whether there is an unacceptably harmful flood risk, having particular regard to flood zones 2 and 3 and surface water run-off.

Reasons

14. The land which is subject to the enforcement notice is in a small business park (approx. 1.3 ha) comprising 3 main buildings and wraparound parking. The business park is located off Tewkesbury Road, close to Junction 10 of the M5 and approximately 1 mile south of Coombe Hill.

15. The deemed planning application relates to the erection of an extension to the building known as Phoenix House, the erection of toilet and kitchen facilities, the

formation of a car park and the material change of use of the land to a brewery and taproom.

16. Policy TC3 of the Framework confirms that a sequential test does not apply to small-scale rural development, such as is the case here. This means that Policy RET4 of the adopted Tewkesbury Borough Local Plan 2011-2031 (the LP) is materially inconsistent with the Framework and so should be afforded very limited weight. The Council also recognise that there is a fallback position in respect of an extant planning permission ref 15/00968/FUL whereby alternative town centre uses could occupy the appeal site. Accordingly, there is no policy objection to the use and thus there would not be a significant adverse impact on the overall vitality and viability of existing town centres.

17. A site-specific flood risk assessment has also been provided by the appellant which concludes that the overall flood risk is classified as low and would not impact or increase the runoff generated by the site. A technical letter in respect of foul drainage water has also been provided, the implications of which are considered to be acceptable. Accordingly, there would not be an unacceptably harmful flood risk, having particular regard to flood zones 2 and 3 and surface water run-off, and so the development accords with Policy INF2 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031, adopted December 2017, and Policy F4 of the Framework.

18. There are also other considerations in favour of the development, including employment and economic development as well as social and community cohesion, which would accord with Policies EMP4, EMP5 and EMP6 of the LP and Policies E4 and HC4 of the Framework.

19. That all being so, support for the development can also be found in Policy S5 of the Framework.

20. In light of all the above, I have little reason to disagree with the agreed position of the main parties and so planning permission will be granted as the development complies with the development plan when read as a whole, as well as the Framework.

Planning Conditions

21. The main parties have agreed three planning conditions which I then accept are necessary and reasonable in the interests of safeguarding the safety of site users during flood events, to ensure the satisfactory disposal of foul water and to assess the effect of the development on surface water runoff to ensure appropriate mitigation. The precise wording of these conditions were agreed by the main parties during the Hearing.

Conclusion

22. For the reasons given above, I therefore conclude that the ground (a) appeal should succeed.

Overall Conclusion

23. For the reasons given above, the enforcement notice is corrected and quashed, and planning permission is granted. Accordingly, the remaining ground (f) and (g) appeals do not therefore need to be considered.

Formal Decision

24. It is directed that the enforcement notice be corrected by:

    - substituting: *'Unit 2'* for the words *'Units 2 & 3'* in section 2 of the notice.
    - substituting: *'Without planning permission, the erection of an extension to the building known as Phoenix House, the erection of toilet and kitchen facilities, the formation of a car park and the material change of use of the Land to a brewery and taproom.'* for the words in section 3 of the notice.
    - substituting: *'1. Cease the use of the Land as a brewery and taproom. 2. Demolish the extension to the building known as Phoenix House. 3. Demolish the toilet and kitchen facilities. 4. Remove the car park hard surfaces. 5. Restore the Land to its condition prior to the breach taking place. 6. Remove all debris/waste materials resultant from compliance with the above steps.'* for the words in section 5 of the notice.

25. Subject to these corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land and buildings at Unit 2, Elmstone Business Park, Tewkesbury Road, Elmstone, Hardwicke, Cheltenham GL51 9SY, as shown on the plan attached to the notice, for the erection of an extension to the building known as Phoenix House, the erection of toilet and kitchen facilities, the formation of a car park and the material change of use of the Land to a brewery and taproom, subject to the following conditions:

    1. The development shall comply at all times with the flood evacuation plan contained with the revised Flood Risk Assessment (26-4128-KTN-FRA-01-E) dated 4 October 2026.
    2. Foul drainage water shall be removed from site at all times in accordance with the details set out in the K-TEN consulting technical letter dated 12 October 2026.
    3. Within 3 months of the date of this decision, details shall be submitted for approval to the Local Planning Authority demonstrating the pre-development and post-development hardstanding areas and associated surface water runoff rates and volumes. The details shall demonstrate that the post development run off is not greater than the existing pre-development run off. Any mitigation measures identified as necessary by the approved details shall be implemented within 3 months of approval and retained thereafter.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Hunter, Counsel instructed for the appellant

Liz Shield, SF Planning

Simon Firkins, SF Planning

FOR THE LOCAL PLANNING AUTHORITY:

Olivia Davies, Counsel instructed for the Council

Will Cole, Senior Planning Compliance Officer

DOCUMENTS:

1. Copy of K-TEN letter dated 12 October 2026
2. Copy of Hearing notification letter
3. Copy of Policy EMP6 of the LP
4. Email from appellant regarding withdrawal dated 10 November 2026
5. Appellant Costs Application
6. Council Response to Costs Application
7. Appellant Final Comments to Costs Application