

Bolsover District Council

Planning Committee

3rd July 2019

Appeal Decisions: January 2019 – June 2019

Report of the Planning Manager (Development Control)

Purpose of the Report

- To report the Planning Service's performance against the Government's quality of decision making targets.
- To report any issues or lessons learnt from the appeal decisions.

1 Report Details

- 1.1 This report relates to the quality of the Council's decision making compared to the Government's performance targets.
- 1.2 The Government measures the quality of the Council's decision making by the percentage of the total number of decisions made by the authority on applications that are then subsequently overturned at appeal. If during a 2 year monitoring period, **10 per cent** of an authority's total number of decisions on applications (for either major or non-major development) are overturned at appeal, then the Council may be designated for its poor performance and applicants can then make their applications directly to the Planning Inspectorate rather than to the Council.
- 1.3 However, during the first appeal monitoring period (from April 2015 to December 2017) the Council won 100% of appeals on Major planning applications and 99.6% of appeals on non-major applications. This performance indicates the Council's decision making during this period was sound and the Council was well below the threshold for designation.
- 1.4 During the second monitoring period (from April 2016 to December 2019) the Council won 96.5% of appeals on major planning applications and 98.8% of appeals on non-major applications. The Council's performance therefore remained above the designation thresholds but 3% of decisions on major applications were over turned at appeal during this monitoring period.
- 1.5 Therefore, given the relatively low number of major applications received each year, it was considered necessary to provide the Planning Committee with additional insight into the reasons appeals were overturned or dismissed so Members would have a better understanding of the issues over the next monitoring period, which covers April 2017 to December 2020.

- 1.6 Subsequently, the Council's performance on appeals over the first two monitoring periods, as noted above, was reported to Planning Committee in January 2019. At that time, it was agreed that an update on appeal decisions should be reported to members every 6 months to give members appropriate oversight of the quality of the Council's decision making under delegated powers as well as inform decision making at Committee level.
- 1.7 This approach also helps to mitigate any potential risk of exceeding the thresholds for designation through poor performance.

2 Conclusions and Reasons for Recommendation

- 2.1 In the 6 months since the last monitoring period ended (i.e. from January 2019 to the end of June 2019) the council has won 100% of appeals on major planning applications, 100% of appeals on non-major applications and 100% of appeals against enforcement notices.
- 2.2 The Council is therefore exceeding its appeal decision targets and this indicates the Council's decision making on planning applications (and enforcement issues) continues to be sound. Summaries of the appeals determined over the last six months are also included as appendices to this report and provide additional insight into how these decisions were made.
- 2.3 Officers consider that continuing to update Members on performance at appeal and the outcome of appeal decisions represents best practice and allows appropriate oversight of the Council's decision making on planning applications. Therefore, officers are recommending this report is noted and that the Council's performance at appeal continues to be reported to the Planning Committee every six months.

3 Consultation and Equality Impact

- 3.1 Consultations are carried out with each application and appeal. Consultations on this report of appeal decisions is not necessary.
- 3.2 Appeal decisions do not need an equality impact assessment in their own right but by monitoring appeal decisions it allows us to check that equalities are considered correctly in every application. There have been no appeal decisions reporting equalities have been incorrectly addressed.

4 Alternative Options and Reasons for Rejection

- 4.1 An alternative option would be to not publish appeal decisions to members. It is however considered useful to report decisions due to the threat of intervention if the council does not meet the nationally set targets. Members of Planning Committee should understand the soundness of decision making and soundness of Planning Policies.

5 Implications

5.1 Finance and Risk Implications

5.1.1 Costs can be awarded against the council if an appeal is lost and the council has acted unreasonably.

5.1.2 The Council can be put into special measures if it does not meet its targets.

5.2 Legal Implications including Data Protection

5.2.1 Appeal documents are publicly available to view online. Responsibility for data is PINS during the appeal process.

5.2.2 Decisions are open to challenge but only on procedural matters.

5.3 Human Resources Implications

5.3.1 Factored into normal officer workload and if original application report is thorough it reduces the additional work created by a written representations appeal. Additional workload created if the appeal is a hearing or public enquiry.

6 Recommendations

6.1 That the report be noted.

6.2 That appeal decisions continue to be reported to Committee members every 6 months.

7 Decision Information

Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
Has the relevant Portfolio Holder been informed?	N/A
District Wards Affected	No
Links to Corporate Plan priorities or Policy Framework	All

8 Document Information

Appendix No	Title
Appendix 1	Planning Appeal Decisions Period 1st January 2019- 31st May 2019
Appendix 2	Planning Enforcement Appeal Decisions January 1st 2019 - 31st May 2019
<p>Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
Report Author	Contact Number
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Appendix 1: Planning Appeal Decisions Period 1st January 2019- 31st May 2019

APP/R1010/W/18/3211091: Field to South Of New Street Whitwell: Outline Application for Residential Development with Associated Access, Parking and Landscaping

Main Issues

The main issues were:

- The character and appearance of the area with particular regard to the settlement boundary
- Biodiversity
- Highway safety

Conclusion

The Inspector concluded that the appeal site and the fields opposite formed an important delineation between settlement and countryside and that the scheme would introduce a significant built form into the countryside creating a harmful, uneven and irregular visual relationship between the built form and the wider countryside. The proposal was therefore considered contrary to policies GEN 2, GEN 8, GEN 11 and ENV 3 of the Bolsover District Local Plan.

The Inspector concluded that the habitat surveys submitted with the application were taken outside the dates and optimal conditions for a site survey and as such the results could not be conclusive on the presence of reptiles making the proposal contrary to policies GEN 2, GEN 8 and ENV 3 of the Bolsover District Local Plan.

The Inspector concluded that the appellant had not shown that a safe access could be provided to the site and visibility splays could only be provided by the detrimental removal or alteration of the existing boundary wall and the effect this would have on the character and appearance of the area. The proposal was therefore considered contrary to Policy GEN 1 of the Bolsover District Local Plan.

The appeal was dismissed

Recommendations

None.

The existing countryside and general requirements for development policies are in line with the Guidance in the NPPF.

APP/R1010/W/18/3216384: Land at 82 New Station Road, Bolsover: Outline Application for a Two Storey Dwelling including Access.

Main Issues

The main issue was:

- The effect of the development upon the stability of land both on the site and in its immediate vicinity

Conclusion

The Inspector concluded that none of the evidence submitted was sufficient to demonstrate that the necessary site works would not exacerbate the instability of the site and there was no substantive evidence that demonstrated that the site was stable or could be made so. The Inspector concluded that the proposal as submitted would be likely to result in material harm to the stability of the land contrary to Policy Gen 7 of the Bolsover District Local Plan and the National Planning Policy Framework

The appeal was dismissed

Recommendations

None.

The existing stability policy is in line with the Guidance in the NPPF.

APP/R1010/W/19/3220085: Holly House Farm, 80 Littlemoor Lane, Newton

Main Issues

- Whether the appeal site would be a suitable location for the proposed development having regard to the development plan and national policy: and
- Whether the proposal would provide for suitable living conditions for future occupants

Conclusion

The site is not in an isolated position and is in a relatively sustainable location. The site is adjacent to but outside the settlement Framework boundary of the Bolsover District Local Plan.

The Inspector considered that saved Policies GEN 8 and ENV 3 were in accordance with the framework in that they recognise the intrinsic beauty of the countryside and the meaning behind the framework is not that any site which is not isolated is suitable for development. The Inspector concluded that the council could demonstrate a five year supply of deliverable housing and as such full weight could be given to the saved policies which are in line with the framework and as such the “tilted balance” under paragraph 11 of the framework was not engaged.

The Inspector concluded that the proposed dwelling did not meet the requirements of Policy HOU 9 in that it was not necessary in this location or essential to the operation of agriculture.

The Inspector also considered that the siting of the proposed dwelling within the curtilage of a working farm and adjacent to the farm access road would result in noise and disturbance for the occupiers of the proposed dwelling contrary to saved Local Plan Policies GEN 1 and GEN 2 which seeks to ensure development does not increase health risks and that when considering the impact of development, consideration will be given to the character and sensitivity of the land and uses around a proposed development with regard given to factors including noise. The proposal would also be contrary to paragraphs 127 and 182 of the Framework which require development to provide a high standard of amenity for existing

and future users and for new development to be integrated effectively with existing businesses.

The Inspector concluded that in accordance with the requirements of s38(6) of the Planning and Compulsory Purchase Act (2004) the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise.

The Inspector attached limited weight to the small contribution to housing supply an associated economic benefits through the provision of one dwelling an attached significant weight to the fact that for sustainability reasons a new dwelling within a rural environment in the countryside would be inappropriate and future occupants would suffer noise and disturbance from farming activities. This tipped the balance firmly against the proposal.

The appeal was dismissed.

Recommendations

None.

The existing countryside and general requirements for development policies are in line with the Guidance in the NPPF.

Appendix 2: Planning Enforcement Appeal Decisions January 1st 2019 -31st May 2019

The performance of Local Authorities in relation to the outcome of enforcement appeals are not being measured in the same way as planning appeals. However it is considered useful to report the enforcement appeals within the same time period to address any issues or lessons learnt from these appeal decisions.

APP/R1010/C/17/3191666: 27 High Street, Whitwell: Retention of the Installation of Exterior Cladding.

Main Issues

The breach of planning control alleged was the addition of external insulation overlain with render to the existing rendered exterior to all elevations without planning permission. An enforcement notice was issued requiring:

- The removal of the external insulation and associated render from all elevations of the building and;
- Remove all associated waste from the site

The main issue was the effect of the proposal on the character and appearance of the appeal property and on the Whitwell Conservation Area.

Conclusion

The ground of appeal was that the steps required to be taken by the notice exceed what is necessary to achieve the purposes of the notice.

The Inspector concluded that the objective of the notice was to remove all external insulation and associated render from all elevations as the purpose of the notice is to clearly remedy the breach of planning control. Leaving any part of the material in place would not achieve that purpose. Accordingly the requirements of the notice did not exceed what was necessary and the appeal on that ground must fail.

The appeal was dismissed and the enforcement notice upheld.

Recommendations

None.