

BOLSOVER DISTRICT COUNCIL

PLANNING COMMITTEE

15TH SEPTEMBER 2021

REPORT: APPEAL DECISIONS: JANUARY 2021 – JUNE 2021

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; and
- To report any issues or lessons learnt from the appeal decisions.

1 Report Details

Background

- 1.1 In November 2016 The Department for Communities and Local Government produced guidance entitled "Improving Planning Performance" which included guidance on speed of planning decisions and quality of planning decisions. This report relates to the quality of decision making targets.
- 1.2 The measure to be used is the percentage of the total number of decisions made by the authority on applications that are then subsequently overturned at appeal.
- 1.3 The threshold or designation on applications for both major and non-major development, above which a local planning authority is eligible for designation, is **10 per cent** of an authority's total number of decisions on applications made during the assessment period being overturned at appeal.
- 1.4 During the first appeal monitoring period the council won 100% of appeals on Major planning applications and 99.6% of appeals on non-major applications. During the second monitoring period the council won 96.5% of appeals on Major planning applications and 98.8% of appeals on non-major applications. During the third monitoring period the council had no appeals on major planning applications and won 100% of appeals on non-major applications. During the fourth monitoring period the council had only one appeal on a non-major application and this appeal was allowed. However, this only equated to only 0.54% of the number of non-major applications determined within that period. The council was therefore still exceeding its appeal decision targets.
- 1.5 Following the first report of appeal decisions to Planning Committee in January 2019 it was agreed that appeal decisions should continue to be reported to Committee members every 6 months.

2 Conclusions and Reasons for Recommendation

- 2.1 During the 6 months since the last monitoring period the council has had no appeals on Major planning applications determined. The council has had only two appeals on non-major applications, one of which included an application for costs. Each of these appeals were allowed. However, this only equates to 0.9% of the number of non-major applications determined within that period. The council is therefore still exceeding its appeal decision targets. One appeal against an enforcement notice was also determined during this period. This appeal was allowed and the enforcement notice quashed.
- 2.2 Notwithstanding the fact that the last three appeal decisions have been allowed, overall the low number of appeals against decisions indicates current decision making is still sound.
- 2.3 When/if appeals are lost the reporting of decisions provides an opportunity to learn from these decisions.

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.
- 4.2 In the latest June 2021 internal audit the process of reporting appeal decisions to Planning Committee and reflecting on decisions taken was reported. The process supported the Planning Department achieving 'substantial' reassurance in the latest internal audit of 'Planning Processes and Appeals'.

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 with 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 This report be noted. Recommend 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 results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
District Wards Affected	No
Links to Corporate Plan priorities or Policy Framework	All

8 Document Information

Appendix No	Title	
1.	Planning Appeal Decisions Period 1 st January 2021 - 30 th June 2021	
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)		
None.		
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Appendix 1: Planning Appeal Decisions Period 1st January 2021 - 30th June 2021

APP/R1010/W/20/3265080: Church Hill Farm, Cragg Lane, Blackwell, DE55 5HZ: Erection of Steel Portal Framed Agricultural Building

Main Issues

The application was granted subject to 5 conditions. The appeal was against the imposition of each these conditions. A costs application was also submitted by the appellant

The main issue was:

- Schedule 2, Part 6, Class A of the 2015 GPDO establishes permitted development rights for agricultural development on units of 5 hectares or more. This includes the erection of a building which is reasonably necessary for the purposes of agriculture within the agricultural unit. Paragraph A.2 enables consideration to be given to the siting, design, and external appearance of any proposed structure. Having regard to these matters, the Council determined that the siting was acceptable, but subject to a condition relating to archaeological considerations. It is the use of this condition, as well as others, that was disputed and as such the main issue was whether the conditions imposed were of sound planning merit when assessed against the provisions of the 2015 GPDO.

Conclusion

The Inspector concluded that in the context of the National Planning Policy Framework (the Framework) the site was located within a designated heritage asset with archaeological interest. However, although the Framework provides clear advice in relation to the determination of planning applications, the proposal did not seek planning permission. Instead, it sought prior approval, the consequence of which is that the principle of development has already been established by the 2015 GPDO.

As part of the prior approval process, regard can be given to siting, design, and external appearance and consequently, in light of the sensitivity of the site, the siting had been scrutinised from an archaeological perspective. In this regard, the Council's advisor had no objection to the location of the proposed building. However, despite this, a condition was attached requiring a written scheme of investigation for archaeological monitoring to be approved in writing before development commenced.

Within Part 6 of the 2015 GPDO, there is no express provision for Council's to attach conditions to control development. The Inspector considered that although the Council was acting responsibly and cautiously in this regard, case law (*Murrell v SSCLG [2010] EWCA Civ 1367*) confirmed that the prior approval process required the minimum of formalities, a matter embedded within the Planning Practice Guidance (PPG) which states that 'prior approval is a light-touch process which applies where the principle of the development has already been established.'

The Council accepted the siting of the proposed building. Therefore, having regard to case law and guidance within the PPG, it follows that a light-touch approach to the decision should have been taken. Accordingly, despite the sensitivities of the site, the Inspector concluded that the archaeological condition represented an unduly onerous restriction on the proposed development which was not indicative of a light-touch approach and should therefore not have been imposed. It was also concluded that there was no specific justification for the other conditions to be imposed as their requirements were already set

out within Part 6 of the GPDO and need not be repeated as conditions on the prior approval notice.

The appeal was allowed, and the prior approval varied accordingly. But, as described within the GPDO, the development must still be carried out within a period of 5 years from the date of this decision, and within 7 days of the date on which the building is substantially completed, the developer must notify the Council in writing of that fact. The requirements in relation to cessation of use were also applicable.

With regard to the costs claim, the Inspector considered that the condition required by the Council in relation to the archaeological sensitivity of the site strayed beyond the 'light-touch' approach expected by the prior approval process and that although the Council had sound intentions, the condition imposed did not have a basis within the 2015 GPDO. It was therefore considered that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, had been demonstrated and that an award of costs was justified. The council was ordered to pay the appellant the costs of the appeal proceedings.

Recommendations

The appeal decision clarified the prior approval procedure. The council's internal procedure for determination of prior approval applications has been amended and the conditions set out in the GPDO are now pointed out in the notes to the applicant rather than being required by condition and additional conditions are not imposed.

APP/R1010/W/19/3241373: Barlborough Springs Fishery, Ward Lane, Barlborough: Siting and Personal Residential Use of Two Temporary Static Residential Caravans (Retrospective) for a two year period

Main Issues

The main issues were:

- Whether the proposal would be inappropriate development in the Green Belt, including any impact on openness, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; and,
- The effect of the proposal on heritage assets or their settings, including the Grade I, Grade II* and II listed buildings including Barlborough Hall, The Stable Block, and Gazebo, the Grade II Registered Park and Gardens of Barlborough Hall, and the Barlborough Conservation Area; and,
- The effect on the living conditions of occupiers of the development with regards to noise from the surrounding area; and,
- Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Conclusion

The Inspector concluded that the site was within the Green Belt. Policy SS10 of the Local Plan for Bolsover District and Chapter 13 of the National Planning Policy Framework (the Framework) set out that Green Belt serves five purposes, including to assist in safeguarding the countryside from encroachment and that both local and national policy set out that the construction of new buildings in the Green Belt should be regarded as inappropriate development, unless it falls within one of the types of development listed as an exception.

The Inspector considered that the two residential static caravans did not fall within one of the types of development listed as an exception and even if they did they would reduce the openness of the Green Belt as a result of their overall size and height. In addition the Inspector considered that the caravans encroached on the countryside and had an urbanising impact and even if they were re-sited and screened with planting they would still erode the openness of Green Belt and encroach into the countryside.

He concluded that the caravans represented inappropriate development which by definition is harmful to the Green Belt and should not be approved except in very special circumstances.

The Inspector acknowledged that the site is located within the grounds of the Grade II Registered Park and Gardens of Barlborough Hall and the Barlborough Conservation Area and was located close to the Grade I, Grade II* and II Listed buildings including Barlborough Hall, The stable block and gazebo.

The Inspector concluded that the proposal would result in less than substantial harm but that as set out in Paragraph 196 of Framework but that less than substantial harm did not equate to less than substantial planning objection and considerable importance and weight should be given to the desire to conserve heritage assets in a manner appropriate to their significance. Less than substantial harm should be weighed against the public benefits of the proposal.

The Inspector considered that, in the absence of a noise assessment, given the thin walls of a caravan and the proximity of the caravans to the M1 that it was highly likely that the occupiers of the caravans would be adversely affected by noise from the motorway and as such the proposal would be contrary to Policy SC11 of the Local Plan which aims to ensure a loss of amenity would not occur as a result of the development and contrary to Paragraph 127 of the Framework which requires planning decisions to create places which promote health and well-being with a high standard of amenity for users.

The Inspector considered the appellants reasons for needing to live on site but considered the security issues could be addressed by the installation of CCTV and considered there to be insufficient evidence of the need for the caravans to support the creation of the business on site.

The Inspector also gave modest weight to the personal circumstances of the appellant and considered there was little evidence to support the claim that the appellant has sought council housing or that, having given up their previous accommodation to move to the site five years ago, they do not have the financial resources to get back on the property ladder. However he also considered there to be an acute housing shortage in England and the council hadn't provided evidence that it was any different locally.

The Inspector concluded that if planning permission were refused the appellant and family would lose their home which would be an interference with their Human Rights. If planning permission for a temporary two year period was to be granted it would avoid the family being homeless and give them an opportunity to find alternative accommodation. He considered this to be a proportionate approach to the aim of protecting the environment and granting a temporary permission would have no greater impact on the appellant and his family than would be necessary to address the wider public interest. The Inspector afforded this factor substantial weight in favour of a temporary grant of permission.

The Inspector concluded that this clearly outweighed the harm identified to the Green Belt, Conservation area and Listed Buildings and considered that very special circumstances existed to justify the development for a temporary period.

The appeal was allowed.

Recommendations

None.

The decision was a judgement about the impact of a proposal on the openness of the Green Belt, the character and appearance of the Conservation Area and the setting of Adjacent Listed Buildings balanced against the personal special circumstances of the appellant rather than testing a Local Plan policy.

Enforcement Appeals

APP/R1010/F/20/3236163: The Coach House, Brookhill Lane, Pinxton: Alterations to a Listed Building

Main Issues

- Unauthorised works had been carried out to the interior of the Grade II Listed building. The enforcement notice sought to the removal of a number of these alterations and required any consequential damage to be restored and repaired. The period for compliance given was two years.

Conclusion

The Inspector considered that none of the works carried out effected the exterior of the building. The Listing description refers to the exterior fabric of the building and does not mention the interior other than to say this is "all C20".

The Inspector acknowledged that a listing description is not exhaustive and that the council maintained the historical significance of the coach house related to the family who owned the Brookhill Hall estate for 300years up to 1950. The building's interior was inspected at the time of listing in 1966 but the existence of the interior was not considered to have historic significance because the features were not documented. The Inspector concluded that the works carried out had not effected the historic interest significance of The Coach House and as such paragraphs 195 and 196 of the National Planning Policy Framework were therefore not engaged and the works that had been carried out therefore didn't conflict with the policies in the Local Plan.

The appeal was allowed and Listed Building Consent granted for the retention of the alterations carried out.

Recommendations

Careful consideration needs to be given to which elements of a Listed Building contribute to the historic interest and significance of that building when assessing applications for Listed Building Consent including reference to that significance in the List description.