

## Bolsover District Council

### Planning Committee

19<sup>th</sup> January 2022

#### Report: Appeal Decisions: July 2021 – December 2021

**This report is public**

#### 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. 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. During the fifth monitoring period the council had no appeals on Major planning applications determined. The council 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 equated to 0.9% 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 continue to be reported to Committee members every 6 months.

## **2. Conclusions and Reasons for Recommendation**

- 1.6 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 one appeal on non-major applications. This appeal was dismissed. The council has therefore won 100% of the appeals determined within that period. The council is therefore still exceeding its appeal decision targets.
- 2.2 The lack of appeals against decisions indicates current decision making is 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 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

<b>Is the decision a Key Decision?</b> (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
<b>Is the decision subject to Call-In?</b> (Only Key Decisions are subject to Call-In)	No
<b>District Wards Affected</b>	No
<b>Links to Corporate Plan priorities or Policy Framework</b>	All

## 8. Document Information

Appendix No	Title
1.	<b>Planning Appeal Decisions Period 1<sup>st</sup> July 2021-31<sup>st</sup> December 2021</b>
<b>Background Papers</b> (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)	
<b>Report Author</b>	<b>Contact Number</b>
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## **Appendix 1: Planning Appeal Decisions Period 1<sup>st</sup> July 2021-31<sup>st</sup> December 2021**

### **APP/R1010/X/21/3272149: 2 Oakdale Road, Broadmeadows, Pinxton: Application for a Certificate of Lawful Use or Development for the use of the dwelling as a care home for children and alterations to the existing garage.**

#### Main Issues

The main issue is whether the Council's decision to refuse to issue a Lawful Development Certificate (LDC) was well-founded.

This hangs on whether:

- The use proposed falls within Use Class C3 of the Use Classes Order; and
- If the use does not fall within Class C3, whether the change from the pre-existing Class C3 dwellinghouse use to the care home use proposed is a material change.

#### Conclusion

With regard to use class of the proposal the Inspector concluded that the proposed use did not fall within Use Class C3 of the Use Classes Order and was therefore a change to the existing use which did not fall within the same use. The Inspector used previous court judgements to back this decision.

With regard to whether the change of use was considered to be "material" depended on whether there would be a change in the character of the use of the site. The Inspector concluded that there were no obvious physical features that distinguished the property from a normal family dwelling but considered that there would be other notable differences in its use. These differences included staff change-over twice a day, early in the morning and late in the evening, weekdays and weekends. This would be very noticeable to neighbouring occupiers, marking the property as something other than a dwellinghouse. It may also result in a number of vehicles being parked at the property at any one time including carers, a manager and other professionals visiting the site. Even if this number of vehicles could be accommodated on site, the extent of parking means that the character of the use would be materially different from a dwellinghouse.

The Inspector therefore concluded that the proposal amounted to a material change of use for which planning permission is required and the council's refusal to grant a certificate of lawful use or development was well-founded.

The appeal was dismissed.

#### Recommendations

None

The Council's interpretation of the Use Classes Order and what constitutes a material change of use was well-founded and the Inspector concurred with the Council's decision on both points.