

Bolsover District Council

Meeting of the Planning Committee on Wednesday 6th July 2022

Planning Appeals Report January – June 2022

Report of the Planning Manager (Development Control)

Classification	This report is Public
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PURPOSE/SUMMARY OF 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.

REPORT DETAILS

1. Background

- 1.1 Since November 2016 Local Planning Authorities have been performance monitored against their speed and quality of decision making. Guidance produced in 2016 entitled “Improving Planning Performance”, which was updated in 2020, set out how their performance was going to be monitored.
- 1.2 This report relates specifically to the quality of decision making, and it details the Council’s most recent appeal decisions – which are the measure for the quality of decision making based on the latest guidance.
- 1.3 The measure used is the percentage of the total number of decisions made by the Council on applications that are then subsequently overturned at appeal.
- 1.4 The percentage threshold 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.

1.5 Since January 2019 appeal decisions have been reported to Planning Committee every 6 months, as a way of updating members on our 'qualitative' performance; but also as a way of reflecting on the appeal decisions for ongoing learning and improvement.

2. Details of Proposals or Information

2.1 During the first appeal monitoring period (January 2019 – June 2019) the Council won 100% of appeals on major planning applications and 99.6% of appeals on non-major applications.

2.2 During the second monitoring period (July 2019 – December 2019) the Council won 96.5% of appeals on major planning applications and 98.8% of appeals on non-major applications.

2.3 During the third monitoring period (January 2020– June 2020) the Council had no appeals on major planning applications and won 100% of appeals on non-major applications.

2.4 During the fourth monitoring period (July 2020 – December 2020) 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.

2.5 During the fifth monitoring period (January 2021 – June 2021) 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.

2.6 During the sixth monitoring period (June 2021 – December 2021) the Council had no appeals on major planning applications determined. The Council had only one appeal on non-major applications. This appeal was dismissed. The Council therefore won 100% of the appeals determined within that period and was therefore still exceeding its appeal decision targets.

2.7 We have now entered the seventh monitoring period and during the 6 months since the last monitoring period (January 2022 – June 2022) the Council has had no appeals on major planning applications determined. The Council has had three appeal decisions on non-major applications. One of these appeals was dismissed, the other two were allowed. The Council has therefore won 33% of the planning appeals determined within that period. However, this only equated to 1.06% of the number of non-major applications determined within that period. The Council is therefore still exceeding its appeal decision targets.

2.8 The Council also had one appeal decision against the issue of an enforcement notice. This appeal was dismissed. The performance of local authorities in relation to the outcome of enforcement appeals is 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.

The lack of appeals against decisions indicates current decision making is sound.

When/if appeals are lost the reporting of decisions provides an opportunity to learn from these decisions.

3. Reasons for Recommendation

- 3.1 An opportunity for the Council to review and reflect upon the appeal decisions received in the last 6 month ensures that the Council is well placed to react to any concerns arising about the quality of decisions being taken.
- 3.2 The lack of appeals against decisions overall indicates that current decision making is sound.
- 3.3 When/if appeals are lost the reporting of decisions provides an opportunity to learn from these decisions.

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'.

RECOMMENDATION(S)

- 1. That this 6 monthly report be noted; and
- 2. Recommend that we continue to report appeal decisions to Planning Committee every 6 months.

IMPLICATIONS:

Finance and Risk: Yes No

Details:

Costs can be awarded against the Council if an appeal is lost and the Council has acted unreasonably. The Council can be put into special measures if it does not meet its targets.

On behalf of the Section 151 Officer

Legal (including Data Protection): Yes No

Details:

Appeal documents are publicly available to view online. Responsibility for data is PINS during the appeal process. Decisions are open to challenge but only on procedural matters.

On behalf of the Solicitor to the Council

Staffing: Yes No

Details:

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

On behalf of the Head of Paid Service

DECISION INFORMATION

<p>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:</p> <p>Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/></p>	<p>No</p>
<p>Is the decision subject to Call-In? <i>(Only Key Decisions are subject to Call-In)</i></p>	<p>No</p>

<p>District Wards Significantly Affected</p>	<p>None</p>
<p>Consultation: Leader / Deputy Leader <input type="checkbox"/> Executive <input type="checkbox"/> SLT <input type="checkbox"/> Relevant Service Manager <input type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/></p>	<p>Details:</p>

<p>Links to Council ambition: Customers, Economy and Environment</p>

DOCUMENT INFORMATION

Appendix No	Title
1.	Planning Appeal Decision - APP/R1010/X/21/3285912: Mill Pond House, Whaley Road, Langwith
2.	Planning Appeal Decision - APP/R1010/X/21/3283765: Golden Cottage, Scarcliffe Lanes, Upper Langwith
3.	Planning Appeal Decision - APP/R1010/D/22/3294811: Claylands Farm Claylands Road, S80 4QE
4.	Planning Enforcement Appeal Decision - APP/R1010/X/21/3283725-3283730: Land at Markland Farm, Markland Lane, Clowne

Appendix 1: Planning Appeal Decision

APP/R1010/X/21/3285912: Mill Pond House, Whaley Road, Langwith

The Application was for determination as to whether prior approval would be required for the change of use of agricultural buildings to granny flat and two holiday lets. The application was refused.

The appeal was made against the refusal to grant prior approval required under Schedule 2, Part 3, Class Q of the Town & Country Planning (General Permitted Development)_(England) Order 2015 (as amended) (GPDO)

Main Issues

The main issue is whether the proposals constitute permitted development under the GPDO taking account of the relevant limitations and conditions having particular regard to flood risks on the site

Conclusion

The Inspector concluded that the proposal would not meet the conditions of paragraphs Q.2. and W.(3) of the GPDO in respect of the flooding risks on the site. Prior approval was therefore required on this matter, and the inspector found, based on the evidence submitted that prior approval should not be granted. The proposal was therefore determined not to be permitted development
The appeal was dismissed.

Recommendations

None.

The Council's interpretation of the GPDO and what constitutes permitted development was well-founded and the Inspector concurred with the Council's decision.

Appendix 2: Planning Appeal Decision

APP/R1010/X/21/3283765: Golden Cottage, Scarcliffe Lanes, Upper Langwith

The application was for extension to a dwelling, a garage, boundary wall, alterations to a vehicular access and change of use of amenity land into residential curtilage. The application was approved subject to conditions. One of these conditions stated that:

Notwithstanding the provisions of Parts 1 and 2 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order) the dwelling shall not be extended or altered externally nor shall any incidental building, structure or enclosure be erected without the prior grant of planning permission.

The appeal was made against the inclusion of this condition.

Main Issues

Conditional permission was granted to partially demolish and significantly extend a period stone farmhouse, Golden Cottage, dating from the late 18th century and noted in the Upper Langwith Conservation Area Appraisal as a non-listed heritage, or locally important townscape asset. It is located on the northern slope of the valley, and adjacent to an area noted with the Conservation area appraisal as an important open space. The condition being appealed removes permitted development rights, to enable the Council to retain control over future building on the site, and in accordance with local policies with regard to the conservation area. The appeal has been made as the appellant considers that the Council has not explained its clear justification for the imposition of this condition. The main issue is therefore whether that 17 is reasonable and necessary with regard to the character and appearance of the Conservation area.

Conclusion

The Inspector concluded that the condition was necessary to make the development acceptable in planning terms, in order to safeguard the character and appearance of the CA and its non-listed heritage assets. However, the planning permission should be varied to alter the wording of the condition to remove some but not all permitted development rights.

In that regard the appeal was allowed and the wording of the condition amended to state:

Notwithstanding the provisions of Classes A, B, C, D, E, and F of Part 1, and Classes A, B and C of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extension, enlargement, alteration or the provision of incidental or ancillary buildings, surfaces or boundary treatments to the dwellinghouse hereby permitted and its curtilage and adjoining non-curtilage land shall take place unless authorised by an express grant of planning permission.

Recommendation

It should be noted that the assessment of the impact of the proposal and the necessity for the condition made by the council was correct but the wording of the condition was too broad and not precise enough in setting out exactly which permitted development rights needed to be removed.

Conditions to remove permitted development rights must be more specific and the reason for the condition more detailed in the future. The council has already noted this and has started using the format set out by the inspector for conditions removing permitted development rights since this appeal decision was received.

Appendix 3: Planning Appeal Decision

APP/R1010/D/22/3294811: Claylands Farm Claylands Road, S80 4QE

The application was for a first floor extension and alterations. The extension and alterations had previously been approved without a glazed gable. The application which was the subject of the appeal was an amendment to the previously approved extension which included a glazed gable in the extension. The application was refused.

Main Issues

The main issue was the impact of the proposal on the residential amenity of the occupants of the adjacent dwelling as a result of over-looking from the first floor glazing in the rear elevation.

Conclusion

The proposed extension includes a rear elevation with fully glazed bi-fold doors. The appeal property is not parallel with its boundary with the adjacent dwelling. Rather than the first-floor extension being set at 90 degrees to the boundary it is set at approximately 75 degrees to it which means that there is a greater degree of overlooking of part of the garden of the adjacent property. The angle of the proposed extension to the boundary means that much of the glazing would be within about 5 metres or less of the boundary with 2 Claylands Farm. The Council's guidance states that 'habitable room windows that overlook neighbouring garden space should normally be at least 10 metres from the boundary. Oblique or obscured outlook from habitable room windows within 10m of the boundary may be allowed dependent upon site specific considerations'.

The Inspector considered that whilst there would be more overlooking of the neighbouring garden than if the proposed extension were set at 90 degrees to the boundary, which would be a more normal situation in terms of any overlooking, the extra degree of overlooking would not be so additionally significant. In addition the occupants of the adjacent dwelling had undertaken planting along the boundary with the appeal property in order to reduce any overlooking and that this had already, very largely achieved that effect.

The Inspector concluded that, while there would be some conflict with the council's supplementary planning guidance, the overlooking would be oblique, and the guidance allows some latitude in such circumstances and the proposal would accord with policy SC3 of the Council's Local Plan 2020(LP) which requires high quality development.

The appeal was dismissed

Recommendation

None

The appeal decision was a judgement made by the Inspector rather than testing Local Plan Policy or the content of the council's guidance.

Appendix 4: Planning Enforcement Appeal Decision

APP/R1010/X/21/3283725- 3283730: Land at Markland Farm, Markland Lane, Clowne

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.

The appeal was made against an enforcement notice issued by the council. The unauthorised development was a material change of use of the land to a mixed agricultural and commercial Long Goods Vehicle (LGV) haulage business, the construction of a private way from Markland Lane, a hardstanding and security fence and the siting of a residential caravan.

The enforcement notice required the unauthorised use of the site for a haulage business including the parking and storage of LGV's and trailers to cease, the use of the private way to cease, the removal of the hardcore used to create the private way and hardstanding, the removal of the security fence and the land returning to grassland and the removal of the static caravan.

The caravan has been removed from the site. The remainder of the development was subject to the appeal.

Main Issues

The main issue is the effect of the development on the countryside and heritage assets.

Conclusion

The Inspector concluded that the development caused harm to the conservation area but that the harm was less than substantial and was outweighed by the public benefit provided by restoration and maintenance of the buildings thereby securing their future and the provision of employment at the site.

With regards to the impact on the countryside the Inspector considered that the house and a small area of land had been sold separately to the rest of the farmstead and considered the building to be redundant and as such its re-use and enhancement fell within paragraph e of Policy SS9 of the Local Plan making the development comply with this policy provided it also respected the form, scale and character of the landscape. The Inspector concluded that, subject to conditions relating to provision of landscaping and restricting the number of LGV's operating from the site, the development did respect the form, scale and character of the landscape and as such complied with Policy SS9.

The Inspector went on to say that even if the farmstead was not considered to be redundant, the proposal represented a sustainable alternative use of the buildings which were no longer needed for agricultural use.

The appeal was allowed and planning permission granted subject to conditions relating to no more than 4 vehicles operating from the site, no maintenance or repair of LGV's or storage of goods, only vehicles belonging to the occupiers of the farm to be parked on site, implementation of a landscaping scheme, any access amendments to be agreed with the Local Planning Authority and space to be maintained for parking and manoeuvring of vehicles on site.

Recommendation

None.

The decision was a judgement about the impact of a proposal on the character and appearance of the Conservation Area and the countryside balanced against public benefits and compliance with Local Plan Policy rather than testing a Local Plan Policy. This was the judgement of one Inspector and does not have to change the judgement of the council on this case or on other cases requiring a balance of issues to be considered and a judgement made.