

## Bolsover District Council

### Meeting of the Planning Committee on 25<sup>th</sup> January 2023

#### Appeal Decisions: July 2022 – December 2022

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| <b>Classification</b>  | 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.
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#### 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. 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 During the seventh monitoring period (January 2022 – June 2022) the council had no appeals on major planning applications determined. The council had two appeal decisions on non-major applications. One of these appeals was dismissed, the other was allowed. However, this only equated to 0.53% of the number of non-major applications determined within that period.

2.8 We have now entered the eighth monitoring period and during the 6 months since the last monitoring period (July 2022 – December 2022) the council has had no appeals on major planning applications determined. The council had three appeal decisions on non-major applications. Two appeals were allowed and one was dismissed. The council therefore only won 33% of appeals determined within this period. However this only equated to 1.14% of the number of non-major applications determined within that period and the council is therefore still exceeding its appeal decision targets.

- 2.9 The council had no appeal decisions against the issue of an enforcement notice. 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.
- 2.10 The lack of appeals against decisions indicates current decision making is sound.
- 2.11 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'.

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### **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><b>Is the decision a Key Decision?</b><br/>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><b>BDC:</b><br/>Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/></p> <p><b>NEDDC:</b><br/>Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/></p> <p><input checked="" type="checkbox"/> Please indicate which threshold applies</p> | <p>No</p> |
| <p><b>Is the decision subject to Call-In?</b><br/>(Only Key Decisions are subject to Call-In)</p>   | <p>No</p> |

|  |          |
|--|----------|
| <b>District Wards Significantly Affected</b>   | None     |
| <b>Consultation:</b><br>Leader / Deputy Leader <input type="checkbox"/> Cabinet / Executive <input type="checkbox"/><br>SAMT <input type="checkbox"/> Relevant Service Manager <input type="checkbox"/><br>Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/> | Details: |

| <b>DOCUMENT INFORMATION</b> |   |
|-----------------------------|---|
| <b>Appendix No</b>          | <b>Title</b>  |
| 1.                          | Planning Appeal Decision - APP/R1010/D/22/3294811: Claylands Road, Whitwell, S80 4SZ                    |
| 2.                          | Planning Appeal Decision - APP/R1010/W/21/3289346: 183 Shuttlewood Road, Bolsover                       |
| 3.                          | Planning Appeal Decision - APP/R1010/W/22/3299172: Marios's Motors, Unit 1 Shuttlewood Road, Shirebrook |

### **Appendix 1: Planning Appeal Decision**

#### **APP/R1010/D/22/3294811: Claylands Road, Whitwell, S80 4SZ**

The planning application was for a first floor extension and alterations. The proposal was an amendment to a previously approved scheme which included a glazed gable in the northwest elevation which was not included in the original scheme. The application was refused.

#### **Main Issues**

The main issue was the impact upon the residential amenities of the occupants of 2, Claylands Farm by overlooking from the first-floor windows on the rear elevation of the proposed development.

The proposed extension included a north-western elevation with fully glazed bi-fold doors. The appeal property is not parallel with its boundary with the adjacent dwelling at 2 Claylands Farm. 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 Development Guidance and Requirements: Supplementary Planning Document 2015 (SPD) states that 'habitable room windows that overlook neighbouring garden space should normally be at least 10 metres from the boundary. Where a new property overlooks an existing garden, these distances may need to be increased.

Oblique or obscured outlook from habitable room windows within 10m of the boundary may be allowed at the discretion of the case officer dependent upon site specific considerations'.

### Conclusion

The Inspector concluded that in this instance, while 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. The Inspector also noted that planting had been undertaken along the boundary with the appeal property in order to reduce any overlooking and that this was largely achieving that effect.

The Inspector concluded that, while there would be some conflict with the SPD, the overlooking would be oblique, and the SPD allowed some latitude in such circumstances. In addition, the proposed development would accord with policy SC3 of the Council's Local Plan 2020(LP) which requires high quality development.

The appeal was allowed.

### Recommendations

None.

The decision was a judgement about the impact of a proposal on residential amenity 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.

## **Appendix 2: Planning Appeal Decision**

### **APP/R1010/W/21/3289346: 183 Shuttlewood Road, Bolsover**

The application was for the demolition of the existing dwelling and construction of a larger replacement dwelling in the countryside. 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 must not be extended without the prior grant of planning permission.

The appeal was made against the inclusion of this condition.

### Main Issues

The main issue was whether or not the condition was necessary and reasonable in the interests of protecting the countryside

### Conclusion

Policy SS9 of the Local Plan for Bolsover District restricts development in countryside areas. This reflects the approach of the National Planning Policy Framework (the Framework). The aim is to achieve the sustainable distribution of development, to avoid isolated homes in the countryside and protect its intrinsic character and beauty.

Although the policy does not explicitly refer to replacement dwellings, the site would constitute previously developed land. Exception a) of Policy SS9 allows for the change of use or the re-use of previously developed land, provided that the proposed use is sustainable and appropriate to the location. It states that 'In all cases, where development is considered acceptable it will be required to respect the form, scale and character of the landscape, through careful location, design and use of materials'.

The Inspector concluded that in carrying out the assessment of the building's scale, the Council have referred to the test of whether the proposed building would be materially larger than the existing building/s. This is a test normally reserved for development in the Green Belt but the Inspector concluded that the scale of the proposed building was a relevant consideration but although a measure of the scale of development against that of the existing building may assist in this, it would not necessarily encompass consideration of the wider effects required by the policy and that is not therefore a reliable measure of the effect of a proposed development on the character and appearance of a location.

The Inspector recognised that the scale of the proposed building was compared to the cumulative size of the existing buildings on the site and the degree to which the dwelling could be theoretically extended under the terms of the GPDO. However, it was nevertheless found to be acceptable having regard to the character of development in the vicinity. Furthermore, in the context of its location close to other houses and residential plots, no harm to the landscape or wider countryside character was envisaged.

The Inspector considered that Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so and The Planning Practice Guidance (the PPG) states that restricting the future of development by the use of permitted development rights may not pass the test of reasonableness or necessity.

The Inspector went on to say that although the proposed house would be larger than the one it would replace and be located behind the main row, as others are, it would not have a high degree of prominence in the landscape. It would be on lower ground compared to the nearest properties south of Featherbed Lane. It would be largely screened by, or seen against, the row of development along Shuttlewood Road and an extension to the dwelling within the restrictions of the GPDO would not change this. In addition, the site lies alongside other houses which would likely benefit from the provisions within the GPDO. Any increase in scale arising from extensions to the proposed dwelling under the terms of the GPDO would be commensurate with extensions which could be undertaken at neighbouring sites. They would not therefore appear at odds with similar sized increases in the nearby houses or, in turn, the characteristic form and scale of development in the locality.

For these reasons the Inspector concluded that the necessary justification for the removal of permitted development rights for extensions to the proposed dwelling does

not exist. The condition was therefore unreasonable and unnecessary, and as such failed the tests as set out in Paragraph 57 of the Framework and the advice in the PPG.

The appeal was allowed and the condition was removed from the planning permission

#### Recommendation

None.

Conditions to remove permitted development rights must be very 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/W/22/3299172: Marios's Motors, Unit 1 Shuttlewood Road, Shirebrook**

The planning application was for the retention of the change of use from storage space above the reception office into a bedsit for the sole use of the owner of the garage. The application was refused.

#### Main Issues

The main issue was whether there would be acceptable living conditions for future occupiers of the bedsit with regard to noise and disturbance.

#### Conclusion

The Inspector concluded that the development would not provide acceptable living conditions for future occupiers with regard to noise and disturbance and that it would therefore be contrary to the Local Plan for Bolsover Policies SC3 and SC11 which require development to demonstrate and ensure there would be a good standard of amenity for occupants. The Inspector also concluded that it would also be contrary to the advice in paragraph 187 of the Framework to ensure that new development can be integrated effectively with existing businesses.

#### Recommendation

None.

The existing policies relating to amenity for future and adjacent occupiers of properties are in line with the Guidance in the NPPF.