

**Bolsover District Council**

**Meeting of the Planning Committee on 6<sup>th</sup> September 2023**

**Appeal Decisions: January – June 2023**

<b>Classification</b>	This report is Public
<b>Report By</b>	Sarah Kay – Interim Head of Development Management
<b>Contact Officer</b>	Karen Wake – Planner

**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 During the eighth monitoring period (July 2022 – December 2022) the council 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.
- 2.9 We have now entered the nineth monitoring period and during the 6 months since the last monitoring period (January 2023 – June 2023) the council has had no appeals on major planning applications determined. The council had two appeal decisions on non-major applications and both appeals were allowed. However this only equated to 1.17% of the number of non-major applications

determined within that period and the council is therefore still exceeding its appeal decision targets.

- 2.10 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.
- 2.11 The lack of appeals against decisions indicates current decision making is sound.
- 2.12 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> 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> Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/></p> <p><b>NEDDC:</b> Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/></p> <p><input checked="" type="checkbox"/> Please indicate which threshold applies</p>	No
<p><b>Is the decision subject to Call-In?</b> (Only Key Decisions are subject to Call-In)</p>	No

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

DOCUMENT INFORMATION	
Appendix No	Title
1.	Planning Appeal Decision - APP/R1010/D/22/3310301: 12 Park Street, Barlborough, Chesterfield S43 4ES
2.	Planning Appeal Decision - APP/R1010/W/22/3303169: 183 Shuttlewood Road, Bolsover, S44 6NX

### **Appendix 1: Planning Appeal Decision - APP/R1010/D/22/3310301: 12 Park Street, Barlborough, Chesterfield S43 4ES**

The planning application was for the retention of the widening the existing driveway opening from 2m to 4m, increasing the wall height using existing materials and fit new electric double gates and a pedestrian gate. The application was refused.

#### Main Issues

The main issue was the effect of the development upon designated heritage assets, and more specifically whether it preserved or enhanced the character or appearance of the Barlborough Conservation Area (BCA) and its effects on the setting of several heritage assets located in the wider area.

#### Conclusion

The Inspector concluded that in this instance, the development preserved the character and appearance of the BCA, all the relevant listed buildings referred to and their settings and the special historic landscape character and interest of the registered park and garden including its setting. The significance of the BCA, the listed buildings and the registered park and garden had not been harmed.

The Inspector considered that the scheme adheres to the expectations of sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and did not conflict with Policies SC16, SC17 and SC20 of the Local Plan for Bolsover District or the designated heritage asset protection policies in the National Planning Policy Framework.

The Inspector concluded that the scheme had enhanced the quality of life for the occupiers of the property as it had created a more secure front boundary, offered greater privacy to the dwelling and garden and improved the vehicular access. The Inspector considered these were material considerations that weighed in favour of granting planning permission, as was the absence of objections from any residents or organisations.

The appeal was allowed.

#### Recommendations

None.

The decision was a judgement about the impact of a proposal on the character of the conservation area and the setting of Listed Buildings 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 to be made.

### **Appendix 2: Planning Appeal Decision - APP/R1010/W/22/3303169: 183 Shuttlewood Road, Bolsover, S44 6NX**

The application was for the demolition of the existing dwelling and construction of a larger replacement dwelling in the countryside. The application was to vary the approved plans condition on the original planning application to allow a different position for the replacement dwelling. The application to vary the plans 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**

The reason provided for attaching the condition referred to Policy SS9 of the Local Plan for Bolsover District [2020] ('BLP'). This policy seeks to restrict development in countryside areas and reflects the approach of the National Planning Policy Framework ('the Framework') in this respect. In applying BLP Policy SS9, the Council considered whether the proposed dwelling would be materially larger than the existing buildings on the site. However, this test goes beyond that set out within the policy and instead relates to development in the Green Belt. BLP Policy SS9 itself states that where development is considered to be acceptable with regards to the appropriateness of its location, that it should respect the form, scale and character of the landscape.

The Inspector considered that whilst the relative scale of the proposed dwelling when considered against existing structures was a matter that can assist in considering the effect that the proposed development would have upon the countryside, it was not the sole consideration. The Inspector considered that the proposed development would not have a high degree of prominence in the landscape and that this would not be changed by the extension of the dwelling within the terms of the GPDO. Additionally, the Inspector considered that any increase in the scale of the development as a result of the exercising of permitted development rights would not appear at odds with the characteristic form and scale of development in the locality.

The Inspector considered that Paragraph 54 of the Framework states that unless there is clear justification for doing so, that permitted development rights should not be restricted by the use of planning conditions. Planning Practice Guidance ('the PPG') states that restricting the future use of permitted development rights may not be reasonable or necessary.

As BLP Policy SS9 makes no reference to a requirement for new development in the countryside to not be materially larger than structures that may be replaced, the Inspector concluded that the removal of permitted development rights for extensions to the proposed dwelling on this basis was not justified. Therefore, the condition was both unreasonable and unnecessary, and accordingly fails the tests as set out in the Framework and advice within 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.