

**Bolsover District Council**

**Meeting of the Planning Committee on 13<sup>th</sup> March 2024**

**Appeal Decisions: July 2023 - December 2023**

<b>Classification</b>	This report is Public
<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 During the ninth 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 We have now entered the tenth monitoring period (July – December 2023) During this period the council had no appeals on major planning applications and three appeal decisions on non-major applications. Two of these appeals was dismissed and one was allowed. The appeal which was allowed was refused by Planning Committee, contrary to the officer recommendation. However, this only equated to 0.57% of the number of non-major applications determined within that period.
- 2.11 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.

### **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:

<b>DOCUMENT INFORMATION</b>	
<b>Appendix No</b>	<b>Title</b>
1.	APP/R1010/W/22/331175: Clayton Farm, Green Lane, Stony Houghton, NG19 8TR
2.	APP/R1010/W/23/3317479: St Bernadettes Catholic Church, 59 High Street, Bolsover, Derbyshire S44 6HF
3.	APP/R1010/W/23/3320946: Willow Tree Family Farm, Langwith Road, Shirebrook, Mansfield, Nottinghamshire NG20 8TF

### **Appendix 1: APP/R1010/W/22/331175: Clayton Farm, Green Lane, Stony Houghton, NG19 8TR**

The planning application was for a gravel drive to serve a touring caravan park, the creation of 5 caravan hard standings, toilet block for 10 tent pitches and dog run area. The application was refused.

#### Main Issues

The main issues were:

- Whether the site would be a suitable location taking account of relevant local and national policies; including having particular regard to its effect on the character and appearance of the area, the proximity of the site to the services and facilities visitors would require access to in order meet day-to-day needs, and the opportunities that would be available for transport options other than the private motor vehicle,
- The effect on the living conditions of occupiers of existing dwellings within proximity of the site, and
- The effect of the proposed development on wildlife and biodiversity.

#### Conclusion

The Inspector concluded that the proposal would significantly harm the rural character and appearance of the area, would have an unacceptable, detrimental effect on the living conditions of existing residents, and it had not been demonstrated that protected species would be conserved/protected and/or there would be a net gain in biodiversity. On this basis the Inspector considered that the proposal did not accord with policies SS9, WC3, WC10, S11, SC3, and SC9 of the Local Plan for Bolsover District. The Inspector considered the fact that some permitted development rights existing for touring caravans and tents and considered the policies in the National Planning Policy Framework (NPPF) but felt that they did not outweigh the harm he had identified. The Inspector therefore found no reason to determine the application other than in accordance with the development plan.

The appeal was dismissed.

#### Recommendations

None

The decision was made in accordance with Local plan policies. The Inspector agreed with the interpretation of these policies and that the Local Plan policies relating to development in the countryside and residential amenity are in line with the NPPF.

**Appendix 2: APP/R1010/W/23/3317479: St Bernadettes Catholic Church, 59 High Street, Bolsover, Derbyshire S44 6HF**

The application was for the conversion of St Bernadettes Church into a private dwelling, including alterations to the building. The application was refused.

**Main Issues**

The main issue for consideration was the effect of the proposed development on the character and appearance of the surrounding area, including the Bolsover Conservation Area ('the CA') and the setting of Non-Designated Heritage Assets ('NDHAs').

**Conclusion**

The Inspector considered the conversion included substantial alterations to the existing building. These alterations proposed would involve the loss of the asymmetrical roof, the row of high-level windows within the side elevation, and the irregularly arranged windows within the front elevation which were features that gave the building its characteristic design. The alterations included a garage door, Juliet balcony with floor-to-ceiling windows, anthracite coloured fenestration, modern exterior doors, and full height glazing within the front elevation would be incongruous and the Inspector considered that, except for the garage door, the alterations would not reflect the local context.

The Inspector went on to say that existing building was set behind a stone wall and therefore unlike the adjacent buildings, did not abut the back edge of the pavement. However, the building was close to the pavement and, together with the stone wall, they added to the sense of enclosure along this part of the road. The Inspector considered that the proposed demolition of the front façade, part of the side elevation and the porch would erode the sense of enclosure by setting the building significantly back from the pavement and the proposed hard surfacing to the front and side of the building, proposed to be used for parking and turning would detract from the strong enclosure along this part of the road.

The Inspector also considered the proposed materials to be used in the conversion could result in a pastiche design that could harm the significance of the Conservation area. The Inspector accepted that a condition requiring submission of materials for approval could be imposed but agreed with the council that the materials should be considered prior to determination to ensure they would be acceptable.

For the above reasons, The Inspector concluded that the proposal would detract from the character and appearance of the surrounding area, contrary to the requirements of Policy SC3 of the Local Plan for Bolsover District which, amongst other things, seeks to ensure that developments respond positively to their context and contribute to local identity and heritage. The Inspector also concluded it would be contrary to the Successful Places supplementary planning document and paragraph 126 of the Framework that seeks to create high quality, beautiful and sustainable buildings and places.

The Inspector considered that the proposal would significantly change the contribution the appeal site provided to the significance of the Conservation area and the setting of the non-designated heritage assets and would result in harm to these heritage assets. The harm would be less than substantial harm to the character and appearance of the Conservation area and therefore in accordance with paragraph 202 of the Framework, it was necessary to weigh the harm against the public benefits of the proposal including, where appropriate, securing its optimum viable use. In doing so, paragraph 199 of the Framework explains that great weight should be given to the conservation of the designated heritage assets. Furthermore, in weighing developments that indirectly affect Non designated heritage assets, paragraph 203 of the Framework requires a balanced judgement having regard to the scale of any harm or loss and the significance of the heritage asset.

The Inspector considered the provision of one dwelling would make a contribution, albeit small, to the Government's objective of boosting the supply of new homes, there would be some short-term employment through the construction phase of the development and some modest public benefits would result from the additional support to the local community and its services from future occupiers of the dwelling. The Inspector also considered there would be some public benefits associated with bringing the building back into use but concluded that the alterations proposed were not necessary to secure the future use of the building.

The Inspector concluded that the harm the proposal would cause to the significance of the Conservation area and the significance of the setting of the non-designated heritage assets would not be outweighed by the modest public benefits provided by the proposal. On this basis the Inspector found that the development would conflict with Policies SC16 and SC21 of the Local Plan and the requirements of the Framework in terms of conserving heritage assets in a manner appropriate to their significance.

The appeal was dismissed.

#### Recommendation

None

The decision was made in accordance with Local plan policies. The Inspector agreed with the interpretation of these policies and that the existing policies relating to development in the Conservation area and adjacent to non-designated heritage assets are in line with the NPPF.

#### **Appendix 3: Appeal Ref: APP/R1010/W/23/3320946: Willow Tree Family Farm, Langwith Road, Shirebrook, Mansfield, Nottinghamshire NG20 8TF**

The application was for the erection of 2 marquees and toilets, re-surfacing of existing access lane in association with mixed use of the site and an extension of the family farm for the keeping of animals.

The application was reported to Planning Committee with the following recommendation:

The current application be referred to the Secretary of State via the National Planning Casework Unit with a recommendation that the application be APPROVED subject to the following conditions:

1. The use of the former playing pitch as an extension to the town farm and the use of the marquees for functions which do not directly form part of the use of the site as a town farm must be discontinued and the land restored to its former condition on or before 21<sup>st</sup> December 2024 in accordance with a scheme of work submitted at least two months before the expiry of the permission and approved in writing by the Local Planning Authority.
2. The use of the former playing pitch must be for the keeping of animals and occasional parking of vehicles in connection with the use of the site and there must be no permanent structures, buildings or fences erected on the site without the prior grant of planning permission.
3. Within 28 days of the date of this decision the noise management plan set out on page 19 of the Noise Impact Assessment (Nova Acoustics 20.10.2022) submitted to the Local Planning Authority on 20<sup>th</sup> October 2022 must be implemented on site in full and must remain in place for the length of this permission unless otherwise agreed in writing by the Local Planning Authority.

Planning Committee disagreed with the officer recommendation and refused the application for the following reasons:

1. The proposal does not accord with any of the exceptions to Sport England's playing fields policy or with Paragraph 99 of the National Planning Policy Framework or Policy ITCR7 (Playing Pitches) in the Local Plan for Bolsover District (2020). As a result the proposal will lead to the loss of an allocated playing field known as Shirebrook Recreation Ground, contrary to the provisions of the development plan.
2. The noise report submitted with the application recognises there could be issues if the event plays music at the levels found typically with this sort of venue, and it proposes very low internal maximum noise limits, which are unlikely to make the venue viable for the proposed use. There is also no consideration of the noise levels from guests singing and shouting at the venue, only raised voices has been assessed. This is a significant source of noise at entertainment venues, and it is one that is not possible to reasonably mitigate given the nature of the venue. It is not considered possible to use reasonable and enforceable planning conditions that would safeguard neighbouring amenity and the proposal is therefore contrary to the requirements of Policy SC11 of the Local Plan for Bolsover District.

### Main Issues

The main issues for consideration were:

- whether the location of the development complies with the development plan, with particular regard to the provision of playing fields; and,
- the effect of noise and disturbance from the development on the living conditions of nearby residents.

### Conclusion

The Inspector considered that the proposed marquees, toilets and access track were located within the development envelope for the settlement and supported the local economy by providing accessible employment opportunities suitable for local people.



The inspector concluded that these elements of the proposal were therefore in accordance with the Local Plan and were acceptable in principle.

The playing pitches are located outside the development envelope, within the countryside where development is strictly controlled. However, development that is necessary for the efficient or viable operation of agriculture and agricultural diversification, such as the keeping of animals and occasional parking, is supported in the countryside by policy SS9 of the Local Plan. As the use of the playing pitches for the keeping of animals and parking associated with the farm park and marquees helps to support the farm, the Inspector considered that development also complied with this policy.

The Inspector acknowledged that playing pitches within the district are protected from development by policy ITCR7 of the Local Plan. This protection extends to disused playing pitches such as those on site, which have not been used for sports since at least August 2017. The National Planning Policy Framework also advises that existing sports land, including playing fields, should not be built on unless they have been shown to be surplus to requirements, or the land would be replaced by equivalent or better provision.

The Inspector also acknowledged that Sport England opposed the application because the locality had a high demand for football pitches and the Bolsover Playing Pitch Strategy Assessment Report (2017) found no surplus of playing field provision. With no replacement of the playing pitches proposed, the development was not supported by Sport England's Playing Field Policy.

However, the Inspector considered that in this case, the application was for a temporary permission for use of the playing pitches, and it would not involve the erection of any permanent structures. As a result, the land would still be available to return to playing pitches if the ongoing review of the Local Plan and associated playing field strategy, action plan and assessment identify that the land needed to continue to be reserved for sports use in the future.

The Inspector concluded that whilst the development did not comply with policy ITCR7 of the Local Plan, in that it resulted in the loss of playing fields, the loss would be temporary and there was currently no demand for the pitches to be brought back into use. Therefore, the harm that would be caused to playing field provision should the appeal be allowed was limited.

The Inspector acknowledged that the appellant holds a licence from the Council which allows the marquees and outdoor area to be used for events such as weddings and the sale of alcohol in relation to such events, between 10am and 11pm on any day of the week, with the venue closing no later than midnight. As the nearest houses are approximately 60m to the west and 125m to the south, the potential for noise from the events to cause disturbance exists.

The Inspector considered that as the venue has been operating for some time it was possible to assess the noise it creates, and a noise impact assessment had identified a need for a suitable noise management plan to avoid justified complaints. Given that, during the 2 year period the venue has been in use, approximately 150 events have taken place and only 2 complaints have occurred, the Inspector concluded that the implementation of an appropriate noise management plan should protect residents from

noise and disturbance, and this could be secured by a condition. If the management plan was not adhered to, and noise disturbed neighbours, the Inspector felt the council could remedy this through its planning enforcement, noise nuisance and licensing powers.

The Inspector concluded that noise from the development would not have a material adverse effect on the living conditions of nearby residents. As a result, the development complied with policy SC11 of the Local Plan which seeks to prevent harm in this regard.

Access to and from Willow Tree Family Farm and the appeal site is via the grounds of the former education centre. The owner of the education centre stated that the farm has no right to use parking facilities within the site of the former centre and that the proposed parking facilities are inadequate. The Inspector considered that access and use of parking on land that is owned by another party was a matter of civil law and was not relevant to the consideration of the planning merits of the appeal.

The Inspector considered that the parking facilities that had been provided, the parking available on the playing fields, in conjunction with the agreement with a neighbouring sports social club to provide additional spaces, was sufficient to provide adequate off road parking.

The conclusion reached by the Inspector was that the change of use of the playing fields was contrary to policy ITCR7 of the Local Plan. However, the harm caused would be limited as the temporary permission meant that the fields would be retained and returned to playing pitches should they be required to be in the future. Furthermore, the appeal scheme supported the development of Willow Tree Family Farm which is a valued local charity. This benefit was considered significant and in conjunction with the temporary nature of the permission was sufficient to outweigh the conflict that exists with the Local Plan. The Inspector concluded that material considerations indicated that the scheme should be determined other than in accordance with the development plan.

The appeal was allowed subject to the following conditions which were set out in the committee report:

1. The use of the former playing pitch as an extension to the town farm and the use of the marquees for functions which do not directly form part of the use of the site as a town farm must be discontinued and the land restored to its former condition on or before 21<sup>st</sup> December 2024 in accordance with a scheme of work submitted at least two months before the expiry of the permission and approved in writing by the Local Planning Authority.
2. The use of the former playing pitch must be for the keeping of animals and occasional parking of vehicles in connection with the use of the site and there must be no permanent structures, buildings or fences erected on the site without the prior grant of planning permission.
3. Within 28 days of the date of this decision the noise management plan set out on page 19 of the Noise Impact Assessment (Nova Acoustics 20.10.2022) submitted to the Local Planning Authority on 20<sup>th</sup> October 2022 must be implemented on site in full and must remain in place for the length of this permission unless otherwise agreed in writing by the Local Planning Authority.

### Recommendation

Committee members should ensure that if they determine an application contrary to an officer recommendation, that decision should be restricted to planning considerations and should be made in accordance with the Policies in the local plan unless the report advises of material planning considerations which indicate otherwise.