

**BOLSOVER DISTRICT COUNCIL**

**Meeting of the Planning Committee on 22<sup>nd</sup> January 2025**

**Report: Appeal Decisions: July 2024 – December 2024**

**Report of the Development Management and Land Charges Planning Manager**  
**(Prepared by Karen Wake)**

<b>Classification</b>	This report is Public
<b>Contact Officer</b>	Karen Wake/Chris Whitmore

**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 In November 2016 (updated October 2022) 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 6-month monitoring period July-Dec 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. During the Jan-June 2023 monitoring period 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. During the July-Dec 2023 monitoring period the council had no appeals on major planning applications and three appeal decisions on non-major applications. Two of these appeals were dismissed and one was allowed. However, this only equated to 0.57% of the number of non-major applications determined within that period. During the Jan-June 2024 monitoring period the council had no appeals on major planning applications and three appeal decisions on non-major planning applications. All three of these appeals were dismissed. The council therefore won 100% of the appeals determined within that period.

- 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. Details of Proposal or Information**

- 2.1 The latest monitoring period was July-December 2024. During this period the council had no appeals on major planning applications and five appeal decisions on non-major planning applications. Two of these appeals were dismissed and three were allowed. However, this only equated to 1.66% of the number of non-major applications determined within that period.
- 2.2 The council had one appeal decision made under made under Section 106B of the Town and Country Planning Act 1990 (as amended) against refusal to modify a planning obligation. The performance of Local Authorities in relation to the outcome of such appeals is not being measured in the same way as planning appeals. However, it is considered useful to report such appeal decisions within the same time period to address any issues or lessons learnt from these decisions.
- 2.3 The lack of appeals against planning decisions indicates current decision making is sound.
- 2.4 When/if appeals are lost the reporting of decisions provides an opportunity to learn from these decisions.

## **3. Reasons for Recommendation**

- 3.1 The lack of appeals against planning decisions indicates current decision making is sound.
- 3.2 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 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. This report be noted.
2. Recommend appeal decisions continue to be reported to Committee members every 6 months.

**IMPLICATIONS:**

<b><u>Finance and Risk</u></b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
<b>Details:</b> 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		
<b><u>Legal (including Data Protection)</u></b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
<b>Details:</b> 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.		
<b><u>Staffing</u></b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
<b>Details:</b> 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.		
<b><u>Equality and Diversity, and Consultation</u></b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
<b>Details:</b> Consultations are carried out with each application and appeal. Consultations on this report of appeal decisions is not necessary.  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.

**Environment**      Yes       No

Please identify (if applicable) how this proposal/report will help the Authority meet its carbon neutral target or enhance the environment.

Sound planning decision making helps to ensure the environmental impact of development is given due consideration to ensure that it is not offset/outweighed by other benefits

**DECISION INFORMATION:**

**Please indicate which threshold applies:**

**Is the decision a Key Decision?**

A Key Decision is an Executive decision which has a significant impact on two or more wards in the District or which results in income or expenditure to the Council above the following thresholds:

Yes       No

**Revenue (a)** Results in the Council making Revenue Savings of £75,000 or more or **(b)** Results in the Council incurring Revenue Expenditure of £75,000 or more.

(a)       (b)

**Capital (a)** Results in the Council making Capital Income of £150,000 or more or **(b)** Results in the Council incurring Capital Expenditure of £150,000 or more.

(a)       (b)

**District Wards Significantly Affected:**

*(to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the District)*

Please state below which wards are affected or tick **All** if all wards are affected:

All

<b>Is the decision subject to Call-In?</b> <i>(Only Key Decisions are subject to Call-In)</i>	<b>Yes</b> <input type="checkbox"/> <b>No</b> <input checked="" type="checkbox"/>
If No, is the call-in period to be waived in respect of the decision(s) proposed within this report? <i>(decisions may only be classified as exempt from call-in with the agreement of the Monitoring Officer)</i>	<b>Yes</b> <input type="checkbox"/> <b>No</b> <input type="checkbox"/>
<b>Consultation carried out:</b> <i>(this is any consultation carried out prior to the report being presented for approval)</i>	<b>Yes</b> <input type="checkbox"/> <b>No</b> <input checked="" type="checkbox"/>
<b>Leader</b> <input type="checkbox"/> <b>Deputy Leader</b> <input type="checkbox"/> <b>Executive</b> <input type="checkbox"/> <b>SLT</b> <input type="checkbox"/> <b>Relevant Service Manager</b> <input type="checkbox"/> <b>Members</b> <input type="checkbox"/> <b>Public</b> <input type="checkbox"/> <b>Other</b> <input type="checkbox"/>	

<b>Links to Council Ambition: Customers, Economy, Environment, Housing</b>

**DOCUMENT INFORMATION:**

<b>Appendix No 1</b>	<b><u>Planning Appeal Decisions Period July 2024 – December 2024</u></b>
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**Appeal Ref: APP/R1010/W/24/3347712 Scrap Yard, Alexander Terrace, Pinxton, Derbyshire NG16 6PN**

The planning application was for a change of use of site from Scrap Car/Metal to Self-Storage Containers for a temporary 5 year period. The application was refused.

**Main Issues**

The main issue in this case was whether the site is a suitable location for the development having regard to flood risk.

**Conclusion**

The site is located within Flood Zones 3a and 3b, which would be at a risk of fluvial flooding from the river Erewash to the south of the site. Paragraph 174 of the National Planning Policy Framework (The Framework) sets out that applications for changes of use should not be subject to the sequential or exception tests which seek to direct development towards zones with a lower risk of flooding. The Inspector considered that whilst the application involved the replacement of existing hardcore and site access modifications, the extent of these works was limited and thus as an application for a change of use, the requirement to satisfy the sequential and exception tests did not apply.

The Inspector considered that flood risk and design should not be considered or calculated any differently in cases for temporary uses and buildings. The containers would be on land within Flood Zone 3a and the access would be located within the functional flood plain. Given this there would be a risk of the containers and the site access being affected by flooding during the lifetime of the development.

The Inspector also considered that the effect of the containers on flood storage capacity had not been modelled and no floodplain compensation was proposed and despite the containers being stored on a permeable surface, the storage of large objects within Flood Zone 3 was likely to alter flood water flows which could displace flood water elsewhere.

The Inspector considered there was a risk of customers seeking to retrieve belongings at risk of flooding on receipt of flood warnings which could increase the numbers of visitors to the site during a flood event. The escape route from the site during a flood event would involve land within the functional flood plain and the site access could be submerged before a flood alert was issued potentially resulting in visitors being locked in the site during a flood event.

The Inspector concluded that the site would not be in a suitable location for the proposed development having regard to flood risk. It would be in conflict with Policies SS1, SS9 and SC7 of the Bolsover District Local Plan (2020) which state that that development proposals will be required to consider the effect on flood risk and should ensure that new development is not affected by and does not increase flood risk elsewhere and that development in the functional floodplain will not be permitted unless it is water compatible or essential infrastructure.

The Inspector also concluded the proposal would conflict with Section 14 of the Framework which sets out that development should only be allowed in areas at risk of flooding where it can be demonstrated that, amongst other matters the development is appropriately flood resistant and resilient such that, in the event of a flood, any residual risk can be safely managed and safe access and escape routes are included where appropriate as part of an agreed emergency 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 flood risk are in line with the National Planning Policy Framework.

#### **Appeal Ref: APP/R1010/W/24/3347838: Land adjacent 1 Park Street, Barlborough, S43 4ES.**

The application was for the construction of a detached single storey dwelling (mezzanine floor over vaulted living accommodation.) The application was refused.

#### Main Issues

The main issues were the effect of the development on, firstly, the setting of nearby heritage assets and, secondly, the living conditions of future residents.

### Conclusion

The Inspector considered the four potentially affected by the proposal to be South Lodge (Grade II), Barlborough Hall (Grade I) the Registered Park and Garden (RPG) (Grade II) and the Barlborough Conservation Area (BCA). The Inspector acknowledged the duty under sections 66 and 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires special regard to be paid to the desirability of preserving or enhancing listed buildings and conservation areas, their setting or any features of special architectural or historic interest which they possess.

The Inspector considered that although historically the site would have associated with South Lodge and Barlborough Hall, as it stands today, it is physically divorced from South Lodge by a private drive such that it is not immediately obvious that it is within the curtilage of South Lodge or the RPG. The Inspector agreed however that the site forms part of South Lodge's setting. He did not agree that it formed part of the setting to Barlborough Hall or the RPG and considered the site now clearly reads as part of Barlborough village and more specifically Park Street which has a varied character and appearance.

The Inspector considered that the once open setting of South Lodge had been eroded by the introduction of residential development to the west, east and south, some of which was of questionable architectural quality. In particular, the Inspector considered the introduction of the private drive and associated housing and the red-brick extension to South Lodge itself had caused considerable harm to the significance of the asset. For these reasons the Inspector considered the site made very limited contribution to the significance of South Lodge or the character and appearance of the conservation area.

The Inspector considered that there a wide range of architectural styles and building forms in the immediate area such that the design of the proposed dwelling would not harm the character and appearance of the area.

The Inspector concluded that the development would preserve the setting of South Lodge, Barlborough Hall, the conservation area and the Registered Park and Garden and therefore did not conflict with policies SS1, SC2, SC3, SC16, SC17 and SC20 of the Local Plan for Bolsover District 2020 or the statutory duties under the 1990 Act.

The Inspector considered that whilst the proposed garden exceeds the 50m<sup>2</sup> benchmark in the Council's SPD, the garden would not be private as a result of the low wall and railings proposed along the boundary. The Inspector acknowledged that this may lead to future pressure for more urban forms of fencing but considered this could be addressed by the removal of permitted development rights meaning that the Council would retain ultimate control over the boundary treatments in the future.

The Inspector also considered that many people do not have access to any meaningful garden or outdoor amenity space and they would be happy to have a garden of the kind proposed here despite it being sub-optimal from a privacy point of view. Any prospective purchaser would be aware of the garden's lack of privacy and restrictions on replacement fences and walls. If privacy was important to a prospective purchaser, it would not unreasonable to assume they would look elsewhere. In addition, some privacy could be achieved through a suitable landscaping scheme which could also be

secured by a planning condition. The Inspector concluded that future residents of the development would not be subject to unacceptable levels of overlooking and accordingly, there would be no conflict with policy SC3 of the Local Plan or paragraph 135 of the National Planning Policy Framework which collectively require a good standard of amenity for future occupants of new development.

The appeal was allowed subject to 10 conditions relating to materials of construction, landscaping, ecological enhancements, removal of permitted development rights, widening of the access, parking and garage to be provided and retained for parking, submission of an archaeological written scheme of investigation, submission of details of windows and doors.

#### Recommendation

None

The decision was made in accordance with Local plan policies. The Inspector took a different view on the interpretation of these policies. The existing policies relating to Historic Assets are in line with the National Planning Policy Framework.

#### **Appeal Ref: APP/R1010/W/24/3338263: Twinyards Farm, Huthwaite Lane, Old Blackwell, Derbyshire DE55 5HX**

The application was a temporary change of use of land from agricultural to commercial storage. The application was refused.

#### Main Issues

The main issues for consideration were the effect of the development on the character and appearance of the area.

#### Conclusion

The Inspector acknowledged that the site was in an area allocated as countryside and as such Policy SS9 of the Local Plan applied. He described the site as a fenced-off area of land covered by gravel. The wider site had several large modern steel framed barns in a mix of commercial and agricultural uses and there were vehicles and other paraphernalia associated with those uses located across the site. Around this large group of buildings was arable farmland.

The Inspector considered Policy SS9 to support development that includes the diversification of an existing farm unit and that what should be included as part of the diversification of an existing farm unit is not defined in the Local Plan. The proposed use was considered similar to uses already approved on the site and the Inspector therefore considered the proposal represented further diversification of an existing farm unit which would be acceptable under the policy provided the proposal respected the form, scale, and character of the landscape, through careful location, design, and use of materials.

The Inspector also considered policy WC3 of the LP which permits employment generating developments of a scale appropriate to a small settlement and / or rural surroundings where the business has no significant negative implications for the area and will help to support a sustainable rural economy and contribute to rural environmental and social regeneration. The Inspector considered the proposal to meet the criteria of this policy.



The reason for refusal was the impact on the character and appearance of the rural area. The Inspector considered that land around the site rural and agricultural in character and whilst the utilitarian style of the barns was not uncommon in rural areas, given the scale, design, and density of the barns they had a modern commercial appearance. The commercial operations that were undertaken across the wider site and the associated paraphernalia contribute towards the commercial character of the wider site, even when seen from a distance. In addition, there close to the site. are two industrial estates and, the siting of groups of large commercial buildings and the associated paraphernalia within this wider setting was therefore not uncommon.

The Inspector acknowledged that the wider site is located on a higher ground level than the surrounding area and two Public Rights of way pass close to the site and as such, what is proposed to be sited on the land, including the storage of large trailers, these would be visible for a considerable distance. However, the Inspector considered similarly sized trailers and other equipment could be stored on the site and the view of similarly sized equipment would not be uncommon. Whilst the design of agricultural equipment varied from commercial equipment, given the distances between the site and Huthwaite Lane and the PRowS the subtle differences would not necessarily be appreciated. This equipment would also be seen in the context of the other commercial equipment that is stored around the wider site and it would only be stored there for a temporary period. As such, the Inspector considered the proposed storage of commercial equipment on the appeal site would sit comfortably alongside the commercial appearance of the wider site.

Whilst the proposal would increase the amount of commercial equipment on the site, the development would be for a temporary period and also included landscaping. This landscaping would soften the appearance of the appeal site as well as the wider site when viewed from the PRowS and from Huthwaite Lane and siting of the landscaping scheme would ensure its commercial character would be restricted to the wider site and this would preserve the rural character of the land around the site.

The Inspector considered this would make a positive contribution to the character and appearance of the wider site such that the proposal would not have significant negative implications for the rural environment and would respect the form, scale, and character of the landscape.

The Inspector concluded that the effect of the proposal upon the character and appearance of the area would not be harmful over the temporary period proposed and consequently, the development would comply with Policies SS9 and WC3 of the Local Plan. It would also accord with the National Planning Policy Framework, insofar as it expects development to be sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.

The appeal was allowed subject to a condition that the use was for an 18 month period only after which the land must be restored, development must be in accordance with the approved plans and parking and turning to be provided on site in accordance with the approved plans.

#### Recommendation

Consideration should be given to the wording of Policy SS9 when the Local Plan is reviewed to consider giving further definition to what is appropriate for farm diversification in the countryside.

The decision was made in accordance with Local plan policies. The Inspector took a different view on the interpretation of these policies. The existing policies relating to development in the countryside are generally in line with the National Planning Policy Framework.

**Appeal Ref: APP/R1010/W/24/3337881 Westwood House, Church Lane, Tibshelf, Alfreton DE55 5NW**

The application was for the installation of a raised platform for horsebox parking, a gravel/hardstanding area and timber post and rail fencing. The application was refused.

**Main Issues**

The main issue for consideration was whether the proposal would be appropriate development in the countryside, having regard to

- i) relevant development plan policies, and
- ii) the effect on the character and appearance of the area.

**Conclusion**

The Inspector considered the main policy which applied in this case was Policy SS9 of the Bolsover Local Plan which permits development in the countryside where it falls within certain categories. The Inspector concluded that the proposal did not comply with any of the categories of Policy SS9.

The Inspector also considered Policy SC3 applied which seeks high quality design in terms of placemaking, buildings and landscaping, which amongst other things accord with and respond to the established character and local distinctiveness of the surrounding landscape.

The Inspector considered the site a collection of buildings, yards and paddocks standing by itself amid open countryside and views of the platform itself were screened by other buildings on the wider site. The Inspector acknowledged that walkers using the adjacent footpath would see the platform and the vehicle parked on it but as the platform would be viewed in the context of the wider complex of stables, barn, open yards and the dwelling itself it would not appear as an isolated or exposed structure in these specific views.

Elsewhere, views from the north would be at significant distances and the platform would again be seen against the backdrop of the other buildings on the appeal site and not as a detached or conspicuous structure in the open countryside.

The Inspector noted and agreed with the council's acceptance that equestrian uses are inherently appropriate to the countryside and considered that the parking platform was functional and not uncommon in rural areas, particularly farmyards and equestrian yards which are appropriate in a countryside location. In addition, the Inspector accepted that horse transporters are a feature of equestrian facilities.

The Inspector considered that, for the above reasons, the development preserved the wider character and appearance of the countryside, and so accorded with the requirements of Policy SC3 of the Local Plan.

The Inspector concluded that, whilst the proposal did not fully accord with the criteria of Policy SS9 relating to supported forms of development in the countryside, the harm in

this case was tempered as the development in related to an established equestrian use, an activity which the Council accepts is suitable in a countryside setting. The Inspector also recognised that, were the appeal to relate to a commercial equestrian use, it could have supported under Policy SS9, whereas development related to a private use does not, even if they are otherwise identical in form and location. The Inspector concluded that the conflict with SS9 was a technical one based on the particular private nature of the equestrian use to which it related, rather than development being inappropriate in principle in the countryside. Moreover, the overarching requirement of Policy SS9 was that development respects the form, scale and character of the landscape, through careful location, design and use of materials. The Inspector concluded that the proposal complied with the policy in these respects, as it would Policy SC3. Overall, these material considerations, taken together, weighed sufficiently in favour of the proposal to outweigh the limited conflict with Policy SS9 and justify a decision other than in accordance with the development plan.

The appeal was allowed and planning permission was granted subject to conditions requiring the development to be in accordance with the approved plans, parking of the horse box to be for private purposes only and the vehicle parked not be used as sleeping accommodation.

#### Recommendation

Consideration should be given to the wording of Policy SS9 when the Local Plan is reviewed to consider amending/re-defining the categories of development that may be appropriate in the countryside.

#### **Appeal Ref: APP/R1010/W/24/3348478: 16 The Chine, Broadmeadows, South Normanton, Alfreton, DE55 3AN**

The application was for the change of use of a dwellinghouse (C3 Use) to a children's care home for up to three children (C2 Use). Minor facilitating works comprised widening of the driveway and vehicle access. The application was reported to planning committee with a recommendation to approve the application subject to conditions. Committee members resolved to refuse the application.

#### Main Issues

The main issues for consideration were whether the use would be unacceptably reliant on the private motor vehicle for travel to and from the site and access to key services and facilities and the effects of vehicle movements and parking on the residential amenity of the area.

#### Conclusion

The Inspector acknowledged that property was located within the development envelope for South Normanton, where development proposals would be acceptable in principle. The Inspector also acknowledged that main centre of the settlement is approximately one mile away and Frederick Gent School was a little closer with the nearest bus stop and corner shop 0.6 miles away.

The Inspector considered that the appeal site and Broadmeadows in general, would be likely to be heavily dependent on car based journeys for shopping and access to other facilities. The Inspector also acknowledged that the existing house could accommodate a large socially active, multi-generation family with several vehicles and different patterns of daily movements for employment and recreation.

The Inspector considered the number of claimed vehicular movements to and from the site claimed by the appellant appeared to be grossly underestimated and the reality of minimising car journeys was not sufficiently proven.

Policy SS1 Sustainable Development, indicates that development proposals should *'locate development in close proximity to trip generators with the aim of reducing the need to travel by non-sustainable modes of transport'*. The Inspector considered that, notwithstanding the location of the appeal site on the outer edge of an established residential area, and its relationship with key facilities, it could not be said that it was *'within a highly sustainable location'* as claimed by the Appellant. This would mean the proposal would be unacceptably reliant on the private motor vehicle for travel to and from the site and access to key services and facilities contrary to the requirements of policy SS1 (c.)

The Inspector considered the site to be on a main road in a large plot and as such vehicular movements to and from the proposed use were unlikely to be unduly intrusive to nearby residents.

The Inspector felt it had been demonstrated that, with minor works, the front forecourt could accommodate four vehicles with space for each to turn. In the event of short stay or drop off road parking, there was a wide main road frontage and a return into The Pemberton.

However, the Inspector concluded that given that the locality was wholly residential, the introduction of a use which relied on staff arriving for, and departing from, work over a wide range of hours would be perceived as being materially different in character and function. Whilst this was likely to have a minimal effect on the residential amenity of the area in general, it would be in conflict with Policy SC1 a) which requires proposals to be appropriate in scale, design and location to the character and function of the area. Policy SC1 d) also sets out that development proposals should accord with other Policies of the Plan.

The Inspector considered there to be two further development plan policies of particular relevance to the application. Policy SS1 f) indicates that development proposals should *'promote the social and economic wellbeing of Bolsover District's communities, contribute to reducing social disadvantages and inequalities and create a positive image of the District'*. Policy LC3, states *'The Council will also support the provision of specialist housing ..... in appropriate locations and where there is an identified need and where proposals accord with other Policies of the Plan'*.

The Inspector noted that Derbyshire County Council's Children's Services, in its consultation reply, reports *'..... we have fewer children's homes across our footprint than other authorities. We do have children placed at a distance and therefore any new provision from private organisations could be useful to increase supply in a more local area'*. Ofsted also identified the national challenge in providing places for children close to their families: *'Children need provision of the right care, in the right place, at the right time .....*'.

The Inspector therefore considered the proposal reflected both of these policies and was in line with the Ministerial Statement<sup>2</sup> in the terms that *'the planning system should not be a barrier to providing homes for the most vulnerable children in society .....* *These need to be the right homes, in the right places with access to good schools and community support .....*'.

Overall, the Inspector considered that in this case there was a tension between the respective development plan policies. Nonetheless, Policy LC3 is qualified by the words *'in appropriate locations ..... and where proposals accord with other Policies of the Plan'*.

The Inspector concluded that substantial weight could be accrued to the principle of providing accommodation of the type proposed. However, such benefits could not be considered in isolation and he regarded the deficiencies of the location of the site relative to trip generators to be a fundamental and outweighing consideration. The conflict with Policy SC1 a) and d) is an added factor. The Inspector concluded there was nothing of sufficient weight to change his conclusion and determination in accordance with the development plan and the proposal would therefore be in conflict with the development plan read as a whole.

The appeal was dismissed. A costs application was made with this appeal, but that application was refused. The Inspector considered Members had sufficient reason to depart from Officer advice and the Council has substantiated its reason for refusal at appeal. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, had not occurred and an award of costs was not warranted.

Recommendation  
None

The decision was made in accordance with Local plan policies. The Inspector took a different view on the interpretation of these policies than Officers but agreed with member's concerns about the location of the site. The existing policies relating to sustainability are in line with the National Planning Policy Framework.

<b>Appendix No 2</b>	<b><u>Appeals made under made under Section 106B of the Town and Country Planning Act 1990 (as amended) against refusal to modify a planning obligation.</u></b>
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**Appeal Ref: APP/R1010/Q/24/3350501:Land rear of 16-124, south west of 124 and between Brickyard Farm & Barlborough Links, Chesterfield Road, Barlborough S43 4ZD**

The appeal was made under Section 106B of the Town and Country Planning Act 1990 (as amended) against a refusal to modify a planning obligation.

The development to which the planning obligation relates was for "Residential and commercial development (business, industrial and warehousing, Class B1, B2 and B8) including new roundabout and associated roads".

The application sought to have the planning obligations modified by way of a Deed of Variation in order to remove the obligation to provide any affordable housing and reduce the contributions required in respect of education contributions, off-site sports provision and highways contributions. The application was refused.

Main Issues

The main issues for consideration was whether the planning obligations would continue to serve a useful purpose if modified as proposed.

Conclusions

The Inspector considered that, in combination, the current planning obligation, subsequent modification and variation require that 10% of the development is delivered as affordable housing and contributions towards on-site public open space, education, off-site sports provision and highways contributions. The detail of these obligations, including triggers, indexation and the mechanism for the return of any unused funds is set out in the obligations.

The Inspector considered that at the time planning permission was granted, the obligations were necessary to ensure that the development complied with the development plan and mitigated any impacts it had, benefiting local communities and supporting the provision of local infrastructure. Clear policy requirements and evidence supported these at the time and now and the utility of the obligations was reinforced by the third-party objections to the application to modify it, with many contributors noting both the social and economic value of the obligations to them and the community. The Inspector considered that the appeal was based largely around the viability of the residential development, and in particular, the effect of the obligations on that viability. The evidence of the appellant showed that if they were to pay the contributions as currently required, then they would still realise a profit.

If the obligations were to be modified as proposed, then the profit level made by the developer would increase however, it would do so at a cost to the occupiers of the site, local residents, Bolsover District Council and Derbyshire County Council. The cost to them, essentially, the public, would be in the complete failure to provide any affordable housing, insufficient provision of contributions towards on- and off-site play and sports facilities and equipment, and insufficient contributions towards education and highways infrastructure.

The Inspector acknowledged that challenging market conditions have affected the country as a whole, not just the appellant, but there was no compelling evidence in the appeal to lead him to conclude that the public should, in effect, suffer those twice. Once directly, and once indirectly in order to protect the return to the developer on their capital employed in delivering the development.

The Inspector acknowledged that development carries risks which are accepted in national planning policy and guidance, which sets out illustrative profit levels to be considered at plan-making stage in acknowledgement of that commercial risk and to allow site promoters and developers to understand likely costs, to be able to make informed commercial decisions. Guidance is clear that the level of profit modelled at plan-making stage is not guaranteed for the lifetime of the project and it is not appropriate to seek to amend obligations in order to protect returns. It is also plainly not the purpose of the planning system or planning obligations to remove any and all financial risk from development.

The Inspector considered that this development had, unfortunately fallen foul of particularly challenging market conditions but that the evidence did not demonstrate that the overall approach, using illustrative profit levels in plan-making viability testing in order to make an informed decision on commercial risk at delivery was flawed. Nor did it show or otherwise require that the system should be used to guarantee such a return, removing the risk from the developer and placing it wholly with the Councils, and in effect, the public.

The Inspector noted that the proposed modifications to the obligations would still not deliver a level of profit within the range preferred by the appellant, which matched that used at the plan-making stage. In terms of viability, he accepted that if the development had been forecast to deliver the current profit level at plan-making stage, then it may not have been pursued. However, he considered that that was the risk inherent in development.

The modification would result in the development delivering no affordable housing. That would clearly conflict with local and national planning policy. It would also result in the delivery of either no, or improperly funded on-site equipped play-space, deliver insufficient funding to meet policy-compliant requirements for off-site sports facilities and make an insufficient contribution towards required highway works and education infrastructure. In all of these respects, the development would not therefore deliver policy aspirations or comply with the development plan.

The Inspector found that the existing obligations were evidence-based and justified, with appropriate policy support, and therefore continued to meet the relevant tests and that overall, the obligations would not serve their useful purpose equally well if they had effect subject to the modification.

The Inspector acknowledged the implications of not modifying the obligations set out by the appellant. However, on the basis of his observations on site, did not give great weight to their suggestion that the road infrastructure would not be completed because the contractors were actively engaged in new surfacing works to the carriageway and footway, and other highway defects had been marked, apparently for rectification.

The Inspector considered the failure to provide the full number of planned new homes suggested by the appellant would be unfortunate, but noted that the vast majority, (126 of the 135 proposed) had already been completed and the vast majority of contributions were therefore due. The completed phases were distinct from the final phase such that the site does not obviously appear incomplete, but for the failure so far to provide the equipped play space.

The Inspector also acknowledged that there was a strongly expressed and very clear desire from residents of both the development and the surrounding area that the contributions be paid and the obligations, particularly in relation to play space, highways and education infrastructure, be met.

The Inspector concluded that the appellant had demonstrated that the obligations without modification would still deliver a profit, albeit not one as large as projected or desired, given the challenging market conditions. The Inspector considered that to be unfortunate, but the evidence showed that the development was still viable. The contributions within the obligations all continued to meet the relevant policy and legal tests and continued to serve a useful purpose.

The appeal was dismissed, and the obligations continue to have effect without modification.

#### 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 developer contributions are in line with the NPPF.

<b>Background Papers</b>
<i>(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 Executive, you must provide copies of the background papers).</i>