

**Bolsover District Council**

**Planning Committee**

**8th January 2020**

**Appeal Decisions: July 2019 – December 2019**

**Report of the Head of Planning**

**Purpose of the 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.

**1 Report Details**

**1. Background**

- 1.1 In November 2016 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 first appeal monitoring period the council won 100% of appeals on Major planning applications and 99.6% of appeals on non-major applications. During the second monitoring period the council won 96.5% of appeals on Major planning applications and 98.8% of appeals on non-major applications. The Council is therefore exceeding its appeal decision targets.
- 1.5 Following the 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 Conclusions and Reasons for Recommendation**

- 2.1 During the 6 months since the last monitoring period the council had no appeals on Major planning applications determined and no appeals against enforcement notices

but has won 100% of appeals on non-major applications. The Council is therefore exceeding its appeal decision targets.

- 2.2 The appeal decisions indicate current decision making is sound. When/if appeals are lost the reporting of decisions provides an opportunity to learn from these decisions.

### **3 Consultation and Equality Impact**

- 3.1 Consultations are carried out with each application and appeal. Consultations on this report of appeal decisions is not necessary.
- 3.2 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 that equalities have been incorrectly addressed.

### **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.

### **5 Implications**

#### **5.1 Finance and Risk Implications**

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

#### **5.2 Legal Implications including Data Protection**

- 5.2.1 Appeal documents are publicly available to view online. Responsibility for data is the Planning Inspector's during the appeal process.
- 5.2.2 Decisions are open to challenge but only on procedural matters.

#### **5.3 Human Resources Implications**

- 5.3.1 This area of work 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 enquiry.

### **6 Recommendations**

- 6.1 That this report be noted.
- 6.1 That appeal decisions continue to be reported to Committee members every 6 months.

## 7 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:  <i>BDC: Revenue - £75,000</i> <input type="checkbox"/>  <i>Capital - £150,000</i> <input type="checkbox"/>  <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/>  <i>Capital - £250,000</i> <input type="checkbox"/>  <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p><b>Is the decision subject to Call-In?</b>  (Only Key Decisions are subject to Call-In)</p>	No
<p><b>Has the relevant Portfolio Holder been informed</b></p>	Yes
<p><b>District Wards Affected</b></p>	None
<p><b>Links to Corporate Plan priorities or Policy Framework</b></p>	All

## 8 Document Information

Appendix No	Title
1	Planning Appeal Decisions Period 1st July 2019-31st December 2019
2	Planning Enforcement Appeal Decisions July 1st 2019 -31st December 2019
<p><b>Background Papers</b> (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 Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
<p> </p>	
<b>Report Author</b>	<b>Contact Number</b>
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## **Appendix 1: Planning Appeal Decisions Period 1<sup>st</sup> July 2019-31<sup>st</sup> December 2019**

### **APP/R1010/W/19/3223128: Land Adjacent to 59 West End, Pinxton: Outline Application for One Dwelling with All Matters Reserved**

#### Main Issues

The main issues were:

- Whether the site was a suitable location for a dwelling having regard to the development plan and national policy; and
- Impact on highway safety

#### Conclusion

The Inspector concluded that the appeal site was in a relatively sustainable location and that it was adjacent to the settlement framework boundary but it was outside that boundary and as such in accordance with Policy GEN 8 of the Bolsover District Local Plan, countryside policies applied.

The Inspector concluded that Policies GEN 10, ENV 3 and HOU 9 of the Bolsover District Local Plan were broadly in accordance with the National Planning Policy Framework and that the council had a 5 year supply of housing and therefore attributed full weight to these policies.

The Inspector concluded that the proposed dwelling was not essential to the operation of agriculture and/or forestry. The inspector considered that although the proposed dwelling removed existing buildings, the framework confirms that previously developed land excludes land occupied by agricultural buildings and the removal of the agricultural building and its replacement with a dwelling would have an urbanising impact and would not enhance the rural character of the area and would harm the openness of the area. The proposal was therefore considered contrary to policies GEN 8, GEN 10, HOU 9 and ENV 3 of the Bolsover District Local Plan.

Indicative plans submitted with the application removed the existing access to the dwelling to the north of the site and replaced it with access to the proposed development giving the existing dwelling an unsafe access further north. The Inspector agreed the indicative layout would provide an unsafe access for the existing dwelling but as access was a reserved matter and that access and parking could be provided on site for both existing and proposed dwellings then a safe access (albeit not the one shown on the indicative plan) could be provided. The Inspector concluded that the proposal was therefore considered to meet Policies GEN 1 and GEN 2 of the Bolsover District Local Plan in respect of highway safety.

The appeal was dismissed

#### Recommendations

None.

The Inspector confirmed the council has a five year supply of housing and that the existing important open areas and countryside policies are in line with the Guidance in the NPPF.

**APP/R1010/W/19/3223115: Hickinwood Farm Yard and Barn, Hickinwood Lane, Clowne: Notification of Prior Approval for Change of Use of an Agricultural Building to Commercial (B1) Use.**

Main Issues

The application was a resubmission of an application for prior approval under Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development)(England)Order 2015 (GPDO) for change of use of a building to a commercial use. Class R allows for changes of use from agricultural buildings to B1 use subject to specific requirements and restrictions. The original application and one subsequent application were both refused and dismissed on appeal. The application was re-submitted with the addition of 1 further affidavits as additional evidence.

The main issues were:

- Whether the proposal would be permitted development in respect of Class R of the GPDO, subject to the prior approval of certain matters.

Conclusion

Compliance with Class R requires that the building was solely used for an agricultural unit on 3<sup>rd</sup> July 2012 or in the case of a building which was not in use on that date when it was last in use. Schedule 2 Part 3, paragraph x of the GPDO sets out that an established 'agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture.

The inspector again concluded that the evidence supplied did not demonstrate that the building was used solely for an agricultural use as part of an established agricultural unit on 3<sup>rd</sup> July 2012 or remained unused on that date, so that its last use prior to 3<sup>rd</sup> July 2012 was solely for an agricultural use as part of an established agricultural unit. The change of use therefore was not development permitted by the GPDO and there was no need to consider the prior approval matters as it would not alter the outcome of the appeal.

The appeal was dismissed

Recommendations

None.

**APP/R1010/W/19/3224662: Land to the West of Bridge Close, Hollin Hill Road, Clowne: Application for a New Dwelling with Supported Living Annexe, Construction of New Barn, Conversion of Existing Barn to Microbrewery/Kitchen with Associated Office.**

Main Issues

The main issues was:

- There was an extant planning permission allowing a new barn on the site in place of the present derelict one. The council had no objection to the barn element of the proposal and referred to the Inspector's power to issue a split decision if some elements of the proposal were found acceptable. However the applicant considered it difficult to separate the elements of the proposal and asked that the proposal be considered holistically. As a result the main issue was the suitability of the site for housing, having regard to the other elements of the appeal proposal and whether exceptional circumstances have been demonstrated in this case.

### Conclusion

The Inspector concluded that the site was outside settlement frameworks where countryside policies apply. Policy ENV 3 of the Bolsover District Local Plan is in line with the National Planning Policy Framework in that it is restrictive of development in the countryside, requiring special justification for new housing.

The Inspector considered the appellant's business needs and the appellant's personal circumstances and the sustainability of living and working on site but concluded that the special justification had not been established and the proposal failed to comply with policy ENV 3 of the Bolsover District Local Plan by not meeting any of the criterion by which development outside settlement frameworks is supported. The Inspector considered the circumstances of the development were insufficient to outweigh that policy conflict

The appeal was dismissed

### Recommendations

None.

The existing countryside policy is in line with the Guidance in the NPPF.

## **APP/R1010/D/19/3223901: Clownefields Cottage, 7 Clowne Road, Barlborough: Retention of Roof Finials on Extension and Porch.**

### Main Issues

- Whether the roof finials preserve or enhance the character or appearance of the Barlborough Conservation Area and the setting of Clowne Fields Farmhouse, a Grade II Listed Building.

### Conclusion

The Inspector concluded that the two dragon finials were prominent features, larger than would be expected on a moderately sized cottage and out of keeping with the simple design of the host property. The porch finial in particular stood out as visually intrusive and was alien and harmful to the traditional character and appearance of the Conservation Area. The impact was localised but nonetheless harmful.

The Inspector also concluded that the porch finial in particular was especially prominent in views along Clowne Road from the North West past Clowne Fields Farmhouse drawing attention away from the Listed Building. This detracted from the simplicity of the scene and caused harm to the setting of the Listed Building.

The Inspector concluded that the finials did not preserve or enhance the character and appearance of the Conservation Area, nor did they preserve the setting of the nearby Listed Building Contrary to Policies CON 1 and CON 10 of the Bolsover District Local Plan.

The Inspector also concluded that in terms of the National Planning Policy Framework, the harm to the significance of the Conservation Area and Listed Building as designated heritage assets was less than substantial but that there were no public benefits arising from the finials to outweigh that harm.

The appeal was dismissed.

### Recommendations

None.

The existing conservation policies are in line with the Guidance in the NPPF.

### **APP/R1010/W/19/3229146: Beeston House, Milking Lane, Clowne: Erection of Replacement Dwelling**

#### Main Issues

The main issue was:

- The effect of the proposed development on the character and appearance of the area

#### Conclusion

The Inspector concluded that the appeal site was outside the settlement framework boundary and as such in accordance with Policy GEN 8 of the Bolsover District Local Plan, countryside policies applied.

The Inspector agree with the council that the scale of the new dwelling would represent a significant increase over that of the existing dwelling. The Inspector felt the wording of Policy HOU 8 of the Local Plan was clear in that a replacement dwelling which was not compliant with the scale of the existing would be treated as a new dwelling rather than a replacement and would therefore be subject to the requirements of HOU 9 which requires the dwelling to be essential to the operation of agriculture or forestry, which had not been justified.

The Inspector also considered that the proposed dwelling lacked the simple form and appearance of a dwelling traditionally associated with a farm location and was more akin to a suburban house found on a modern residential estate. Consequently the proposed dwelling was not reflective of its location and inherent character contrary to Policy HOU 8 of the Local Plan and paragraph 127 of the Framework.

The Inspector also considered that the position of the proposed dwelling, extending out into the paddock would result in the expansion of the built form of the farmstead and cause an encroachment into open countryside.

For the above reasons the Inspector concluded that the proposal was contrary to Policy HOU 8 of the Bolsover District Local Plan as the new dwelling was not in keeping with the character of its surroundings and was contrary to the aims of the framework in that it would harm the character of the area.

The appeal was dismissed

### Recommendations

None.

The Inspector confirmed that the existing dwellings in the countryside policies are in line with the Guidance in the NPPF.

## **APP/R1010/W/19/3229167: Land between 33 and 39 Sherwood Street, Newton: Construction of a Pair of Semi-Detached Dwellings**

### Main Issues

The main issues was:

- Whether the development would provide adequate living conditions for future occupants of the proposed houses with particular regard to overlooking of their outdoor private amenity space.

### Conclusion

The Inspector considered that the rear gardens of both of the proposed new dwellings would be overlooked to a considerable extent from the first floor rear windows of the existing dwelling at 39 Sherwood Street, in particular from the bedroom window which was parallel to and less than 5m from the site. The occupiers of the new houses would therefore not have the degree of privacy for their rear gardens which they could reasonably expect and this unacceptable situation was not made acceptable just because future residents may be aware of it at the time of purchase.

The Inspector concluded that the development would not provide adequate living conditions for future occupants and would consequently conflict with Policy GEN 2 of the Bolsover District Local Plan which seeks to ensure that development does not lead to harmful overlooking or loss of privacy. The proposal would also fail to accord with of the provisions of the National Planning Policy Framework, in particular paragraph 127 which seeks to ensure that development provides a high standard of amenity for existing and future users.

The Inspector also concluded that the proposal was contrary to the guidance in the Council's "Successful Places" supplementary planning document which seeks to ensure that development provides acceptable living conditions for new and existing residents and Policy SC3 of the emerging Local Plan. Policy SC3 seeks to ensure that development provides a good standard of amenity, including privacy, for future occupants.

The Inspector acknowledged that there would be some social, environmental and economic benefits from providing housing on this site but concluded the benefits arising from a small development would be limited and would not outweigh the harm caused by providing insufficient privacy for future occupants.

The appeal was dismissed

### Recommendations

None.

The Inspector confirmed that the existing Policy and guidance relating to amenity and privacy are in line with the Guidance in the NPPF.



## **Appendix 2: Planning Enforcement Appeal Decisions July 1<sup>st</sup> 2019 -31<sup>st</sup> December 2019**

The performance of Local Authorities in relation to the outcome of enforcement appeals are not being measured in the same way as planning appeals. However it is considered useful to report the enforcement appeals within the same time period to address any issues or lessons learnt from these appeal decisions.

There have been no enforcement appeals within the period of this report.

## **Appendix 3: Appeals under Section 18 of the Land and Compensation Act Decisions July 1<sup>st</sup> 2019 -31<sup>st</sup> December 2019**

The performance of Local Authorities in relation to the outcome of appeals for Certificates of Appropriate Alternative Development which are determined under the Land and Compensation Act are not being measured in the same way as planning appeals. However it is considered useful to report these appeals within the same time period to address any issues or lessons learnt from these decisions.

### **Background**

The site is within the corridor safeguarded for the HS2 rail link. The Secretary of State for Transport accepted the appellants blight notice under HS2 Ltd's discretionary Express Purchase Scheme. An application for a Certificate of Appropriate Alternative Development (CAAD) for residential development for up to 24 dwellings was then submitted to the council. The council issued a negative certificate as it was outside the settlement framework in an area of open countryside which was considered unnecessary development in the countryside in an unsustainable location and would have an urbanising impact on the countryside. This was contrary to Policies HOU 2, ENV 3 and HOU 9 of the Bolsover District Local Plan and the policies in the National Planning Policy Framework.

The council did not provide any indication of what development it would consider appropriate instead.

The applicant filed an appeal to the Lands tribunal citing the council as respondent. The council was however not the respondent, it was the Secretary of State for Transport as the acquiring Authority. It was agreed that the Secretary of State be a non-participating respondent with the council a participating party to the reference.

### **Main Issues**

- Whether or not the council has a five year supply of housing and therefore the weight to be given to policies in the local plan,
- Whether the council should have considered what other forms of development would be suitable on the site, not just the housing listed as the proposed alternative development.

### **Conclusion**

The Inspector concluded that the council did have a five year housing supply and therefore has an up-to-date housing policy. On this basis he concluded that housing on the site would be contrary to Local Plan policies and would not be an acceptable form of alternative development on the site.

However the Inspector concluded that the council should have considered all other forms of alternative appropriate development on the site not just the development proposed and in this respect he concluded alternative development which would have been considered in accordance with the development plan would have been the exploitation of sources of renewable energy and small scale employment uses related to local farming, forestry, recreation or tourism subject to compliance with Policies SC6 and SS9 of the emerging Local Plan.

The appeal was allowed as there were other forms of appropriate alternative development for the site even the residential development proposed wasn't and a certificate of

appropriate alternative development should have been issued for those uses rather than the application being refused.

### Recommendations

When considering applications for appropriate alternative development the council must consider all appropriate developments for the site, not just the ones proposed in the application and issue a certificate for those which are appropriate. The council has received three other applications for a certificate of appropriate alternative development on different sites since the tribunal hearing of this application. The way they are now determined follows the procedure set out at the Tribunal and all forms of appropriate alternative development are considered.