

Bolsover District Council

Planning Committee

30th September 2020

Appeal Decisions: January 2020 – June 2020

Report of the Planning Manager (Development Control)

This report is public

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

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. During the third monitoring period the council had no appeals on major planning applications and won 100% 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 has no appeals on Major planning applications determined, and has won 98.7% of appeals on non-major applications and has had no appeals against enforcement notices. 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 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 PINS 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 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.

6 Recommendations

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

7 Decision Information

Is the decision a Key Decision? 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>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
Has the relevant Portfolio Holder been informed	Yes
District Wards Affected	None directly
Links to Corporate Plan priorities or Policy Framework	All

8 Document Information

Appendix No	Title
1.	Planning Appeal Decisions Period 1 st January 2020 - 30 th June 2020
Background Papers (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)	
N/A	
Report Author	Contact Number
Sarah Kay	Ext. 2265

Appendix 1: Planning Appeal Decisions Period 1st January 2020 - 30th June 2020

APP/R1010/W/19/3220726: The Laurels, Ruthyn Avenue, Barlborough: Retention of and Alterations and Revisions to Proposed Stable Block on Same Footprint as the (Recently) Previously Demolished Stables

Main Issues

The main issues were:

- Whether the proposal would be inappropriate development in the Green Belt, the effect on the openness of the Green Belt and if the proposal would be inappropriate development, whether any harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.
- Whether the proposal would cause any other harm, namely the effect of the development on the character and appearance of the area.

Conclusion

The Inspector concluded that the proposal would be inappropriate development in the Green Belt and would materially erode the openness of the appeal site.

The Inspector considered that the Framework sets out that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness or any other harm resulting from the proposal, is clearly outweighed by other considerations. No special circumstances are advanced in this case.

The Inspector also concluded that the proposal conflicted with the framework and the aims of saved Policy GEN 9 of the Bolsover District Local Plan which taken together, seek to protect the openness and permanence of Green Belts and that no material considerations justify a decision other than in accordance with the development plan with which the proposal would conflict.

The appeal was dismissed

Recommendations

None.

The Inspector confirmed the council's Green Belt policies are in line with the Guidance in the Framework and the assessment of the impact of the proposal on the Green Belt was correct.

APP/R1010/W/19/3237017: 2 Tallys End: Application for the Variation of Condition 4 of Planning Permission 17/00153/FUL which restricted trading hours and delivery hours for McDonalds Restaurant and Take-away

Main Issues

The main issues were:

- The restaurant is operational at the appeal site. The appellant sought to extend the opening hours to between 05:00 and 00:00 hours seven days a week which represented an additional hour of trade in the morning and evening. (The condition imposed by the council restricted restaurant/take-away hours to between 06.00 and 23.00 daily and deliveries to between 06.30 and 23.00 daily.)
- Planning Practice Guidance is clear that the decision maker shall consider only the question of the conditions subject to which planning permission should be granted.

It is not the re-consideration of the original application. The main issue is therefore the effect that the variation of the opening hours would have on the living conditions of the occupiers of nearby residential properties, with particular regard to noise and disturbance.

Conclusion

The Inspector considered that the proposed extended opening hours would not result in significantly increased levels of noise and disturbance to nearby residents subject to the imposition of appropriate conditions. The Inspector concluded the disputed condition was neither necessary nor reasonable in order to safeguard the living conditions of nearby residents, with particular reference to noise and disturbance and the proposal would comply with Policy GEN 2 of the Bolsover District Local Plan.

The appeal was dismissed and the condition amended to say "The trading hours of the restaurant/hot food takeaway shall only be between 05.00hrs and 00.00hrs daily. Delivery and other service functions (such as refuse collection) shall only take place between 06.30hrs and 23.00hrs daily."

Recommendations

None. The decision was a judgement about the impact of a proposal on residential amenity rather than testing a Local Plan Policy.

APP/R1010/W/19/3238421: 37 Low Common, Barlborough: Retention of a Tree House and Construction of Pergola

Main Issues

The main issues were:

- Whether the appeal scheme would be inappropriate development for the purposes of development plan policy and the National Planning Policy Framework;
- The effect of the scheme on the openness of the Green Belt;
- If the scheme would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it; and
- The effect of the scheme on the living conditions of the occupiers of the neighbouring property, with regards to privacy and noise.

Conclusion

The Inspector considered that Policy GEN 9 was in line with Green Belt Policy in the National Planning Policy Framework and of them state that new buildings in the Green Belt are inappropriate except in certain circumstances. The Inspector concluded that neither element of the proposal met the exceptions to inappropriate development and as such both the treehouse and the pergola represented inappropriate development in the Green Belt.

The Inspector considered that the proposal would cause limited harm to the openness of the Green Belt but substantial weight is given to this harm in accordance with paragraph 144 of the Framework and in addition to the harm caused by the reason of inappropriateness.

The Inspector considered that the proposal would not be harmful to the living conditions of neighbouring occupants with particular regard to privacy and noise however this did not

mitigate against the substantial weight to be given to the harm to the openness of the Green Belt as a result of this inappropriate development and no special considerations existed which would outweigh this harm.

The Inspector concluded that the proposal was contrary to Policies GEN 2, which requires development to cause no material harm to the local environment unless outweighed by the benefits of the scheme, GEN 9 of the Local Plan and paragraphs 143-146 of the Framework

The appeal was dismissed

Recommendations

None.

The existing Green Belt policy is in line with the Guidance in the National Planning Policy Framework and the assessment of the impact of the proposal on the Green Belt was correct.

APP/R1010/W/19/3241610: The Dales, 21 Worksop Road, Whitwell: Change of Use of Agricultural Building to Storage/Warehouse Use

Main Issues

- The application was submitted under the prior notification procedure to change agricultural buildings to other uses. For an application to be submitted under this procedure it has to meet a number of criteria. The main issue in this case is whether the buildings were solely in agricultural use on 3rd July 2012 so as to be permitted development under Schedule 2, Part 3, Class R of the Town and Country Planning General Permitted Development Order.

Conclusion

The Inspector considered that from the evidence provided it seemed reasonable to conclude that, the appeal buildings were probably in agricultural use as part of the wider operation on 3 July 2012. The Inspector acknowledged that this use may have only been for a relatively short period of time at some point between 2010 and the end of 2012 and that the buildings may have been used more recently for storage related to equestrian use. However, the Inspector considered that the evidence pointed to the buildings being in association with the agricultural use in July 2012 and for the purposes of Class R, provided that the building was in use on that date any prior or subsequent use is not of concern

Once the Inspector had concluded that the buildings were in agricultural use in July 2012, the matters which can be considered in a prior approval application (transport and highways, noise, contamination risk and flooding) were addressed. The Inspector considered that none of these issues would result in the proposed use being acceptable subject to a condition relating to visibility splays.

The appeal was allowed

Recommendations

None.

The Inspectors decision is different to other appeal decisions for the same type of development in its interpretation of Schedule 2, Part 3, Class R of the Town and Country Planning General Permitted Development Order in that it states that provided the building was in use for agricultural purposes in July 2012, its use before or after that date is not of

concern. The decision accepts that the most recent use related to storage related to equestrian use and the buildings were used for vehicle storage at the time of the site visit. Class R only relates to the change of use of agricultural buildings and if the building is in a different use at the time of the application it raises the question of whether Class R applies. In addition, this differs from other appeal decisions for the same type of development which considered the use of the building in July 2012 and also considered the last use of the building. Previous decisions have also required the building to solely in use for agriculture as part of an established agricultural unit rather than just that the building was probably in use for agriculture.

APP/R1010/W/20/3247931: Romeley Cottage, Romeley Lane, Clowne: Extension to Dwelling to Provide Self-Contained Accommodation

Main Issues

The main issue was:

- The fee required for the application submitted. The application was received by the council but was made invalid as no fee was submitted for the application as the applicant claimed it was a domestic extension for a relative with disabilities and as such no fee was required. The extension proposed included all of the facilities to be self-contained i.e bedrooms, bathroom, kitchen, separate entrance door and as such the council considered the relevant fee to be the fee for a new dwelling. The applicant disputed the fee requested by the council and appealed to the Planning Inspectorate.

Conclusion

The Inspector referred to the relevant case in law being *Uttlesford DC v SSE & White* (1992). The judgement established whether a residential use would be ancillary or not depends on the specific circumstances of the case – a matter of fact and degree and even if the accommodation to be provided includes facilities for independent day-to-day living (as is the case here) it would not necessarily constitute a separate planning unit from the main dwelling.

In this case, the Inspector considered that the facilities being provided in the proposed extension go beyond what would be expected given the personal circumstances of the intended occupant and in particular, the proposed front door into the kitchen of the extension which would allow the unit to be occupied completely independently of the main dwelling.

The Inspector acknowledged that the *Uttlesford Judgement* also indicated that the intended use may also be a relevant factor to consider. In this case the accommodation was intended to be occupied by the Appellant's mother-in-law who does not currently live on site and is in poor health. There was no intention for the annexe to be occupied as a separate dwelling, no separate curtilage, parking spaces, address or legal titles would be created.

The Inspector concluded that the case was finely balanced but considered that the size of the unit, the kitchen and bathroom, and perhaps most importantly, the front door, push the development into being a new dwelling as opposed to an annexe. The fee for the application should therefore be the fee for a new dwelling. As no fee had been submitted the application was invalid and could not be determined and as such the appellant could not appeal the non-determination of the application.

The Inspector determined that no further action would be taken in relation to the appeal.

Recommendations

None.

The Inspector confirmed that the council's interpretation of whether or not a proposal represents a self-contained dwelling and requires an appropriate fee was correct in this case.