



# B O S T O N

## B O R O U G H C O U N C I L

REPORT TO:	Planning Committee
DATE:	15 <sup>th</sup> December 2020
SUBJECT:	Receipt of Appeal Decisions
PORTFOLIO HOLDER:	Councillor Nigel Welton
REPORT AUTHOR:	Mike Gildersleeves – Assistant Director – Planning
EXEMPT REPORT?	No

### **SUMMARY**

The purpose of this report is to advise members of the receipt of appeal decisions received since the previous report.

### **RECOMMENDATION**

The Committee are asked to note this report and the decisions attached.

### **REASONS FOR RECOMMENDATION**

To address the Service Plan 2020/21 and provide an update on performance/outcomes.

## **1.0 INTRODUCTION**

- 1.1 It is established practice that all appeal decisions are reported to Planning Committee as part of performance monitoring and to consider if any particular decisions raise issues which might influence practice or future decision making.
- 1.2 All applicants have a right of appeal against the decision of the planning authority, over a refusal, an approval with conditions (if the conditions are unacceptable to the applicant) and in cases of 'non-determination' where the authority has not issued a decision within the prescribed 8 or 13-week period without an agreed 'extension of time'. The right of appeal applies to all categories and types of applications – including Enforcement and other Notices where there are defined categories or grounds of appeal which an appellant has to follow.

## 2.0 APPEAL DECISIONS

<b>Location</b>	Bramley House, Wainfleet Road, Boston, PE21 9RW
<b>Reference</b>	B/18/0472
<b>Proposal</b>	Resubmission of B/18/0291 for the erection of detached 1.5 storey annexe
<b>Delegated / Committee</b>	Delegated
<b>Appeal Decision</b>	Allowed
<b>Appeal Date</b>	04-Mar-2020

The Appeal was allowed and planning permission was granted.

The Inspector noted the previously dismissed Appeal for a similar proposal. Changes to the scheme (including removal of balcony and amenity space) made the accommodation more akin to an annexe and the appellant stated the accommodation was for elderly family members. The Inspector found that the accommodation would be functionally linked to Bramley House and would be ancillary.

The Inspector found the design had improved and was in keeping with Bramley House and would be subservient, concluding there would be no adverse impact on the character of the area.

In respect of the impact on neighbouring properties, the inspector concluded the proposed use would not result in any detrimental impact given the scale and nature of the proposal.

<b>Location</b>	Sycamore House, Rookery Road, Bicker, Boston, PE20 3DB
<b>Reference</b>	B/19/0065
<b>Proposal</b>	Outline application for a residential development
<b>Delegated / Committee</b>	Delegated
<b>Appeal Decision</b>	Dismissed
<b>Appeal Date</b>	10-Mar-2020

The Appeal was dismissed.

The Inspector noted the location outside of the settlement boundary for Bicker and found no evidence that the proposal is necessary at this location nor that it would meet the sustainable development needs of the area in terms of economic, community and environmental benefits. The appeal proposal, therefore, fails to accord with Policy 1 of the LP.

The intention to construct attached housing on the site, which would help meet a generally acknowledged need for low cost housing, was not seen as a justification. The site is located near to a primary school and shops, however it is likely that future occupants would still be heavily reliant upon the private car for accessing higher order facilities – noting that the nearest bus stop would be 350 metres away from the appeal site and this would act as a significant impediment to the use of public transport. The Inspector accepted that the site would be a windfall site and its development would not result in the loss of valuable agricultural land, however as a consequence of its location this did not add support to the development proposal.

<b>Location</b>	106, Robin Hoods Walk, Boston, PE21 9LQ
<b>Reference</b>	B/19/0116
<b>Proposal</b>	Erection of 1 detached two storey dwelling
<b>Delegated / Committee</b>	Delegated
<b>Appeal Decision</b>	Dismissed
<b>Appeal Date</b>	17-Mar-2020

The Appeal was dismissed.

Noting the established characteristics of the area, the Inspector found the proposed building would be significantly taller than existing bungalows and would be highly visible. Overall, the proposed dwelling would not be in keeping with the street scene and would detract from the character and appearance of the area. It was accepted that that the height is necessary to mitigate flood risk, however this does not justify the harm that would be caused to the character and appearance of the area.

For these reasons, the proposal would cause harm to the character and appearance of the area and therefore would be contrary to policies 2 and 3 of the South East Lincolnshire Local Plan (2019), which, amongst other things, require high quality design and that development is appropriate to the site.

<b>Location</b>	Land adjacent to 69, Middlegate Road West, Frampton, Boston, PE20 1DA
<b>Reference</b>	B/19/0144
<b>Proposal</b>	Two-storey detached dwelling
<b>Delegated / Committee</b>	Delegated
<b>Appeal Decision</b>	Dismissed
<b>Appeal Date</b>	20-Mar-2020

The Appeal was dismissed.

The Inspector noted the previous refusal for a similar proposal on similar grounds.

The existing character of the area and mix of buildings was noted. The Inspector found the proposal would be very close to no.67 and that resultant dwelling would appear cramped and not in keeping. The raised floor levels were noted and these would be incongruous within the street scene. The western gable would also appear stark and out of keeping.

Views over the garden of number 13 Grosvenor Road would occur. Equally, the proposal would cause overbearing impacts on number 67 Middlegate Road West. Concerns also related to the relationship with number 69.

Overall, the proposal was found to be contrary to policies 2 and 3 of the Local Plan.

<b>Location</b>	Land off Penny Gardens, Penny Gardens, Boston, Kirton, PE20 1HN
<b>Reference</b>	B/19/0180
<b>Proposal</b>	Erection of 7 terraced two storey dwellings
<b>Delegated / Committee</b>	Non-determination Appeal
<b>Appeal Decision</b>	Dismissed
<b>Appeal Date</b>	09-Jun-2020
<b>Costs decision</b>	Dismissed

The Appeal was dismissed.

The Inspector noted the character and appearance of the area, describing it in detail. The Appeal scheme was noted as being characterised by hardstanding, being stark and out of character. The inspector found the development attractive in design but the layout was car dominated and contrary to the character and appearance of the area.

The relationships between plots within the development was also found to be unacceptable.

Insufficient information relating to drainage had been supplied to sufficiently demonstrate that the development would not result in any adverse impacts.

As such, the proposal was found to be contrary to policies 2, 3 and 4.

Costs decision - The application for costs is refused.

The Appellant claimed that the Council failed to communicate regularly; failed to provide consistent advice; and failed to make a timely decision.

The Inspector found disagreement between the Appellants position and that put forward by the Council.

It was identified that the decision was not made in time, but that in itself does not represent unreasonable behaviour. Equally, it was noted that whilst Officers may have previously offered a view on the scheme, the final view of the authority is not available until a decision is issued, again this does not in itself represent unreasonable behaviour.

The Inspector found the Council had justified its position in respect of all matters, and did not find unreasonable behaviour by the Council, and thus the claim was refused.

<b>Location</b>	Land to the west of Cherry Tree Lodge, Swineshead Road, Frampton
<b>Reference</b>	B/19/0441
<b>Proposal</b>	Outline application for the erection of 2 detached dwellings
<b>Delegated / Committee</b>	Delegated
<b>Appeal Decision</b>	Allowed
<b>Appeal Date</b>	09-Jun-2020

The Appeal was allowed.

The Inspector noted the outline nature of the appeal proposal, with all matters reserved.

The Inspector noted the countryside location and applied policy 1 as the starting point. They noted that Policy 1 states that development will be permitted in the Countryside that is necessary to such a location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits.

The Inspector advised: *“Based on the evidence before me, the proposal would not necessitate a countryside location. Where the policy refers to the sustainable development needs of the area, this is not, in my view, so broad as to include housing development of the type proposed. Hence, it would not accord with the circumstances in the Countryside where development will be permitted. The defined settlement boundary ends only a short distance from the site, which I return to later in my decision. Nonetheless, this does not alter the strict lack of compliance, under Policy 1.”* Concluding that the suite would not be in a suitable location for housing.

The accessibility of local services on foot, and the bus service in to Boston was noted. The Inspector found that as a consequence, greater dependency on the use of the car was unlikely.

The Inspector found that: *“As this is a matter of planning judgement concerning where the services are located in relation to the site and their accessibility, the extent of the settlement boundary is not determinative. The SELLP refers to shops, services and public transport in relation to defining such boundaries, but there is not the substantive evidence before me that suggests this is the reason why this boundary has been delineated as it is.”* Concluding that the site had reasonable access to services and thus would comply with policy 2 & 3.

The inspector also gave weight to the NPPF.

Within the Planning Balance, the Inspector gave weight to the provision of housing which outweighed a lack of compliance with policy 1. The Inspector concluding that: *“Taking these matters together, the benefits that would arise would outweigh the harm. In this case, this is a material consideration that outweighs the conflict with the development plan as a whole and indicates that planning permission should be granted for development that is not in accordance with it.”*

<b>Location</b>	Former New Castle Inn and adjoining land on Lister Way, 36 Fydell Street
<b>Reference</b>	B/18/0370
<b>Proposal</b>	Erection of 3 three storey apartment blocks consisting of 55 flats
<b>Delegated / Committee</b>	Committee
<b>Appeal Decision</b>	Dismissed
<b>Appeal Date</b>	09-Jul-2020

The Appeal was dismissed.

The Appeal surrounded 3 key issues – parking, character and living conditions.

Parking provision - Inspector noted the policy requirement for 105 parking spaces and 55 cycle spaces, but found the location was suitable for non-car occupation as a result of the location and access to facilities and services. However, they considered the occupants would be likely to have a car, and no innovative measures (such as car clubs) had been proposed to mitigate the reduced levels of parking. They noted that the parking standards can be applied flexibly, but in this case adequate provision for parking would not be provided. They noted the lack of on-street parking and as such, found the proposals contrary to policies 2, 3 and 36.

Character - Found the facades overbearing, lacking in articulation and interest, and felt that the scale and proximity could undermine the potential development of land to the east. Raised floor levels would increase the bulk of the building. Found the design concept acceptable in principle, but found issues with the overall scale of the blocks, with little scope for landscaping. Concluding that the benefits of regeneration would not outweigh the issues caused by overdevelopment.

Living conditions - The Inspector considered that there was insufficient information to demonstrate that adverse impacts on the amenities of existing residents on Fydell Street would not occur.

Conclusion - Having applied the Planning Balance, the Inspector concluded that the harm arising would not be outweighed by the benefits occurring, and thus the Appeal was dismissed.

<b>Location</b>	Oldham House, Main Road, Wrangle, Boston, PE22 9AT
<b>Reference</b>	B/19/0107
<b>Proposal</b>	Change of use from Nursery and Farm Shop to Garden centre etc
<b>Delegated / Committee</b>	Delegated
<b>Appeal Decision</b>	Dismissed
<b>Appeal Date</b>	23-Jul-2020

The Appeal was dismissed.

The inspector found that the effects of the proposed use would differ fundamentally from its historic situation, but no significant harm would result. Appropriate conditions could be imposed to further mitigate the impact arising.

The proposed use in this appeal includes the manufacture of fencing, gates, decking, sheds and other miscellaneous timber products as a primary and significant element of the intended mixed use of the site. The Inspector considered it essential that noise from the use of machinery and tools on site, even if limited only to within the workshop building, do not unacceptably affect the living conditions of occupiers of nearby residential properties, identifying that an assessment of noise and its effects cannot in this case be left later to a planning condition. This is because the issue of whether noise can be adequately controlled and appropriately mitigated is critical as to whether planning permission should be granted at all.

As no assessment had been undertaken by a qualified person, the proposal was considered to have an unacceptable impact. The proposal being contrary to policies 2, 3 and 30.

<b>Location</b>	187, Sleaford Road, Boston, PE21 7PG
<b>Reference</b>	B/20/0024
<b>Proposal</b>	Erection of a 1.8m high fence
<b>Delegated / Committee</b>	Delegated
<b>Appeal Decision</b>	Dismissed
<b>Appeal Date</b>	29-Sep-2020

The Appeal was dismissed.

The effect of the fence on the character and appearance of the area was the main determining issue. Having considered the existing character, the Inspector found that because of its height, length and prominence it would be an obtrusive and incongruous feature in the street scene and would detract from the attractive landscaped character.

The Inspector advised that there was no evidence to suggest that the proposed enclosure was the only option to provide security for the site.

Conflict with policy 2 of the Local Plan was found.

<b>Location</b>	Rear of Gunby House, 21, Sibsey Road, Boston, PE21 9QY
<b>Reference</b>	B/20/0107
<b>Proposal</b>	Outline application for residential development (1 plot)
<b>Delegated / Committee</b>	Delegated
<b>Appeal Decision</b>	Dismissed
<b>Appeal Date</b>	12-Nov-2020
<b>Costs decision</b>	Dismissed

The Appeal was dismissed.

The Inspector considered 2 key issues, the impact on neighbouring amenity, and the impact on the character of the area.

It was found that although the driveway would run close to number 19, the established boundary would provide a suitable noise buffer. Regarding the impact on number 21, although noise was not considered significant, it would still be noticeable over the background noise levels emanating from the main road. In combination with the proximity of habitable room windows and the general proximity and lack of boundary details, the proposal would have an unacceptable impact on number 21.

The Inspector noted the characteristics of the area, including the long-plots, spacious pattern and extent of tree cover and vegetation, in addition, the Inspector noted the Boston Gate development but also acknowledged the thinning out of development as you move northwards.

The opening up of the new driveway and its length were noted and considered to have a harsh and stark appearance. The proposal would consolidate the pattern of development in a harmful way.

The inspector noted the position of no 25A, which was approved in 1988, and did not consider that this formed a basis for approval as the policy context had changed.

Regarding the Boston Gate development, the Inspector found that this was closer aligned to the character of development to the south and thus its context was subtly different.

Overall the inspector concluded that the proposal would cause material harm to the spacious and verdant character and appearance of the area and in this respect would fail to accord with LP Policies 2 and 3 which seek to ensure that new development responds to the amenity and character and appearance of an area and maximises opportunities to improve its character and quality.

Applying the planning balance, the Inspector concluded that the development was unacceptable. That the proposal would cause material harm to the living conditions of the occupiers of No 21 and to the character and appearance of the area and these aspects of the scheme would conflict with the development plan, read as a whole. There are no material considerations in this case to justify a decision other than in accordance with the development plan.

Costs decision - The application for costs is refused.

The Appellant claimed that the Council failed to accept the Boston Gate development as a reason for granting permission. Equally, it was claimed that the Council failed to give regard to the revised submission. Finally, they challenged the use of Delegated Powers to determine the application. The Inspector found the Council had justified its position in respect of all matters, and did not find unreasonable behaviour by the Council, and thus the claim was refused.

### **3.0 COMMENTS ON DECISIONS FROM ASSISTANT DIRECTOR – PLANNING**

- 3.1 Whilst this is a lengthy update in terms of the number of decisions being reported, it is pleasing to note that 8 decisions and 2 costs decisions went in the Councils favour – in all of those cases the Council was able to fully demonstrate and evidence its position, and it was pleasing to note that Local Plan policy was performing well (in particular policies 2 and 3).
- 3.2 It was particularly pleasing to note that the 2 costs claims were dismissed, although there remain learning outcomes from both experiences; particularly Penny Gardens (a non-determination Appeal) which surrounded a series of unfortunate events (including numerous changes of case officer at a difficult time for the service) although the planning decision was also dismissed thus the Councils position was well founded. It was pleasing to note that the Inspector found no fault on Gunby House, and also dismissed the Appeal, an earlier iteration of which was refused by the Planning Committee.
- 3.3 Members may also wish to note that since the Appeal decisions on Penny Gardens and 106 Robin Hoods Walk, alternative schemes have since been agreed and permissions granted.
- 3.4 For the 2 allowed schemes; whilst the outcomes are disappointing, the reasons are understood.

- 3.5 The annexe at Bramley House had overcome a previous decision in the eyes of the Inspector and essentially was justified on the basis of need and lack of impact.
- 3.6 Cherry Tree Lodge highlights the importance of the planning balance, particularly when considering the matter of housing provision and delivery. Of note, the inspector found that the settlement boundary was more than a line on a plan, and there was a need to consider connectivity, accessibility and the general characteristics of the area. In essence, the Inspector concluded that whilst the proposals were contrary to the starting point of the plan (policy 1) there were other policies and material considerations, which weighed in favour of permission being granted. The inspector placed weight to the provision of housing. This is important in terms of the application of Section 38(6) of the Act, and the matter of planning balance, which has moved on considerably in recent years through evolution of decisions and case law. In short, conflict with one particular policy or element of a policy of a Local Plan should no longer be seen as a basis for refusing development, and there is a need to consider matters in the round. Whilst the decision is disappointing, Officers consider it does not undermine the development plan, simply it shows how different decision-makers can reach different conclusions, particularly when considering matters of housing growth and sustainability. It is considered that this does not set a precedent for future decision-making.
- 3.7 Overall, our Appeal performance remains good and is better than national target over the rolling 2 year period. This is a good indicator of the quality of decision taking. This is also considered to be reflective of the current position with the adopted local plan, which will have an effect in terms of guiding development and reducing the Councils exposure to speculative applications.

#### **4.0 PERFORMANCE**

- 4.1 The Council has received 10 decisions from 1<sup>st</sup> March 2020 to 30<sup>th</sup> November 2020, of which 2 were allowed and 8 were dismissed. We have also had 2 dismissed costs claims.
- 4.2 The Ministry of Housing, Communities and Local Government (MHCLG) monitors authorities in relation to the number of major and non-major applications overturned (i.e. allowed) at appeal. The threshold is for fewer than 20% of all major applications determined overturned at appeal over a rolling two-year period (i.e. the total number of major decisions divided by the total number overturned). For authorities who exceed this target, they will be classed as 'poorly performing' and applications for major developments may be made by developers directly to the Planning Inspectorate. MHCLG also monitor the threshold for quality of decisions for non-major applications, the threshold for which is 10%. Like the major threshold, this is the total number of non-major applications overturned at appeal compared to the total number of non-major decisions made.
- 4.3 The following tables set out the Councils position in relation to the rolling two-year period. In this case between 1<sup>st</sup> December 2018 to 30<sup>th</sup> November 2020:

<b>2 year - Appeals performance - Majors</b>			<b>2 year - Appeals performance - Non-Major</b>	
Total number of decisions	48		Total number of decisions	679
Total number of Appeals	2		Total number of Appeals	25
Dismissed	2		Dismissed	15
Allowed	0		Allowed	9
Withdrawn	0		Withdrawn	1
<b>% indicator (majors allowed / total number of decisions)</b>	<b>0%</b>		<b>% indicator (non-majors allowed / total number of decisions)</b>	<b>1.35%</b>

4.4 Given the aforementioned performance, the Council is therefore significantly within government's target and not at risk of being classed as poorly performing.

#### **FINANCIAL IMPLICATIONS**

None

#### **LEGAL IMPLICATIONS**

None

#### **ANY OTHER IMPLICATIONS**

None

**CONSULTATION** None undertaken

#### **BACKGROUND PAPERS**

Background papers used in the production of this report are listed below: -

##### **Document title**

Appeal decision –

##### **Planning References:**

- B/18/0472
- B/19/0065
- B/19/0116
- B/19/0144
- B/19/0180 + Costs decision
- B/19/0441
- B/18/0370
- B/19/0107 + Costs decision
- B/20/0024
- B/20/0107

##### **Where the document can be viewed**

All application documents are available via the Councils website using the relevant details.