



B O S T O N

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

AGENDA ITEM NO:

REPORT TO:	Planning Committee
DATE:	29 th June 2021
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 provide an update on Appeal 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

Location	Reed Point, Spalding Road, Sutterton, Boston, PE20 2EP
Reference	B/18/0530
Proposal	Erection of 9 industrial units
Delegated Committee	/ Delegated
Appeal Decision	Dismissed
Appeal Date	09-Dec-2020

This application was refused under Delegated Powers in May 2019, shortly after the adoption of the Local Plan. It was refused on 3 grounds:

1. Impact on the character of the area
2. Lack of demonstrable need for the development
3. Lack of evidence relating to the need for employment in this location.

The main policies referred to were 1 and 7.

The Appeal was held via an Informal Hearing which was held virtually by the Planning Inspectorate. The Inspector distilled the 3 reasons above in to 2 principal issues:

- a) Whether the site is a suitable location for the proposal, having regard to local and national planning policies; and,
- b) The effect of the proposal on the character and appearance of the area.

On location, the inspector noted the countryside location of the site, and recognized the relationship between policies 1 and 7. The Inspector was not persuaded that a focus on employment sites in Sutterton only was appropriate (as the Appellants asserted), identifying that there was inadequate demonstration that other better located sites do not exist.

Noting the nature of the development, and the proposal as 'starter units' the inspector concluded that this would not be in a suitable location, based upon conflicts with policies 1 and 7.

With regard to character, the Inspector found the development would diminish the contribution the site makes to the character of the area and that harm to the area would result. As such, this compounded the failings in relation to policies 1 and 7.

The inspector noted the jobs that would be created, but found in the planning balance that no material considerations would outweigh the clear conflict with the development plan. The Appeal was dismissed.

Location	Tall Trees, Waste Green Lane, Algarkirk, Boston, PE20 2AP
Reference	B/20/0040
Proposal	Change of use from a paddock to land used for the repair of refrigerated units
Delegated Committee	/ N/A
Appeal Decision	Notice Quashed
Appeal Date	06-Apr-2021

This related to an Appeal against an Enforcement Notice relating to the use of the land – ie without planning permission the use of the land for repair of refrigerated trailers and siting of a storage container. The notice was issued 2 days following a change in the Use Classes Order which introduced a new Class E.

In addition to the structure of the notice, and the alleged breach, one of the key considerations related to the planning merits and whether or not permission should be granted. The main basis for this assessment related to amenity impacts and the impact on the character of the area.

The Inspector gave some consideration to the planning merits, and identified some areas of potential concern in relation to noise. However, this was primarily to establish the nature of the use. The Inspector concluded that the use was not B1 (contrary to the Council and Appellants views) and thus as a result of the regulation changes, did not fall in Class E. The Inspector declined to amend the notice, choosing to quash the decision instead.

The Inspector does note that the Council may wish to issue a corrected notice. Members will note this is a technical decision relating to the construction of the notice, and whilst disappointing, it does not prevent the Council issuing a revised notice. Members awareness, a revised application has since been made seeking planning permission for the use. This will be considered on its own merits.

Location	Land adjacent, The Rookery, Rookery Road, Bicker, Boston, PE20 3DB
Reference	B/20/0076
Proposal	Erection of dwelling
Delegated Committee	/ Delegated
Appeal Decision	Dismissed
Appeal Date	04-Feb-2021

Following refusal under Delegated Powers, this application for a single dwelling proceeded to Appeal. The Inspector identified the main issues as being the effect on a non-designated heritage asset, the impact on the character and appearance of the area, and the impact on the neighbouring dwelling.

The proposal was to be located within the grounds of “The Rookery” which the Council identified as a non-designated asset. The Inspector agreed, with its significance being derived from its age, form and space around, concluding that the development would cause harm to the setting of the asset. The Inspector noted the weight applied to the Conservation Officer comments during the determination and was persuaded that the Council had properly evidenced its case. The inspector found conflict with policies 2, 3 and 29.

The Inspector also found the proposal would impact on the street scene, due to the loss of space between existing dwellings and the dwelling would be discordant in the street, again, being contrary to policies 2 and 3.

Finally the Inspector found conflict with policy 2 in respect of the loss of living conditions and amenity for the host property.

The Inspector dismissed the appeal on all grounds.

Location	10A , 10B, 10C and 10D, Field Street, Boston, PE21 6TR
Reference	B/20/0074
Proposal	Change of use of 4No HMOs (Class 4) 3-6 occupants to 4No large HMOs (more than 6 occupants).
Delegated Committee /	Delegated
Appeal Decision	Dismissed
Appeal Date	04-Feb-2021

Permission was sought to change the use of a building from a smaller, to a larger HMO. This was refused by the Council due to concerns regarding the quality of the accommodation and the living conditions for current and future residents.

The Inspector found deficiencies in room sizes (when set against the Nationally Described Space Standards – NDSS); finding the removal of the communal lounge to facilitate more accommodation would be detrimental to the amenity of the existing residents in the existing accommodation; that the outdoor space and garden would be inadequate and unlikely to be used; and that due to the size of the gardens in combination with the relationships with other dwellings amenity issues would likely result as a consequence of noise and disturbance.

The inspector agreed with the Council that these failings combined would result in the development being contrary to policies 2 and 21, and the Appeal was dismissed.

Location	Buildings at Boston Road, Swineshead
Reference	B/20/0082
Proposal	Prior Notification for the proposed change of use an Agricultural Barn to Residential
Delegated Committee /	Delegated
Appeal Decision	Dismissed
Appeal Date	17-Mar-2021

This case surrounded a Prior Notification made under Class Q (Agricultural to Residential).

The main issue was whether the proposal was compliant with the Class Q legislation, in particular the focus was on whether or not the works proposed were “reasonably necessary” as part of a conversion under this class.

The inspector noted the content of the structural report which recognized deficiencies with the building without the need for significant works. The installation of a new foundation and floor was noted, and was required due to the insufficient nature of the existing building. The inspector considered this to be a new structural element.

The inspector concluded the works went well beyond “conversion” and what was reasonably necessary. Therefore the proposals fell outside of the limits of the legislation. Thus prior approval was not permitted.

Location	Land north of Millstone, Donington Road, Kirton End, PE20 1NX
Reference	B/20/0080
Proposal	Outline application with all matters reserved for residential development of up to 9 dwellings
Delegated Committee /	Delegated
Appeal Decision	Dismissed
Appeal Date	18-Dec-2020

This application sought permission for 9 dwellings in outline form. It was refused under Delegated Powers. Members will recall a nearby Appeal ((APP/H1840/W/17/3180996)) which was Allowed in 2019 which the Appellants considered was material, and significant to this application.

The Inspector recognised the character of the site and its relationship with the countryside beyond, finding the proposals would have an urbanising effect, in a way that would be relatively unsustainable and contrary to the Spatial Strategy (Policy 1). The Inspector considered the previous Appeal decision, but noted this transcended the introduction of the new Local Plan and that the Council could demonstrate a 5YHLS.

The Inspector found the benefits of the proposal (including 2 units of affordable housing) would not outweigh the harm to the character of the area, and the conflicts with policies 1 and 2. For these reasons, the Appeal was dismissed.

Location	15, Pilleys Lane, Boston, PE21 9RA
Reference	B/20/0262
Proposal	Proposed two storey side and rear extensions and alterations
Delegated Committee /	Delegated
Appeal Decision	Allowed
Appeal Date	03-Mar-2021

This was a householder appeal, relating to an extension to an existing building. The main issues being the impact on amenities of number 13 Pilleys Lane.

The inspector considered the relationships and impacts in detail, including highlighting the use of rooms and proximities. The inspector found some impacts could be mitigated through conditions relating to obscure glazing, and that the resultant impacts of the development would not be detrimental in terms of loss of light or outlook.

The Inspector allowed the appeal, subject to conditions.

Location	Land to the rear of Crest House, Coles Lane, Swineshead, Boston, PE20 3NS
Reference	B/20/0281
Proposal	Outline application for the erection of one single storey dwelling
Delegated Committee /	Delegated
Appeal Decision	Dismissed
Appeal Date	21-March-21

This application sought permission for a dwelling, it was in outline with all matters reserved. It was refused under Delegated Powers.

On living conditions, the inspector agreed with the Council that the dwelling would have an adverse impact on neighbouring properties due to the combination of proximity, surface material for the new access and vehicle movements, and the visual intrusion of the new driveway.

Turning to character and appearance, the Inspector noted nearby development including that on the adjacent land. The subdivision of the plot was noted, but overall it was not considered that the scheme would be harmful to the character and appearance of the area given the mix of styles and spatial arrangements found locally.

Concluding a lengthy planning balance, the Inspector found that the harm to living conditions, in particular those of Crest House, would be contrary to the development plan, and that there were insufficient benefits arising to outweigh this harm.

Location	Land adjacent Laconia, Church Road, Freiston, Boston
Reference	B/20/0147
Proposal	Erection of four bedroom dwelling with detached garage, including boundary fence
Delegated Committee /	Delegated
Appeal Decision	Dismissed
Appeal Date	14-May-2021

This application was for a dwelling and was refused under delegated powers. Officers refused the application due to its location (within countryside), the failure to pass sequential and exceptions tests, and the effect on a nearby listed building.

The Inspector accepted that the proposals would conflict with policy 1 and 11, in terms of location and there were insufficient benefits to outweigh this. The 5YHLS was noted.

On flood risk, the site was within Flood Zone 3, and that in the event of a breach of defenses the site could be at risk of flooding and serious harm for future residents. The Inspector gave weight to the 2017 Strategic Flood Risk Assessment and the plan objectives set out in policy 4, concluding that the site didn't pass the Sequential Test. As such, conflict with policy 4 was found.

Turning to the impact on the nearby Grade 2 Georgian House, the inspector did not agree with the Councils view, and found no harm on the significance or setting of the asset. The proposal was however dismissed on the earlier 2 grounds.

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 7 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 1, 2 and 3).
- 3.2 It was disappointing that the Enforcement Notice was quashed, although the reasons are understood, both Officers and the Appellant consider the Inspector could have amended the notice or made a different determination. A revised application is before the Council for consideration.
- 3.3 The Appeal that was Allowed was a householder Appeal, and having reviewed the decision, it still generates mixed views internally and is considered to be finely balanced. However, it does provide useful guidance in terms of the assessment of harm in respect of householder proposals including significant extensions.
- 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 1st March 2020 to 30th 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:

2 year - Appeals performance - Majors			2 year - Appeals performance - Non-Major	
Total number of decisions	40		Total number of decisions	723
Total number of Appeals	2		Total number of Appeals	26 (inc. 2no. Prior approvals)
Dismissed	2		Dismissed	18
Allowed	0		Allowed	8
Withdrawn	0		Withdrawn	0
% indicator (majors allowed / total number of decisions)	0%		% indicator (non-majors allowed / total number of decisions)	1.11%

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/18/0530
- B/20/0040
- B/20/0074
- B/20/0076
- B/20/0080

Where the document can be viewed

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

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| <ul style="list-style-type: none">• B/20/0082• B/20/0147• B/20/0262• B/20/0281 | |
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