



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:	26 th July 2022
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 and highlight any key decisions or themes arising.

RECOMMENDATION

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

REASONS FOR RECOMMENDATION

To provide an update on Appeal performance/outcomes; and pick up any key learning around planning policy or approach to decision making in order to ensure quality of decisions in future.

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.

1.3 Decisions are published on our website, and are circulated to Members when received as part of the weekly list.

2.0 APPEAL DECISIONS

2.1 There have been 13 Appeals since the last report to Members. Of these, 5 were allowed and 8 dismissed. The Appeals related to a mix of application and development types, including a major housing scheme, discharge of condition, lawful development certificate and minor residential developments.

2.2 Of the decisions received, the following are considered the most noteworthy:

Location	Rear of 27, Argyle Street, Boston, PE21 8PJ
Reference	B/20/0438
Proposal	Erection of a dwelling
Delegated Committee /	Delegated
Appeal Decision	Allowed
Appeal Date	08-Jul-2021

2.3 Summary:

This revolved around the loss of an existing parking area to provide a dwelling – the proposal being an additional dwelling with no additional on-site parking.

The Inspector noted the sustainable nature of the location and access to shops, services, town centre and train station. They noted there could still be an incentive for the existing occupiers of 27 to keep a car, but noted there were opportunities to park within the street. The inspector concluded there were reasonable places for parking and passing and this supported the Appellants position. It was concluded that any impact would be limited.

The Inspector noted the amenity concerns, but again found these would be limited.

Concluding, it was found the proposal would be compliant with the NPPF, and Policies 2, 3 and 36 of the Local Plan, the additional dwelling contributing to housing delivery generally was noted as a benefit.

Location	Old Leake Caravan Park, Shaw Lane, Old Leake, Boston PE22 9LQ
Reference	B/21/0102
Proposal	Certificate of Lawfulness (proposed use) in respect of siting of static caravans
Delegated Committee /	Delegated
Appeal Decision	Allowed
Appeal Date	08-Jul-2022

2.4 Summary:

This rested on a nuanced piece of case law, and whether or not a lawful development certificate should have been granted.

There were significant disagreements between the Agent for the Appellant and the Council around the various relevant Case Law and how it should be applied. The Council were legally represented at the hearing by Counsel.

In short, the Inspector concluded that regardless of the Case Law interpretation, the condition (7) imposed by the **Inspector** (my emphasis) in 2019 (B/18/0136) was the key failing as it did not meet the necessary 6 'tests', particularly in relation to its wording and meaning, and its ability to therefore be enforceable. On that basis, the Inspector concluded that given the ambiguity, he had no other basis than to grant the lawful development certificate.

The lawful development certificate granted is very precise in terms of the area it relates to, the number of caravans (25), that they must be used by agricultural workers, and that the other conditions attached to the previous Appeal decision remain relevant.

A Costs claim was made by the Appellant but failed.

Location	Land East of Llewelyn House, Main Road, Wigtoft, Boston, PE20 2NZ
Reference	B/21/0011
Proposal	Erection of 4 detached chalet bungalows
Delegated Committee	/ Delegated
Appeal Decision	Allowed
Appeal Date	01-Mar-2022

2.5 Summary:

Site within countryside between Sutterton and Wigtoft. Weight given to criteria D (economic, community and environmental benefits) of policy 1 – noting the benefits of 4x3-bed dwellings, the connections to both Sutterton & Wigtoft with their facilities, and the economic benefits arising from construction. Concluding policy 1 and NPPF (para 78) compliant.

Considered the site an infill development; limited erosion of existing character; bungalows would reduce the impact further when compared to existing two-storey forms. Compliant with policies 2&3.

On balance, scheme found to be acceptable as limited harm would be outweighed by wider benefits.

Location	Land Adjacent to 69, Middlegate Road West, Frampton, Boston PE20 1DA
Reference	B/21/0291
Proposal	Proposed construction of 1no. two storey residential dwelling
Delegated Committee	/ Delegated
Appeal Decision	Allowed
Appeal Date	12-Apr-2022

- 2.6 Summary:
Significant planning history, including recent dismissal on Appeal - APP/Z2505/W/19/3240611.

Inspector did not consider the size of the plot, and the resultant size of dwelling to be harmful to the street scene. Inspector considered the changes had overcome the previous reasons for dismissal. No conflict with policies 2 and 3.

Despite close proximities, relationships with neighbouring properties (67&69) were acceptable.

Location	Land to the east of Old Main Road, Fosdyke, PE20 2BU
Reference	B/20/0130
Proposal	Residential development of 23 dwellings including 6 affordable dwellings
Delegated Committee /	Delegated
Appeal Decision	Dismissed
Appeal Date	09-Mar-2022

- 2.7 Summary:
Outside settlement boundary, failing to meet criteria of Policy 1.

Concerns regarding impact on character, not seen as a 'logical conclusion to the village'. Landscaping would not diminish the harm that would result.

Affordable housing given moderate weight, but noted the Councils 5YHLS. Conflicts identified with Policies 1, 2 and 3.

Flood risk (policy 4) conflicts, particularly in relation to Sequential Test.

Location	Jasmine Cottage, Pitcher Row Lane, Algarkirk
Reference	PENF0303/19
Proposal	Appeal against an Enforcement Notice pertaining to the breach of planning control relating to the erection of a two-storey rear extension, the erection of a detached garage and the erection of fence and gates.
Delegated Committee /	Delegated
Appeal Decision	Notice Upheld
Appeal Date	09-JUL-2021

- 2.8 Summary:
The proposal related to an Appeal against the notice, fundamentally due to the Appellants desire to retain a two storey extension which had been built at the property.

The extension had been refused through a retrospective planning application. Additional development relating to fence were also included in the notice. The Councils main concern related to the impact on Ivy Cottage (neighbour) and also the character and appearance of the area.

The Inspector discussed the impact on Ivy Cottage at length and agreed with the Councils position. In addition, the fence was concluded to adversely impact on the character of the area.

The notice was upheld, albeit with minor variations to extend the compliance period.

3.0 COMMENTS ON DECISIONS FROM ASSISTANT DIRECTOR – PLANNING

- 3.1 This is the first update since June 2021, and whilst there is a balanced mix of decisions (some Allowed) most were dismissed. There is also a mix of cases with different application types and policy issues, including a nuanced case involving significant Case Law.
- 3.2 At two of the Appeals, the Council were represented externally, B/20/0130 by an external consultant and B/21/0102 by Counsel. In both cases this represented value for money given the complexity of the cases. No Costs Awards were made in connection with any of the Appeals.
- 3.3 In general terms, the Council has been able to demonstrate its position in respect of all Appeals, and whilst some decisions for housing were allowed, generally the Local Plan policy continues to perform well. For those housing schemes that were allowed, it was notable that Inspectors afforded weight to other material considerations including the provision of housing, general sustainability of location and economic benefits of construction when forming their planning balance. This is not uncharacteristic when considering wider decisions across the Partnership and the general trend nationally.
- 3.4 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 Department of Levelling Up, Housing and Communities (DLUHC) 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. DLUHC 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.

4.2 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	49		Total number of decisions	715
Total number of Appeals	2		Total number of Appeals	23*
Dismissed	2		Dismissed	16
Allowed	0		Allowed	7
Withdrawn	0		Withdrawn	0
% indicator (majors allowed / total number of decisions)	0%		% indicator (non-majors allowed / total number of decisions)	2.2%

* this figure includes 3x appeals for other application types, i.e. Prior approval, Lawful Development Certificate, Condition Discharge and 2x Enforcement Appeals which resulted in the granting of planning permission.

4.3 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	Where the document can be viewed
<p data-bbox="145 192 416 232">Appeal decision –</p> <p data-bbox="145 264 499 304">Planning References:</p> <ul data-bbox="204 304 475 779" style="list-style-type: none"><li data-bbox="204 304 400 344">▪ B/20/0431<li data-bbox="204 344 475 385">▪ B/19/0444/CD1<li data-bbox="204 385 400 425">▪ B/20/0130<li data-bbox="204 425 400 465">▪ B/20/0249<li data-bbox="204 465 400 506">▪ B/21/0066<li data-bbox="204 506 400 546">▪ B/21/0291<li data-bbox="204 546 400 586">▪ B/20/0068<li data-bbox="204 586 400 627">▪ B/21/0011<li data-bbox="204 627 400 667">▪ B/21/0102<li data-bbox="204 667 400 707">▪ B/21/0379<li data-bbox="204 707 400 748">▪ B/20/0263<li data-bbox="204 748 400 788">▪ B/20/0438<li data-bbox="204 788 400 828">▪ B/20/0482	<p data-bbox="831 264 1442 371">All application documents are available via the Councils website using the relevant details.</p>