



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:	25 th January 2023
SUBJECT:	Receipt of Appeal Decisions
PORTFOLIO HOLDER:	Councillor Nigel Welton
REPORT AUTHOR:	Abbie Marwood – Deputy Development Manager – 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 4 Appeals since the last report to Members. Of these, none were allowed, 3 dismissed and 1 withdrawn. The Appeals related to a mix of application and development types, including changes of use, minor householder and an adult gaming centre.

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

Location	Panache, Station Road, Old Leake, Boston
Reference	B/21/0461
Proposal	Change of use of garden for the keeping and breeding of dogs and erection of kennels (retrospective)
Delegated Committee	/ Delegated
Appeal Decision	Dismissed and Enforcement Notice upheld
Appeal Date	17 Jan 2023

2.3 Summary:

This revolved around the unauthorised change of use of a field to the rear of a dwelling for the keeping and breeding of dogs, including the erection of kennels. The development has already been undertaken and is therefore retrospective.

The Inspector noted the countryside nature of the location and lack of justification as to why such an operation is necessary to this location. They noted that such an operation would conflict with neighbouring uses and that there are significant adverse impacts on the character and appearance of the area as a result of the development.

The Inspector noted the benefit of providing a business and local employment, however it was found that this did not outweigh the harm nor the conflict with Policies 1 and 7.

A particular point of interest in this case is the assessment of the noise impact from the operation. Evidence was given by Boston Borough Council Environmental Health Officer in relation to the nature, impact and measuring of such noise impact and the Inspector concurred with this, finding that a condition would not adequately mitigate adverse impact of noise produced by the site.

The associated Enforcement appeal was also upheld, subject to minor corrections, requiring the use of the land to cease and all structures to be removed.

Location	14-16 Strait Bargate, Boston
Reference	B/22/0222
Proposal	Change of use from a former Class E use to an Adult Gaming Centre (Sui Generis)
Delegated Committee	/ Committee
Appeal Decision	Appeal Withdrawn
Appeal Date	18 Jan 2023

2.4 Summary:

This appeal relates to the proposed change of use of a unit at 14-16 Strait Bargate to a mixed 'sui generis' use as an adult gaming centre.

The application was determined at Planning Committee with a resolution to refuse based upon:

- impacts on the character and appearance of the area, vitality of the primary shopping frontage and the Conservation Area (policies 2, 26 & 29);
- Failure to support the creation of healthy, inclusive and safe places which contribute positively to community well-being (policy 32).

The applicant appealed the refusal of planning permission but has since withdrawn this appeal. They have not provided detailed reasons for withdrawing the appeal.

Location	109 Wyberton West Road, Boston
Reference	B/21/0541
Proposal	Erection of detached garage with amendments to existing driveway
Delegated Committee	/ Delegated
Appeal Decision	Dismissed
Appeal Date	30 Sept 2022

2.5 Summary:

The main issue under consideration for this appeal is the impact upon the character and appearance of the street-scene. Of particular importance is the pattern of surrounding development, characterised by long front gardens and dwellings set back from the frontage.

The Inspector assessed the proposal for a detached garage against Policy 2 and 3 and found that it would result in an incongruous feature at odds with the general pattern of development, and therefore resulting in an adverse impact on the street-scene.

Location	Land off Common Side Road, Leake Commons, Boston PE22 9RR
Reference	B/21/0428
Proposal	Change of use from agriculture to glamping site to include the siting of 11no units.
Delegated Committee	/ Delegated
Appeal Decision	Dismissed
Appeal Date	01 Nov 2022

2.6 Summary:

The appeal concerned a number of issues:

- Whether the location is suitable for tourism development;
- Whether the proposal is an acceptable form of development in relation to flood risk;
- The effect of the proposal on the living conditions of neighbouring occupiers in respect of noise and disturbance.

The proposal was for 11no glamping units on a parcel of agricultural land located outside of the settlement boundary. Whilst Policy 9 supports tourism the Inspector found that in this case the proposal would not be necessary to its location and would not contribute to the sustainable development needs of the area.

In addition, the Inspector found that the sequential and exceptions test had not been passed and therefore did not represent suitable development in relation to flood risk.

In conclusion the Inspector noted the concerns in relation to noise and disturbance, but found that the development would not materially harm the living conditions of neighbouring occupiers. The appeal was therefore dismissed on the basis of the first 2 points.

3.0 COMMENTS ON DECISIONS

3.1 This is the first update since July 2022, and whilst there is a small number of appeals 3 out of the 4 are dismissed and 1 was withdrawn. There are also a mix of cases with different application types and policy issues, including enforcement involvement.

3.2 At one of the Appeals, the Council were represented externally, B/21/0461 by Counsel. In this case this represented value for money given the complexity of the case and the format as a hearing. 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, generally the Local Plan policy continues to perform well with all those appeals that were determined being dismissed by Inspectors.

It was notable that Inspectors afforded weight to other material considerations including the general sustainability of locations and environmental, social and economic benefits of proposals 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 (Jan 2020 – Dec 2022):

2 year - Appeals performance - Majors			2 year - Appeals performance - Non-Major	
Total number of decisions – Planning Applications	79		Total number of decisions – Planning Applications	1040
Total number of Appeals	1		Total number of Appeals	35*
Dismissed	1		Dismissed	25
Allowed	0		Allowed	10
Withdrawn	0		Withdrawn	0
% indicator (majors allowed / total number of decisions)	0%		% indicator (non-majors allowed / total number of decisions)	0.96%

* this figure includes appeals for other application types in addition to Planning Applications, i.e. Prior approvals, Lawful Development Certificate, Condition Discharge and Enforcement Appeals.

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

Appeal decision –

Planning References:

- B/21/0461
- B/22/0222
- B/21/0541
- B/21/0428

Where the document can be viewed

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