



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:	08 October 2024
SUBJECT:	Appeal Decisions
PORTFOLIO HOLDER:	Councillor John Baxter
REPORT AUTHOR:	Abbie Marwood – 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 (dated Oct 2023) 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 6 Appeals since the last report to Members, which comprises of 2 planning decision appeals and 4 enforcement notice appeals. Of these, one enforcement appeal has been allowed, and 5 appeals were dismissed.
- 2.2 Of the appeal decisions received by the LPA, a summary of the cases and important points are below:

Planning decision appeals

Location	Stone Acre Farm, Sutterton Drove, Amber Hill, Boston
Reference	B/23/0296
Proposal	Prior Notification – Class Q proposed change of use of agricultural building to 1 no dwelling
Delegated Committee	/ Delegated
Appeal Decision	Dismissed/ Application for costs dismissed
Appeal Date	03 Sept 2024

- 2.3 Summary:

This appeal relates to an application for Prior approval under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO). Prior Approval under Class Q relates to applications for the conversion of agricultural buildings to dwellings, subject to meeting the criteria within the legislation. The appellant also submitted an application for costs against the LPA.

Under Class Q, the Local Planning Authority has 56 days to issue a decision as to whether the proposal meets the requirements or requires planning permission, and if no decision is issued the proposal is considered to be given 'deemed' consent, within the limitations of the GDPO.

In this case the Council issued a decision after the expiry of the 56 days. The reason for refusal was insufficient evidence to demonstrate the site was in fact in agricultural use as part of an established agricultural unit. It therefore did not comply with the requirements of the GDPO.

The Inspector based their decision on whether the proposal would be permitted development within Class Q of the GDPO, particularly in relation to whether the site was in agricultural use as part of an established agricultural unit and whether the building has been used for a period of 10 years before the date of the application.

The Inspector concluded that there was not sufficient evidence (lack of financial information and physical evidence) to demonstrate that the site was in agricultural use as part of an established agricultural unit and was more akin to a recreational use. In relation to the building the Inspector found the building had been demolished and moved within the site, and therefore did not meet the requirement to have been used for a period of 10 years before the date of the application.

The Inspector therefore concluded that the proposal would not comply with the requirements of Class Q and dismissed the appeal.

In relation to the costs application against the Council, the Inspector found that the Council had not acted unreasonably and that an award of costs was not warranted. The costs application was also refused.

Location	La Vern, Washdyke Lane, Kirton Meeres, Boston
Reference	B/23/0112
Proposal	Outline application with all matters reserved for 1no dwelling
Delegated Committee	/ Committee (18 July 2023)
Appeal Decision	Dismissed
Appeal Date	02 July 2024

2.5 Summary:

The application related to a proposed dwelling and was refused by Committee on 18th July 2023. The main issue under consideration for this appeal were:

- Whether the appeal site is an appropriate location for residential development, with regard to the development plan; and
- Whether the proposal would comply with national planning policy which seeks to steer new development away from areas at highest risk of flooding.

The Inspector found that the proposal had not demonstrated it would be necessary to its location, or that it would meet the sustainable development needs of the area. In addition, the site is remote from sustainable travel routes, with no footpath and no evidence was provided in relation to how the dwelling would support the vitality of a rural community or the countryside.

The Inspector found that the lack of an adequate sequential test was contrary to Local Plan Policy 4 and the NPPF and therefore the proposal was unacceptable in terms of flood risk.

Enforcement Appeals

Location	The Barn at Seadyke House, Seadyke Road, Kirton, Boston PE20 1QE
Reference	B/22/0280
Proposal	Proposed change of use of former annexe to residential dwelling
Delegated Committee	/ Delegated
Appeal Decision	Part A quashed/Part B dismissed

Appeal Decision Date	07 Feb 2024
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Summary:

This appeal relates to an enforcement notice issued following the refusal of a planning application. The breach related to the conversion of an annexe to a separate dwelling without planning permission. The notice required the use to cease and restrict all future occupancy to that incidental to the main dwelling.

The Inspector noted that although a condition limited the occupation of the annex, on the basis of the evidence submitted, it was concluded that the dwelling had never been occupied as an annexe, but rather as a separate dwelling. The Inspector therefore allowed the appeal and quashed the enforcement notice.

In relation to the refusal of planning permission to a separate dwelling, the Inspector noted the dwelling's location within the countryside and within Flood Zone 3 as contrary to local and national policy and therefore the vulnerability of the dwelling outweighed any personal circumstances. The appeal against the refusal of planning permission was therefore dismissed and planning permission was withheld.

Location	2 Sleaford Road, Boston
Reference	B/23/0327
Proposal	Enforcement Notice – installation of roller shutters
Delegated Committee	/ Delegated
Appeal Decision	Dismissed – notice upheld
Appeal Date	17 September 2024

2.6 Summary:

The appeal concerned an enforcement notice requiring the removal of 3no roller shutters that were installed without planning permission.

The Inspector agreed that the installation of the roller shutters caused harm to a non-designated heritage asset (2 Sleaford Road), nearby Grade II Listed building (5 Sleaford Road) and was contrary to Policy 2, 3 and 29 of the South East Lincolnshire Local Plan 2019.

The enforcement notice requires the removal of the roller shutters.

Location	Ulllyatts Drove, Amber Hill, Boston
Reference	
Proposal	Enforcement Notice – Change of use to storage and distribution
Delegated Committee	/ Delegated
Appeal Decision	Dismissed – notice upheld
Appeal Date	18 September 2024

Summary:

The appeal relates to an enforcement notice requiring the change of use of land to storage and distribution to cease, following the refusal of a planning application. The development involved a proposal to convert a former agricultural building and yard into a storage and distribution yard for distribution.

The main issues in the consideration of the appeal were:

- The effect of the development on the character and appearance of the open countryside;
- Highway safety

The Inspector concluded that the use for a business in the countryside caused material harm to the character and appearance of the area and conflicted with Policy 3 and 4 of the SELLP. The Inspector concluded that highway concerns could be adequately addressed via the imposition of a condition to limit the size of the vehicles.

Consequently, the Inspector varied the time period for compliance from 6 months to 12 months, upheld the enforcement notice and refused planning permission.

Location	Bay Hall, Hall Lane, Benington, Boston
Reference	B/22/0508
Proposal	Enforcement Notice – Change of use to holiday let
Delegated Committee	/ Delegated
Appeal Decision	Allowed – notice quashed
Appeal Date	11 September 2024

Summary:

The application relates to a proposal to change the use of a dwelling to a holiday let without planning permission. The enforcement notice required the use to cease.

The Inspector noted the impacts on residential amenity but found that with appropriate conditions the impacts would not be detrimental as to cause harm. The Inspector therefore quashed the notice and granted permission subject to conditions.

3.0 COMMENTS ON DECISIONS

- 3.1 These are the appeals that have been determined by PINs since Oct 2023, and whilst there is a small number of appeals 5 have been dismissed and one enforcement notice quashed.
- 3.2 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 in line with Officer Decisions.

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 and is in accordance with Planning Officers approach to decision making.

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 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. 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 (Sept 22 – Aug 24):

2 year - Appeals performance - Majors			2 year - Appeals performance - Non-Major	
Total number of decisions – Planning Applications	64		Total number of decisions – Planning Applications (Minor and Other Categories)	574
Total number of Appeals	0		Total number of Appeals *	10
Dismissed	0		Dismissed	9
Allowed	0		Allowed	0
Withdrawn	0		Withdrawn	1
% indicator (majors allowed / total number of decisions)	0%		% indicator (non-majors allowed / total number of decisions)	0.0%

* this figure includes appeals for other application types in addition to Planning Applications, i.e. Lawful Development Certificate and Condition Discharge, which do not fall within the Minor or Other recording categories.

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/22/0508
- B/22/0280
- B/23/0296
- B/23/0327
- B/23/0112

Where the document can be viewed

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