



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:	7 February 2017
SUBJECT:	Receipt of Appeal Decisions
PORTFOLIO HOLDER:	Councillor Peter Bedford
REPORT AUTHOR:	Development Control Manager
EXEMPT REPORT?	No

SUMMARY

The purpose of this report is to advise members of the receipt of two appeal decisions in respect of:

15 Mentmore Gardens, Boston and
50 Brothertoft Road, Boston

Both appeals were dismissed. The second one was an appeal against an Enforcement Notice which was dismissed and the requirements of the Notice, subject to corrections, were upheld.

The two decision letters are attached to this report.

RECOMMENDATION

The Committee are asked to note this report and the comments arising from it.

REASONS FOR RECOMMENDATION

To address a Service Delivery Action Plan point for 2016/17.

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'. This 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 any appellant has to follow.

2.0 APPEAL DECISIONS SINCE DECEMBER 2016

15 Mentmore Gardens, Boston

- 2.1 This application for a garage extension and including a lifting of the ridge height for first floor accommodation was refused by Committee, contrary to officer recommendation, at the August 2016 meeting. The single reason for refusal given related to the increase in footprint and the proximity to and impact upon the amenities of neighbours contrary to Policy G1 (B/16/0206).
- 2.2 At paragraph 2 of the Inspector's decision an additional issue was introduced by the Inspector as part of their ability to bring their own experience to a decision. This is since an Inspector is not bound to look only at an authority's reason(s) for refusal.
- 2.3 The Inspector then proceeded to dismiss the appeal on that single ground (para 5), and did not agree that there would be any effects upon the living conditions of neighbours (para 10). Although judgements of character are often subjective, the Inspector concluded that the structure would be wholly at odds with the character of the streetscene.
- 2.4 Members will be aware of the Application for a Certificate of Lawfulness for a garage extension (B/17/0003) at this property which is currently under consideration and any necessary update on the progress of determination of that application will be reported to Committee verbally.

50 Brothertoft Road, Boston

- 2.5 These appeals were against an Enforcement Notice issued in April 2016 which alleged the use of the caravan stationed in the curtilage of No.50 for purposes not ancillary to the main dwelling house, i.e. as a separate and independent dwelling unit.
- 2.6 Appeals against an Enforcement Notice must follow prescribed grounds; there is the ground (a) appeal....'that planning permission should be granted'; and the others are technical legal grounds. Unless an appellant appeals ground (a), the planning merits of allowing it to remain are not considered.
- 2.7 Paragraph 1 of the attached decision is the Inspector correcting the Notice. It is not the act of stationing the caravan – as a building operation - that would need permission, but the use of the land. The Inspector explains this at paras 3-5.
- 2.8 The appellants only appealed on ground (c)....'that there has not been a breach of planning control'. The Inspector's assessment of this ground takes up the rest of the decision letter. It is not an assessment of the planning merits of whether or not it should receive permission – since ground (a) has not been appealed, it is a legal exercise to establish if there has been a breach of control or not. The test is 'on the balance of probability' and at paras 15 and 16 the Inspector concludes that the appeals should not succeed.

2.9 The appellants now have two months from the date of the Inspector's decision to comply with the Notice – i.e. by 12 February 2017.

3.0 CONCLUSION

3.1 These decisions put performance on appeals for 2016/17 to 30% - out of ten; three have gone against the Council (exceeds our target of 20%, 1 in 5). To date this year there have been three costs applications against the Council, one has been successful (Pincushion costs, reported to Committee in September 2016).

3.2 By way of assistance, the Brothertoft Rd decision is a good example of where the planning merits do not come into the decision. It was a matter of 'on the balance of probability' based upon the evidence. A similar example would be the current application for a Certificate of Lawful Development at 15 Mentmore Gardens following the unsuccessful appeal. That application for the certificate can only be assessed on the matter of law -whether or not the proposals are permitted development.

FINANCIAL IMPLICATIONS

None

LEGAL IMPLICATIONS

None

ANY OTHER IMPLICATIONS

None

CONSULTATION

Portfolio Holder: Councillor Peter Bedford

APPENDICES

Planning appeal decisions in respect of:

15 Mentmore Gardens and 50 Brothertoft Rd

BACKGROUND PAPERS

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

Document title	Where the document can be viewed
Application and appeal files: 15 Mentmore Gardens, Boston Ref: B/16/0206	Development Control
50 Brothertoft Road, Boston Ref: Penf 0191/15	