



# 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:	20 June 2017
SUBJECT:	Receipt of Appeal Decision
PORTFOLIO HOLDER:	Councillor Michael Cooper
REPORT AUTHOR:	Development Control Manager
EXEMPT REPORT?	No

### **SUMMARY**

The purpose of this report is to advise members of the receipt of an Enforcement appeal and costs application decision in respect of a site at Willow Lodge Park, Chapel Hill Road, Chapel Hill.

The Enforcement Notice appeals were dismissed which means that the Notices served by the Council have been upheld and planning permission in seeking to regularise the breach has been refused. The Costs application made by the Council against the appellants was unsuccessful. Copies of 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 Service Delivery Action Plan points for 2017/18.

## **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 May 2017**

### **Willow Lodge Park, Chapel Hill Road, Chapel Hill, Lincoln**

- 2.1 A holiday park for sixty-four lodges was approved in 2004 with conditions that included that the lodges may only be used for holidaying and none shall be occupied during February or March in each year (Condition 6). Upon the receipt of complaints and evidence that some that had been brought onto the site were being lived in permanently in breach of that condition, Enforcement Notices were served, initially in June 2016. Upon advice on the 'four year rule', those Notices were withdrawn in August 2016 and new Notices served with a different definition of the alleged breach.
- 2.2 Those Notices became the subject of these appeals. The Inspector's para 3 and 6 of his letter describe how only a ground 'a' appeal was proceeded with, this is the 'that planning permission ought to be granted' ground in that there is an application for planning permission in front of the Inspector. The options open to the Inspector on a ground 'a' are set out in his para 6.
- 2.3 The prospect of 64 homes in the open countryside, without occupation control in an unsustainable location was the reason for seeking to enforce this condition and the Inspector's paras 9 to 17 set out how he approached the sustainability issues and if the site had any sustainability credentials. The Inspector agreed that there are fundamental differences between the characteristics of holiday and permanent residential accommodation and without the condition it would be 'inherently unsustainable' (para 17).
- 2.4 Flood Risk is assessed in the Inspector's para 18 to 22, the appellants' did not provide any flood risk information to support their deemed planning application. Thus there was no proposed mitigation or measures to show how the site could be made safe.
- 2.5 The Inspector's discussion on conditions confirms that our 'standard' two month period for non occupation is reasonable (para 24) and there was no justification for the appellants' suggested alternatives.
- 2.6 Finally, the impact on the appellants' Human Rights is addressed in some detail in the Inspector's para 28 to 37. That rights under Article 8(1) are qualified rights - that interference with them can be justified in the public interest – is a fundamental part of how planning control sits with Human Rights. The Inspectors' text is a good aide on how a decision maker should approach this subject and the Committee is requested to specifically note these paragraphs.

2.7 This is a very relevant and convincing appeal decision; the alternative would have been isolated and uncontrolled large scale residential development way beyond the bounds of any sustainable locations. The Inspector's clarification of how he approached what the Framework's para 55 'isolated' means, at his para 14, is also useful.

### **Costs**

2.8 Your officers believed that it was worthwhile putting a costs application in against the appellants, but as set out in the separate costs decision letter, the Inspector explains why such an award was not justified in terms of the subsequently withdrawn ground 'd' appeal.

## **3.0 CONCLUSION**

3.1 Although there are two appeals here, for monitoring purposes it is one decision that has gone in favour of the Council. For the year to date two out of two appeal decisions have gone in favour of the Council.

### **FINANCIAL IMPLICATIONS**

None

### **LEGAL IMPLICATIONS**

None

### **ANY OTHER IMPLICATIONS**

The upheld Notice took effect on the date of the Inspector's decision so the time period for compliance will expire on 11 May 2018.

**CONSULTATION** Portfolio Holder: Councillor Michael Cooper

### **APPENDICES**

Enforcement Notice appeal and costs decisions in respect of:  
Willow Lodge Park, Chapel Hill Road, Chapel Hill.

### **BACKGROUND PAPERS**

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

<b>Document title</b>	<b>Where the document can be viewed</b>
Application & Enforcement files: Willow Lodge Park, Chapel Hill Road, Chapel Hill Ref: B/04/0793 and PENF051/16	Development Control