



# 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:	15 <sup>th</sup> October 2019
SUBJECT:	Receipt of Appeal Decisions
PORTFOLIO HOLDER:	Councillor Nigel Welton
REPORT AUTHOR:	Mike Gildersleeves - Growth Manager
EXEMPT REPORT?	No

### SUMMARY

The purpose of this report is to advise members of the receipt of appeal decisions received since the previous report, these are:

**Planning Reference:**

B/18/0119

**Proposal:**

Outline application for residential development following demolition of the existing buildings with all matters (layout, appearance, landscaping, access and scale) reserved for later approval

**Location:**

Bridge House, Grantham Road, Boston, Lincolnshire, PE21 7NL

**Decision level:**

Planning Committee

**Appeal Decision:**

Dismissed

**Planning Reference:**

B/18/0346

**Proposal:**

Outline application for residential development (up to 8 dwellings) with all matters reserved for later approval

**Location:**

Land west of Millview, Donington Road, Kirton End, Boston, PE20 1NX

**Decision level:**

Planning Committee

**Appeal Decision:**

Allowed

**Planning Reference:**

B/18/0320

**Proposal:**

Outline application for residential development (up to 2 dwellings) with all matters reserved

**Location:**

Land fronting Sharpe's Paddock, Morley Lane, Bicker, Boston, PE20 3DP

**Decision level:**

Delegated

**Appeal Decision:**

Dismissed

**RECOMMENDATION**

The Committee are asked to note this report.

**REASONS FOR RECOMMENDATION**

To address the Service Plan 2019/20.

**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.

**2.0 APPEAL DECISIONS****Bridge House, Grantham Road, Boston, Lincolnshire, PE21 7NL**

- 2.1 The inspector gave due regard to policies 13,14, 33 & 34 in considering the potential impact of the development on the route of the Boston Distributor Road. He identified that the site is within a commercial area and that the proposed pocket of residential

development would be at odds with this. He concluded that the development would fail to integrate into the surrounding area and would be in conflict with policies 2 and 3. The inspector also noted that the Council did have a 5YHLS which was confirmed by the adoption of the SELLP, with no evidence to the contrary.

#### **Land west of Millview, Donington Road, Kirton End, Boston, PE20 1NX**

- 2.2 This was an outline application with all matters reserved, the Inspector considered both the revised NPPF and the adopted SELLP which were released and adopted post determination of the application.
- 2.3 The Inspector identified that the site was outside of the boundary for Kirton End, but was within an area with other residential development (opposite). He advised that the site is more related to the character of the village than the countryside, and any encroachment into the countryside would not be at odds with the established character.
- 2.4 He advised that the development would result in visual change, but as this would be seen in the context of the existing village this would result in minimal harm. This could be further reduced at Reserved Matters stage. He did not find that the development would lead to the joining of Kirton End and Kirton End Bridge, concluding that the development would be in accordance with policies 2 and 3.
- 2.5 The inspector concluded that the development would be acceptable in relation to amenity considerations.
- 2.6 On sustainability, and access to facilities and services, the Inspector noted the relationship with Kiron End and Kirton, and made reference to para 78 of the NPPF, advising that it is possible to cycle between the settlements and that development would enhance the social and economic benefits of the area. The conclusion being the proposals would be in accordance with policies 1 & 5.
- 2.7 At para 28, the Inspector identifies that the Council cannot demonstrate a 5YHLS and that para 11d of the NPPF is engaged.  
*\*\*Officers advise this is incorrect, and we are taking legal advice on this matter. However, it is noted that there has been a significant delay between final comments on the Appeal being sought by PINS (27/3/19) and the decision (17/9/19) during which time the Council has released two 5YHLS updates which confirm the Councils position.\*\**
- 2.8 Notwithstanding the above, the Inspector found there would be some harm, although that would be limited and could be mitigated, concluding the development is in accordance with policies 2 & 3. The inspector applied the planning balance, and gave weight to the supply of housing, plus the economic and social benefits and concluded that these would outweigh any harm from the development. The Appeal was allowed subject to conditions.

#### **(Morley House) Land fronting Sharpe's Paddock, Morley Lane, Bicker, Boston, PE20 3DP**

- 2.9 The Inspector recognised the changes in policy since the determination of the application, confirming that whilst at the time of the refusal the Council could not demonstrate a 5YHLS, it could now do so, and that full-weight could be attributed to the SELLP.

- 2.10 They identified the location in 'countryside' as defined in policy, and that there was a lack of justification in relation to policy 1. Considering the requirements of the NPPF, the Inspector concluded that the site is not isolated, but there was no substantive basis for a deviation from policy 1 of the development plan which is the starting point for decision-making.
- 2.11 The Inspector agreed that the development would be contrary to the rural character and would extend the build form into the countryside, concluding this would have an adverse effect. Although it was accepted that there would not be any harm to heritage assets subject to careful design. It was concluded that there was conflict with policy 2 of the SELLP.

**Growth Manager comments:**

- 2.12 Clearly the outcomes of these Appeals are mixed, and it is considered that this can in part be attributed to the complexity caused by the timing of the decisions in relation to the Councils 5YHLS and development plan position pre-adoption of the SELLP. It is hoped that now the SELLP is in place and with regular updates to the 5YHLS, and active monitoring against our Housing Delivery Test requirements, this complexity would be reduced and we should see more consistency in approach from Inspectors.
- 2.13 That said, on reviewing the commentary within the decisions, it is clear that the SELLP is the starting point for decision-taking, and that Inspectors continue to give weight to all relevant material considerations including the NPPF, levels of harm, etc. It is clear therefore that Inspectors are applying this balance, particularly when considering whether proposals are in accordance with policy 1 of the SELLP. While Members may find some of the outcomes disappointing, particularly in relation to the development that was allowed outside of the settlement boundary, it is important to consider that the weight attributed to these factors is a matter for the decision-maker, within the planning balance. Whilst the plan is the starting-point for decision-making, this has to be taken as a whole (weighing up conflict with and between policies) and all other material considerations. Equally, Officers would advise that each case must be determined on its own merits and thus, one decision does not set a precedent for future decisions per-se.
- 2.14 Additionally, it does appear that policies 2 & 3 of the SELLP are performing positively in terms of enabling the Council to resist development where it would have an unacceptable impact and where conflict with the policy objectives would occur, with Inspectors giving weight to these policies.
- 2.15 In addition, following a review of recent decisions received and comments made generally by Members regarding decisions received, Officers have recently written to the Planning Inspectorate outlining some areas of concerns. Subsequently we have received a response from the Planning Inspectorate (feedback unit). Both documents are provided along with this report for Members information. Whilst we are clearly disappointed with their response, we believe it is helpful in providing greater clarity in respect of their approach to decision-taking. It is also positive to note:

*"It is vital that the Inspectorate meets its quality targets and that, with due acknowledgement of your comments, it be satisfied that its decisions are fit for purpose. Please accept my assurance that the Inspectorate is actively working on continuing to improve all of the practices and procedures within its remit."*

2.16 In conclusion, Officers will continue to review all Appeal decisions received, and where such decisions appear to be irregular will consider obtaining the necessary legal advice in respect of potential for challenge. We will also continue to review the approaches adopted by Inspectors, and their rationale in respect of decision-taking. However, it is also hoped that decisions will become more consistent as future Appeals will be determined against the SELLP (and its associated background documents) as the starting point.

### 3.0 CONCLUSION

3.1 The Council has received 14 decisions from 1<sup>st</sup> April 2019 to 1<sup>st</sup> October 2019, of which 6 were allowed and 8 were dismissed.

3.2 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. MHCLG 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.

3.3 The following tables set out the Councils position in relation to the rolling two year period. In this case between 30<sup>th</sup> September 2017 to 1<sup>st</sup> October 2019:

<b>2 year - Appeals performance - Majors</b>		<b>2 year - Appeals performance - Non-Major</b>	
Total number of decisions	76	Total number of decisions	737
Total number of Appeals	4	Total number of Appeals	26
Dismissed	2	Dismissed	14
Allowed	2	Allowed	11
Withdrawn	0	Withdrawn	1
<b>% indicator (majors allowed / total number of decisions)</b>	<b>2.63%</b>	<b>% indicator (non-majors allowed / total number of decisions)</b>	<b>1.49%</b>

3.4 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

**APPENDICES**

Inspectors decision notices for the Appeals identified

**BACKGROUND PAPERS**

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

**Document title**

Application file including Appeal documents –

**Planning References:**

- B/18/0119
- B/18/0346
- B/18/0320

Letter to the Planning Inspectorate  
Response from the Planning Inspectorate

**Where the document can be viewed**

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