



B O S T O N

BOROUGH COUNCIL

Municipal Buildings, West Street, Boston, Lincolnshire, PE21 8QR

Tel: 01205 314292

Email: michelle.sacks@boston.gov.uk

Mrs. Sarah Richards
Chief Executive
The Planning Inspectorate
3B Hawk Wing, Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

23 August 2019

Dear Mrs Richards

I am writing to you in your role as Chief Executive for the Planning Inspectorate in relation to some concerns that our Council has in respect of recent planning appeal decisions.

Firstly may I congratulate you on your recent reforms to the Planning Appeal system. We hope that these will be successful in improving efficiency within the appeals process, the resolution of which has positive benefits for both Councils and Applicants a-like.

Boston Borough Council is a relatively small council in Lincolnshire, but we are very much focused on delivering growth in an appropriate way. We do not receive large numbers of applications, or larger numbers of Appeals when compared to others. To be clear, our authority is supportive of growth and is not anti-development. The purpose of this letter is not therefore to complain at developments being allowed, but to raise some concerns regarding the approach being adopted by Inspectors, the weight being afforded to our Development Plan, and general consistency.

We have recently adopted (March 2019) a new Local Plan – the South East Lincolnshire Local Plan – which was developed and delivered in partnership with South Holland District Council. Prior to this it is fair to say that the Council was subject to numerous speculative applications, but it was the aspiration of all parties that the adoption of a new plan would provide greater clarity for all, particularly in relation to managing growth within both authorities' areas. This new plan is supported by a clear 5-Year Housing Land Supply, and the Council is also performing well in relation to its Housing Delivery Test requirement. To that end, the Plan we believe should be given the most significant level of weight within planning decision-taking...in short, it will never be as current and up-to-date as it currently is, and in a plan-led system should therefore be the key tool against which all applications should be judged.

However, since the adoption of the plan, the Council has received a series of Appeal decisions which do cause the Council some alarm, particularly in relation to:

- the weight being afforded to the plan by Inspectors;
- the approach to Inspectors decision-making and
- consistency between Inspectors decisions.



This is highlighted by 3 cases in particular which I have highlighted in Table 1 below:

Table 1			
Appeal Number	Inspector	Site	Outcome
APP/Z2505/W/18/3210572	M Heron	Land adjacent to Lloyds Farm, Old Main Road, Fosdyke, PE20 2DB	Dismissed
<p>The Council have no negative comments in relation to this decision, or its approach, in particular as it seems to be strongly related to the application of the Development Plan policy – in particular Policy 1. However, we do believe it does highlight the apparent inconsistency in approach with other decisions which are highlighted in this correspondence (below).</p>			
APP/Z2505/W/18/3211205	Ian McHugh	The Grange, 114 Church Green Road, Fishtoft, Boston, PE21 0QY	Allowed
<p>This decision was particularly concerning to the Council, owing to the approach to and weighting given to the Development Plan, and also the application of the 'isolated' test from the Framework. The Council have particular concerns as this could set an undesirable precedent for the consideration of many other similar sites within a rural area such as ours.</p> <p>To that end, the Council sought legal advice, and although we have chosen not to seek a Judicial Review in this instance, the advice we received advised us that we would have positive grounds to seek a review. In particular the advice we received highlighted the following errors/concerns: (bold text = my emphasis)</p> <ol style="list-style-type: none"> 1. The Inspector misinterpreted Policy 1 of the SELLP in that he failed to conclude that the Appeal Scheme was contrary to the development plan. In particular, DL23 records that there is 'some conflict with the general thrust of Policy 1'. The correct position is that there was conflict with the clear wording of Policy 1 and therefore with the development plan for the purposes of s.38(6) Planning and Compulsory Purchase Act 2004; 2. Although the Inspector referred to the NPPF, he arguably did not consider §12 NPPF, which indicates the Government's policy that "Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted". There is a policy presumption that development in conflict with an up-to-date local plan (which the SELLP is) should not normally be allowed. There is nothing in the Decision which indicates that the Inspector had regard to this national policy test; 3. The Inspector misinterpreted §59 NPPF when coming to decision about the relevance of the 1993 appeal decision. §59 NPPF does not impose a free-standing obligation on LPAs to 'boost supply' over and above meeting their 5 year requirement. In any event, the LPA in this case met this requirement by identifying a 			

5YS. Consequently, the main reason that the Inspector discounted the relevance of the earlier appeal decision was erroneous;

4. The Inspector misinterpreted §79 NPPF on the question of 'isolated homes'. In Braintree BC v SSCLG, the Court of Appeal held that "*the word "isolated" in the phrase "isolated homes in the countryside" simply connotes a dwelling that is physically separate or remote from a settlement*" (my emphasis) - see judgment §31. The Court also said that "*a settlement would not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house nearby, or public transport within easy reach*" (§32).
5. In the present appeal, the Inspector referred to the 'close proximity of the other dwellings' (DL10). This is not the test; the test is whether a site is physically separate or remote from a settlement. **Consequently, the Inspector applied the wrong test.**
6. **The Inspector also misunderstood §68 NPPF.** Whilst this supports residential development by small/medium house builders, it is not a general policy which supports all such developments wherever they may be found. The only part of §68 that might possibly have been relevant is §68(c): "support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes". There is no support in policy for the Appeal Scheme, nor is it within an 'existing settlement'. The Inspector erred because he proceeded on the basis that development promoted by small builders complies with the NPPF without further qualification.
7. The Inspector misinterpreted §102 NPPF [sic]. At DL17, he refers to §102 NPPF, which doesn't actually make any reference to rural areas. It is §103 NPPF which says that "opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making". There are 2 problems with the Inspector's approach: (i) §103 NPPF does not remove the requirement to locate development where opportunities to maximise sustainable transport modes are available, merely to appreciate the different context; (ii) whilst the Inspector appears to find that there is little prospect of anyone using the bus or walking, this appears to be acceptable to him. **The Inspector's approach effectively disapplies national policy on sustainable transport to isolated rural areas.** That is a fundamental misreading of policy in my view.

The Council are therefore clearly concerned that the approach adopted by the Inspector in this instance may become commonly used one. In which case it would be based upon an incorrect approach, but would also clearly undermine the presumption towards the application of the Development Plan. In the case of the SELLP, a plan which was adopted earlier this year and is supported by a 5YHS and compliance with the Housing Delivery Test requirement.

APP/Z2505/W/19/3222165	Chris Pipe	Land at Puttock Gate, Fosdyke	Allowed
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The Councils concern on this case echoes those raised in the above case. In particular, the Inspector identifies a clear conflict with policy 1 (para 7), but then goes on to identify a further basis upon which permission should be granted (i.e. that there is no harm resulting from the proposal – para 12).

Again, the Council are concerned that this does set a precedent in terms of approach which is both incorrect (see above advice) and which also seriously undermines the approach in the plan which is to have clear settlement boundaries in order to steer growth and new development.

The Council have carefully reviewed each of these decisions (as summarised within Table 1), and in the case of The Grange, actually sought advice regarding the potential for Judicial Review.

As a small authority, operating within tight financial constraints, decisions relating to Judicial Review are carefully considered and whilst we were advised we would have good grounds to challenge the decision we have chosen not to pursue this route. However, the Council do not rule out the potential for future challenges if the approach taken on The Grange (and to an extent Land at Puttock Gate) continues and creates a pattern for future decision making which undermines the Development Plan.

Both Officers and Members of our Planning Committee have raised significant and serious concerns that the approach adopted by the Inspectors on The Grange and Land at Puttock Gate undermines the approach set out within the adopted, and up-to-date Development Plan. It does therefore appear to contradict the overall ethos of a plan-led planning system. In short, the concern is that these decisions appear to ride roughshod over the overall aims of the development plan (specifically the 'settlement boundary' approach to directing growth), and these circumstances could be repeated on numerous occasions within our Authorities area. The cumulative effect of which could be particularly damaging, and would not result in plan-led, managed, and sustainable growth.

We would therefore welcome a review of the above decisions, to ensure that the correct approach is being adopted and that the correct regard is given to our Development Plan. We would welcome your comments and feedback on these.

Furthermore, concerns are expressed at the apparent inconsistency between Inspectors within their decision making. This is clearly evidenced by the differing conclusions between the decisions. Whilst the Council recognises that each case is different and determined on its own merits, there must be some consistency in approach. Without this, to the lay-person it must appear as if the Appeals process is some kind of lottery wherein decisions in the same area, assessed against the same policy can have completely differing outcomes purely down to Inspectors judgements and a lack of communication/consideration of other similar decisions within that area. We would therefore welcome some consistency between Inspectors and how this is achieved – it would be beneficial for our Members to understand how work is allocated to Inspectors, what 'checks and balances' there are to Inspectors decision making, and whether there are regular reviews between Inspectors covering the same areas to look at consistency.

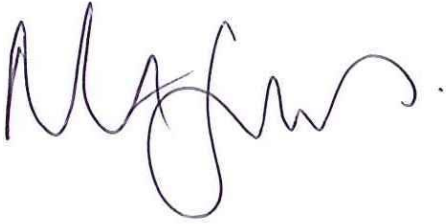
We would welcome your views on our comments above, and your review of the cases identified. As an authority we do not believe in apportioning blame, and are more concerned with looking at learning outcomes and forward progression. As such, we would be more than willing to host you (or an appropriate representative) to discuss the matters we have raised.

Equally, we would be willing to work with you and your Inspectors to better understand their approach to decision-making within Appeals – perhaps we could arrange a mutual training session for our Members and Officers facilitated in part by one or more of your Inspectors to enable a better understanding of the process and approach to decision-making? We would be more than happy to host and arrange this if you are in agreement.

We hope that the content of this letter and our concerns are clear. We would be happy to expand in more detail if necessary. As stated, the intention of this correspondence is not to apportion blame, or seek to be negative towards the work the Inspectorate do, but is more about improving understanding, improving consistency, and highlighting the importance of the Development Plan within a plan-led system. Again, we would be happy to work with you on any areas you feel may be beneficial in order to deliver better outcomes for our community.

I look forward to hearing from you in due course

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michelle Sacks', with a stylized, cursive script.

Michelle Sacks
Deputy Chief Executive

cc. Mike Gildersleeves - Growth Manager, Boston Borough Council