



Hinckley & Bosworth
Borough Council

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FORWARD TIMETABLE OF CONSULTATION AND DECISION MAKING

SCRUTINY COMMISSION 22 August 2019

WARDS AFFECTED: ALL WARDS

PLANNING APPEALS UPDATE

Report of Director (Environment and Planning)

PURPOSE OF REPORT

- 1.1 To update members on the progress of current planning appeals.

2. RECOMMENDATION

- 2.1 That the Scrutiny Commission notes the report and the appeal decisions attached at appendix 1 and current appeals attached at appendix 2.

3. BACKGROUND TO THE REPORT

- 3.1 The performance indicator (PI) for appeals is that at least 60% of all appeals should be dismissed. The table below shows the last two financial years.

Year	No of Appeals	Appeals Dismissed (%)
2017/2018	23	78%
2018/2019	45	71%

- 3.2 The appeal decisions set out in appendix 1 show that since the last report in December 2018, between November and early July there have been 34 appeals decided. Of these, 10 were allowed and 24 dismissed. This results in a success rate of 71% of all appeals lodged.

- 3.3 The appeal progress report at appendix 2 includes current progress on appeals for members' information. Members are asked to note the contents of the report.

The Big Pit, Hinckley

- 3.4 Since the previous report the appeal at the site known locally as 'The Big Pit' has been determined and was allowed. This was a written representation appeal following a planning committee overturn of officers recommendation. Additionally the appellant applied for a costs award against the councils unreasonable behaviour. A partial award for costs was granted by the Planning Inspectorate who determined:

Overall, I consider the Council has relied on somewhat vague and generalised assertions about the proposal's impact, and has manifestly failed to do produce substantive and convincing evidence to support its one reason for refusal. This has resulted in the appellant incurring unnecessary expense in having to refute these matters at appeal.

The appeal evidence included many detailed technical reports, surveys, and assessments, including the Ecological Appraisal, Flood Risk Assessment, Noise Risk Assessment and Arboricultural Impact Assessment. These form part of the normal investigative and background work which might be expected to accompany a development of this type and complexity, and are not pertinent to the preparation of evidence in connection with the rebuttal of the single reason for refusal at appeal. It therefore follows that my decision to award costs in this case does not extend to include the time taken and expense occurred in the preparation of these reports.

I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Framework and PPG Paragraphs 030 and 049 has been demonstrated, and that a partial award of costs is justified.'

- 3.5 A figure has been submitted by the appellant for costs but this figure is yet to be agreed.

Land at Crabtree Farm, Barwell

- 3.6 A public inquiry relating to Land at Crabtree Farm, Barwell was held in response to the Council's refusal to grant planning permission for up to 25 dwellings and a burial ground. The inquiry sat for 3 days beginning on the 11th June and closing on the 13th June. The main issues for this appeal were:

- whether the proposed housing would be in an acceptable location having regard to development plan and national policies that seek to manage the location of new development; and
- the effect of the development proposed on the character and appearance of the area and on the role and function of the Hinckley/Barwell/ Earl Shilton/ Burbage Green Wedge.

- 3.7 The Inspector allowed the appeal and concluded:

'There is an agreed significant shortfall in housing land supply. The homes would be located in an accessible location and would bring economic and other benefits. To be weighed against that is the harm that I have found in relation to the character and appearance of the area and to the role and function of the Green Wedge. In my view, that harm would be limited in the wider context and would not outweigh the significant benefits of the proposal, let alone significantly and demonstrably outweigh them when assessed against the Framework as a whole. In these circumstances, I consider that the appeal scheme would comprise sustainable development and the presumption in favour of such, as set out in the Framework, and the development plan, applies. That is a significant material consideration that outweighs any conflict with some elements of the development plan. Therefore, for the reasons set out above, I conclude on balance that the appeal should succeed.'

- 3.8 The previous appeals progress report discussed the inquiry regarding land off The Common, Barwell, which had similar issues but was at a larger scale. The Common appeal was dismissed due to the harm of the development on the countryside and

the green wedge, additionally the council was found to have a 5 year land supply. However the latest appeal at Crabtree Farm, found limited harm to the countryside and green wedge and concluded the council could not demonstrate a 5 year housing land supply. Due to the council not being able to demonstrate a 5 year land supply the inspector attributed 'substantial weight' to the provision of housing and affordable housing within a sustainable location.

- 3.9 The finding that the council does not have a 5 year land supply has serious implications upon decision taking moving forward as paragraph 11 of the National Planning Policy Framework is engaged. This identifies that for decision taking that there is a presumption in favour of sustainable development and any adverse impacts in granting permission should significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole. This is a much stricter/difficult test which must be made when determining applications.

Land south of Cadeby Hall, Cadeby

- 3.10 A public inquiry relating to land south of Cadeby Hall, Cadeby was held in response to the Council's serving of an enforcement notice for the carrying out of works for the construction of a dwelling house and ancillary structures including walls. This public inquiry sat for 2 days, starting 29th May and closing 30th May. A decision was received 8th July and the appeal was dismissed and the enforcement notice upheld with small amendments for clarity.
- 3.11 The Inspector found that the proposal would fail to preserve the character and appearance of the Cadeby Conservation Area and would have an adverse effect on the setting of Cadeby Hall as a non-designated heritage asset contrary to Policies DM10, DM11 and DM12 of the Site Allocations and Development Management Policies DPD (SADMP) and Policy 13 of the Core Strategy.
- 3.12 The enforcement notice require the demolition and removal of the works from the land and level and make good and seed the land with grass. The period for compliance with the requirements of the enforcement notice is 6 months.
- 3.13 The appellant also applied for an award of full costs against the council due to unreasonable conduct. This award for costs was refused and the inspector concluded that the Council carried out adequate prior investigation, which led to the service of the notice.

4. EXEMPTIONS IN ACCORDANCE WITH THE ACCESS TO INFORMATION PROCEDURE RULES

- 4.1 Not exempt

5. FINANCIAL IMPLICATIONS [CS]

- 5.1 There have been two public inquiries since the previous report of December. One for the Crabtree Farm appeal and another for land south of Cadeby Hall, Cadeby which are both discussed in section 3 of this report. Public Inquiries are the most expensive form of appeal, due to the need for expert witnesses for cross examination and the need for a barrister. Both inquiries had a barrister, a consultant expert witness and officers of the council as expert witnesses. The total cost for the Crabtree Farm Inquiry was £24,036 and the total cost for the Cadeby Hall inquiry was £21,450. It is important to note that these figures only include the cost of external

consultants/barriers and do not include the amount of officer time and resources which are significant for a public inquiry. In accordance with Accounting Practice because these were known enquires at the end of financial year 2018/19 the costs of these appeals have been allowed for in an appeals provision.

5.2 For other appeals, the Council's 2019/2020 appeals budget is set at £43,000. This budget is likely to be spent covering the council's costs in defending the Peckleton Lane, Desford appeal, which is set to be a Public Inquiry.

5.3 Any additional costs as a result of current appeals and possible future appeals (including the big pit) require approval in accordance with financial procedure rules. Members should be aware that officers have to act within statutory planning guidance and due to the nature of expertise involved funding appeals can be significant.

6. LEGAL IMPLICATIONS [MR]

6.1 None arising directly from this report.

7. CORPORATE PLAN IMPLICATIONS

7.1 The Council needs to manage its performance through its Performance Management Framework with regard to appeals and has performed above the adopted PI of 60%.

7.2 It also ensures that the Council is ensuring that it is meeting the priorities of the Corporate Plan particularly *Places – Creating clean and attractive places to live and work*.

8. CONSULTATION

8.1 None required

9. RISK IMPLICATIONS

9.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

9.2 The council cannot currently demonstrate a five year land supply which triggers paragraph 11 of the National Planning Policy Framework and the presumption in favour of sustainable development. This will result in more difficult decisions for the council and could result in more appeals due to challenges by landowners/developers.

9.3 Decisions must be determined in accordance with paragraph 11 of the NPPF, alongside local and national planning policies to ensure a robust and defensible decision is made.

10. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

10.1 The report provides an update to the Scrutiny Commission of current appeal cases. The implications of these appeals are determined on a case by case basis and can affect the planning balance when considering individual planning applications affecting all sections of the community.

10.2 As this report does not propose any amendment to a service or Policy, an Equality Impact Assessment is not relevant.

11. CORPORATE IMPLICATIONS

11.1 By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Procurement implications
- Human Resources implications
- Planning implications
- Data Protection implications
- Voluntary Sector

Background papers: Relevant Planning Applications documents available on the Council's Planning Portal

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