



Hinckley & Bosworth
Borough Council

A Borough to be proud of

FORWARD TIMETABLE OF CONSULTATION AND DECISION MAKING

SCRUTINY COMMISSION 12 March 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

Performance

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

Year	No of Appeals	Appeals Dismissed (%)
2017/2018	23	78%
2018/2019	45	71%
2019/2020*	78	71%

*As of 20 February 2020

- 3.2 The appeal decisions set out in appendix 1 show that since the last report in July, there have been 26 appeals decided. Of these, 11 were allowed and 15 dismissed.
- 3.3 The Council also has Central Government targets which measure the extent to which the Council's decisions are overturned at appeal (as an indicator of the quality of the decisions made by local planning authorities).
- 3.4 The thresholds for designation for the quality measure is no more than 10% of all Major applications and 10% for minor and other types of application. The measure to be used is the percentage of the total number of all decisions (approved or refused) divided by the numbers that are subsequently overturned at appeal.

- 3.5 Speeding up delays in the planning system has been one of the key drivers for successive governments. One of the drivers for the quality measure was to ensure that Councils were making decisions on applications that were sustainable but also to stop Councils refusing applications due to local opposition which they knew would then be approved at appeal which again leads to delays in development getting permission.
- 3.6 If a Council fails the quality measure set out above then the Local Planning Authority could become a “designated authority”. Where an authority is designated, applicants may apply directly to the Planning Inspectorate (on behalf of the Secretary of State) for the category of applications (major, non-major or both) for which the authority has been designated.
- 3.7 The Government measures performance over a two year assessment period and publishes those authorities that have failed to meet the criteria 9 months after the end of the period to allow time for appeals to pass through the system.

Assessment Period	Government Designation published
April 2016 to March 2018	December 2018
April 2017 to March 2019	December 2019
April 2018 to March 2020	December 2020

- 3.8 The first period of designation under these measures ended in December 2018 however the publication of the figures was considered experimental until July 2019 to allow local planning authorities time to verify the data. It has therefore only been since July 2019 that an authority could have been designated under the quality measure.
- 3.9 Only 5 out of 346 Local Planning Authorities failed this measure based on the assessment period April 2016 to March 2018.

Local Planning Authority	Number of Overturns	% Score
Epsom and Ewell	3	10.0
South Bucks	4	10.3
South Lakeland	5	10.9
Bromley	11	14.7
Peak District National Park	1	16.7

- 3.10 Over this period Hinckley and Bosworth’s performance in relation to Major applications was 1.6%.

Hinckley and Bosworth	1	1.6
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- 3.11 We are awaiting the Government’s figures for our performance for the assessment period April 2017 to March 2019 which were due to be published in December. In this period the Council determined 71 Major applications of which 2 were overturned at appeal. Our estimate is that the figure will be **2.6%** for Major applications
- 3.12 Members will also now be able to see the rolling figure for the new assessment period April 2018 to March 2020 on the Monthly Appeals Report attached to all Planning Committee Agendas. At this point we have determined 78 Major applications of which 5 have been overturned at appeal. For this assessment period our performance to date is **6.41%**.

- 3.13 The applications that have been overturned at appeal in the current assessment period are;

Application	Address	Date Determined
18/00279/OUT	Crabtree Farm, Barwell	17/08/18
18/010266/FUL	Barracks House, Barwell	07/05/19
18/00302/FUL	Amber Way, Burbage	18/10/18
18/01252/OUT	Peckleton Lane, Desford	29/07/19
16/00758/FUL	21 Station Road, Bagworth	05/06/19

- 3.14 As Hinckley and Bosworth does not receive a high number of “Major” applications, it does not take many overturns to reach the threshold. It would only take the overturn of one more Major application to take the Authority up to the 10% threshold.

	To date	Estimate (to end of designation period)
Total Majors Determined	78	90
Appeals Overturns	5	6
Quality %	6.41%	9.8%

- 3.15 Members should also be aware that the assessment period covers all applications determined up to March 2020 but the results at appeal will be factored in up until December 2020. Delaying making decisions would also not alter the end figure as any deferrals would likely lead to an appeal against non determination which are still counted as “deemed refusals” and would be treated like a refusal if overturned at appeal.
- 3.16 Officers have identified around 12 Major applications that could be determined prior to the 31st March 2020. Most of these awaiting a S106 agreements and already have a resolution to approve. This will be a priority for Officers during February and March to provide a buffer to try to prevent the Council going over the 10% for Major applications.
- 3.17 In relation to Minor / Other applications the Council determined 1,450 planning applications of which 12 were overturned at appeal. For this performance period our performance is 0.82% which is well below the 10% threshold.

Notable appeals decisions

Kyngs Golf Club, Market Bosworth

- 3.18 This application was held by way of a hearing for the erection of multi-functional recreational building, the erection of a golf simulator building, the erection of a golf buggy garage, formation of a new car parking area and new access roads and the proposed erection of 15 golf holiday homes and all associated ancillary works and landscaping. The application was refused due to the location and form of development proposed and the impact on the character and appearance of the area.
- 3.19 The Inspector dismissed the appeal stating

“The golfing and holiday aspects of the proposal would be acceptable in terms of their location relative to local services and facilities. The proposal would result in a presently defunct recreational facility being brought back into use which would add to

the facilities for local people and would benefit the area economically, together with new holiday accommodation. In terms of the location and form of development, I find that the proposals would accord with Policy 23 of the CS and Policies DM1, DM4 and DM24 of the SADMP. Compliance with these policies overall, however, is subject to the criteria relating to the effect of the proposals on the character and appearance of the area, to which I now turn.”

“I recognise the appellant’s points that the golf course is a modified landscape. Nevertheless, it is still an open site with natural features and it forms a continuous part of the green and natural environment which surrounds Market Bosworth. Indeed, I saw on site that the fact that it is a modified golf course landscape is only evident in views from the high ground to the east and from within the site itself. From lower or more distant vantage points, the features of the site are not obvious given the screening provided by intervening hedgerows and trees. Given this, I accept that the harm to the wider landscape in this case would be limited. Nevertheless, in localised views, the lodges would be prominent and intrusive and would have a detrimental impact on the existing open and undeveloped character of the site.”

“In terms of the nine detached lodges, it was explained that these would be sold to raise capital to fund construction of the clubhouse and golf course renovation. A costs appraisal was submitted by the appellant containing broad brush estimates of costs and revenues for the development. The appraisal lacks information such as land costs and does not include evidence of how the projected sales prices of the lodges or the costs of construction have been arrived at. As such, it is of limited value in assessing the overall viability and scale of the development proposed, though the Council has not offered any detailed evidence to contradict the appellant’s position.”

- 3.20 Despite Officers efforts at the Hearing and despite the appeal being dismissed the Appellant made an application for full costs against the Council. The Inspector awarded partial costs in relation to reason for refusal 3 only which is likely to be under £10k. The Inspector found

“In respect of the third RFR, the Council’s position was framed in such a way as to imply there would be a loss of facilities to an existing enterprise. That was not an accurate reflection of the situation, as no playable golf course exists, and it follows that there could be no threat to its viability. Whilst Policy DM24 seeks to resist the loss or change of use of cultural and tourism facilities including ancillary areas, there is an important difference between the loss of an existing facility and a proposal not re-providing a facility which no longer exists. The Council should have understood this distinction, and no evidence was provided to substantiate its position that a 9 hole practice course was necessary for the future viability of the golf club, or how the re-positioning of the 1st and 18th holes would undermine the functioning of the course, when there would still be a full 18-hole facility”.

“As such, the Council’s assertions that the proposal would result in less choice for members were based on vague, generalised and inaccurate assertions about the proposal’s impact which are unsupported by objective analysis. This amounts to unreasonable behaviour as set out by the PPG, and the applicant has been put to wasted expense in contesting this reason for refusal”.

Peckleton Lane, Desford

- 3.21 This was an outline planning application for up to 80 dwellings with associated works. It was refused by Planning Committee due to the impact the development would have on the landscape character on the edge of Desford. The Inspector allowed the appeal stating

“The Council can only demonstrate a deliverable housing land supply of 4.15 years although I recognise that there has been no significant under-delivery of housing in recent years when measured against relevant requirements. It was also confirmed that, in granting planning permissions on sites beyond development boundaries, the Council has been applying its policies flexibly to ensure that its housing supply has remained strong. Be that as it may, the Council now finds itself in a position where it cannot currently demonstrate a five-year supply of housing land against its current requirement, and the shortfall is significant. Although a very late submission to the Inquiry suggested a planning obligation had been signed following a resolution to grant permission for 200 houses, my conclusions are not altered.”

“As a consequence, with regard to paragraph 11 of the Framework and its associated footnote 7, the policies which are most important for determining this application are to be considered out-of-date, thus engaging the so-called tilted balance. In such circumstances, permission should be granted unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits.”

“In my view, the limited localised landscape harm would not significantly and demonstrably outweigh the significant benefits of the proposal 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, 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.”

A5 Aquatics

- 3.22 This application was for what is known as a paragraph 79 home which is where the Government allows new dwellings to be built in the countryside but only where there are of exceptional or innovative design. The Council refused this application as it did not consider that the design of the dwelling met this criteria. The Inspector agreed and dismissed the appeal stating

“Whilst the proposals clearly set out from a specific premise which links to the character of the site, they appear to have departed from that premise. In particular, the proposed doubly curved grass roofs, part earth sheltered ground floor area, timber decking oversailing the lake and largely symmetrical layout and balance of solids and voids would result in a bold and contemporary architectural solution rather than the more simplistic form of a fishing village.”

“Nonetheless, setting this aside and considering the architectural merits of the proposed dwelling, it would be of an interesting composition and appearance that would clearly set it apart from nearby development. The proposed dwelling would therefore not be without merit. However, the Framework sets a high bar in relation to design. Whilst the proposals would be of a high quality, they would not amount to design of an exceptional quality that would be truly outstanding, reflecting the highest standards in architecture. Similarly, as the proposals would not execute the design premise that informed the original concept discussed with Opun, it could not be said

to advocate a sensitive approach to the defining characteristics of either the site or its wider setting in the local area.”

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

4.1 Open session.

5. FINANCIAL IMPLICATIONS [CS]

5.1 The Planning Service is allocated an appeals budget annually. The table below sets out the spend per year against the budget allocated. It is important to note that these figures do not include officer time and resources spent on appeals and only identify the costs for external consultants/barrister fees.

Year	Budget	Spend
2017/18	45,000	20,610
2018/19	49,000	51,101
2019/20	43,000	92,165

5.2 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. In 2019/20, 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, the total cost for the Cadeby Hall inquiry was £21,450 and the total cost of the Peckleton Lane enquiry totalled £43,094.

5.4 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. A standard Inquiry normally equates to around 20 days of officer time from administration through to senior officer level.

5.5 Additionally, a provision will have to be set aside for new appeals not included in the above list that will be settled in future years. This is estimated to be £70,000 (based upon 2 known cases). Currently there is £43,000 in the provision so there is potential for a further cost of £27,000. Any further applications that result in an appeal will increase these costs.

5.6 In 2016 Government made it clear that planning authorities should not reject more than 10% of major development applications unnecessarily. This was particular meant to stop Councils refusing applications due to local opposition that they could easily foresee would be approved at appeal. If the 10% target is breached, it can lead to the planning powers being removed from the council. This would be a significant loss of income, which could potentially be around circa £510,000 per annum (based on an average of the last 34 months). If this happens the Service will have to reduce its cost base to meet the shortfall in income.

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 lack of a 5 Year Housing Land Supply is an identified risk on the Council's Risk Register and are implementing the required mitigation actions.

<u>DLS.44</u> - Five year housing land supply	Regulatory: legislation Political: member support/approval	<u>Member engagement / training in relation to housing developments has taken place.</u> <u>"Regular Member briefings at Planning Policy Member Working Group about major housing schemes, including appeals and five year housing land supply calculations.</u> <u>Quarterly reports to Planning Committee to advise upon progress relating to strategic housing developments."</u>	3		<u>Q1. The council do not currently have a 5 year housing land supply. All Members have received training and further briefing to this effect. SLT and officers are working closely with Members to plan a positive way forward to address this.</u>
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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

Criteria for Designation <https://www.gov.uk/government/publications/improving-planning-performance-criteria-for-designation>

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