

PLANNING AND ENFORCEMENT APPEAL DECISIONS
REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY
DIRECTION)



Hinckley & Bosworth
Borough Council

A Borough to be proud of

WARDS AFFECTED: ALLWARDS

1. **PURPOSE OF REPORT**

To inform Members of the Planning and Enforcement appeal determinations that have been made contrary to the decision of the Local Planning Authority.

2. **RECOMMENDATION**

The report is noted.

3. **BACKGROUND TO THE REPORT**

3.1 Since the last report to the Scrutiny Commission in April 2012 there have been 19 appeal decisions made by the Planning Inspectorate. 5 appeals allowed, 9 appeals dismissed; 2 appeals with split decision and 3 were withdrawn.

3.2 **Of those allowed 3 were recommended to committee for refusal and Members resolved to refuse the applications; 1 was recommended for approval and Members resolved to refuse the application; and 1 was an appeal against an enforcement notice.**

4. **APPEALS ALLOWED**

4.1 Appeal by **Mr Paul Chapman** against a refusal to grant full planning permission for the erection of dwelling, sub-division of existing detached garage, creation of new access and re-alignment of existing access 11/00399/FUL at The Bungalow, Barton Road, Congerstone

4.2 The Planning Inspector considered there are two main issues: (i.) the justification for the proposed dwelling in the countryside; and (ii.) the effect of the proposed development on public open space facilities. Both of these two issues were considered in light of the recently published National Planning Policy Framework.

4.3 With regards to the first issue over a dwelling in the countryside, the Planning Inspector noted that the site would be set within a cluster of existing dwellings. He considered the group of houses as a continuation of the settlement notwithstanding its location outside the settlement boundary. Local Plan Policies (RES5 and NE5) have been reviewed in light of the NPPF and such policies have limited consistency with the Framework given the specific location of the site. The Planning Inspector agreed with the Council's view that the site would be within a sustainable settlement, albeit outside the settlement boundary and the proposal would constitute sustainable development.

4.4 Furthermore the NPPF requires the Council to continue to identify a supply of specific deliverable sites sufficient to provide a five year housing supply plus an additional buffer of 5%. On the basis that the Council cannot demonstrate a 5 year housing supply and the proposal in the context of housing development in the countryside meets the presumption in favour of sustainable development as set out in the NPPF and this outweighs the requirement of Local Plan and Core Strategy policies. The

Planning Inspector concluded that the proposed development in this location is therefore justified.

- 4.5 In relation to the second issue over public open space provision the Planning Inspector referred to the relevant local plan policies IMP1 and REC3 as well as the Council Supplementary Planning Document: Play and open space guide (2008) [SPD] which were considered by the Inspector to be consistent with the Framework and accorded them significant weight.
- 4.6 The signed and dated Unilateral Undertaking putting forward the contribution towards open space was found to accord with the requirements of the SPD. The Planning Inspector also found that the planning obligation also meets the tests reiterated in paragraph 24 of the NPPF regarding CIL regulations. Accordingly the proposed development was not considered by the Planning Inspector would not conflict with the Framework, Policies IMP1 and REC3, or the SPD. It is interesting to noted that the support of the Inspector in respect of REC3 and the SPD which gives us some comfort going forward.
- 4.7 In light of the NPPF the Planning Inspector considered the proposal would be sustainable development in open countryside and without a 5 year housing supply the site is justifiable. The proposal also met the open space requirement in accordance with Local Plan Policy IMP1 and REC3, or the SPD consistent with the NPPF. Based on the above reasons the appeal succeeds.
- 4.8 **Inspector's Decision:** Appeal allowed
- 4.9 Appeal by **Mr Neil Chapman** against an enforcement notice over an unauthorised twin unit mobile home (11/00035/UNAUTH) on land at Dagleys Farm, Potters Marston Lane, Earl Shilton. Two main issues formed part of this informal hearing: i) whether there is a need for an agricultural worker to live on the land; and ii) the effect of the mobile home on the character and appearance of the countryside.
- 4.10 In relation to the first issue with regards to essential need, the Planning Inspector agrees with the conclusions made in the Reading Agricultural Consultants report that the scale and nature of the livestock enterprises present and anticipated give rise to animal welfare demands requiring the ready availability of a worker at most times, and that suitable alternative housing does not appear to be available.
- 4.11 It is noted by the Planning Inspector that the business consists of breeding and rearing a number of farm animals which require close attention. Turnover is currently limited due to restricted building cover. The enterprise appears capable of being sufficiently profitable to support the appellant. Given the nature of the enterprise and its economic viability, the Planning Inspector found there is an essential need for an agricultural worker to live on the land.
- 4.12 Turning to the second issue that is over its impact on the character and appearance of the countryside, the mobile home is sited on land at low level, well screened from surrounding views. The Planning Inspector argues that traffic movements to and from the land are likely to be fewer than they would be were the appellant to live elsewhere and travel to the holding. The mobile home would therefore accord with criteria (i.) to (iv.) of LP Policy NE5 and similar aspects in Policy BE1 which aim to protect the character and appearance of the countryside and ensure road safety. On this basis the Planning Inspector concludes that the effect of the mobile home on the character and appearance of the countryside would be acceptable.
- 4.13 The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application for use as agricultural land to a mixed use of agricultural and residential use, and the siting of a twin unit mobile home for residential use

subject to conditions. The conditions include limiting the planning permission for the standard 3 years, secure access, layout and parking arrangements and limiting occupation to those engaged in agriculture.

- 4.13 **Inspector's Decision:** Appeal allowed
- 4.14 Appeal by **Mr and Mrs Crawford** against the refusal to grant full planning permission for extensions and alterations to Vine Cottage, Ormes Lane, Ratcliffe Culey (11/00978/HOU). The main issues were the effect of the proposed extensions on the living conditions of residents of the adjoining property at 19 Ormes Lane, and on the character and appearance of the locality.
- 4.15 The main area of concern raised by the Council was the impact of the proposed first floor extension at the rear of Vines Cottage on the living conditions of the adjoining property to the north, 19 Ormes Lane. The Planning Inspector considered that the height increase as a result of adding a first floor extension above the existing single storey extension and the position of the adjoining property is such that there is unlikely to be any material effect on the light reaching either the nearest windows of this property or rear garden.
- 4.16 The Inspector addresses reference to a statement used by the Council from the Councils House Extension SPG over acceptable distances along a common boundary for single storey and two storey extensions. However, the Inspector dismisses applying this statement in this specific case since the existing single storey extension is already more than 3 metres in length and in any event set back from the common boundary.
- 4.17 It was noted that Vine Cottage formed a relatively secluded position at the end of a cul-de-sac where little would be seen of the proposed extensions. While it was suggested that the front extension would unbalance the front elevation, there is no significant symmetry to this elevation that would be harmed. For these reasons the proposed extensions would not appear visually intrusive or out of place. As such, there would be no conflict with Policy BE1 (a) of the Local Plan.
- 4.18 Overall the Inspector concluded that the proposed extensions would not adversely affect the living conditions of residents of the adjoining property at 19 Ormes Lane, nor would they have an adverse effect on the character or appearance of the locality. In granting permission conditions have been imposed to ensure a satisfactory appearance to the completed development and to specify the approved plans, for the avoidance of doubt.
- 4.19 **Inspector's Decision:** Appeal allowed
- 4.20 Appeal by **Mrs Ashby** against the decision to grant planning permission subject to conditions for the change of use of land from agricultural land to mixed use of agricultural and equestrian land and retention and erection of associated buildings (part retrospective) at Land at Markfield Lane, Thornton.
- 4.21 The appeal sought to remove conditions 4, 6 and 7 of planning permission 11/00755/FUL which state:
- 4.22 Condition 4 – “Within three months of the date of the decision notice, the stables, storage building and field shelters illustrated on plan numbers 40 and 50, received by the Local Planning Authority on the 16.9.11 shall be removed”.
- 4.23 Reason for condition 4 – “In the interests of visual amenity and to protect the character of the countryside, in accordance with Policy NE5 of the adopted Hinckley and Bosworth Local Plan”.

- 4.24 Condition 6 – “No buildings or structures, including any temporary buildings or structures, other than those approved by this consent, shall be erected within the application site as shown edged in red on plan no P60”.
- 4.25 Reason for condition 6 – “To reduce proliferation of development on the rural landscape in the interests of visual amenity and character of the countryside and in accordance with policy NE5 of the adopted Hinckley and Bosworth Local Plan”.
- 4.26 Condition 7 – “The development hereby permitted shall only be used for personal use and shall not be used in connection with a riding school/livery yard or any other business or commercial use”.
- 4.27 Reason for condition 7 – “To ensure that the use of the site is not to the detriment of highway safety and the requirements of Policies NE5 and T5 of the Adopted Hinckley and Bosworth Local Plan”.
- 4.28 Main issues
- 4.29 In respect of this appeal, the inspector considered two main issues;
- a) the impact of the proposals on the visual amenity of the site and surrounding countryside; and,
 - b) the impacts on highway safety.
- 4.30 Reasons/consideration
- 4.31 Conditions 4 and 6
- 4.32 The Inspector initially comments that much of the appeal site is open to wider public views and an uncontrolled proliferation of buildings and structures within an area with extensive public access would have a detrimental impact contrary to Local Plan Policy NE5 which seeks to protect the countryside for its own sake.
- 4.33 Furthermore the Inspector accepts that the aim of conditions 4 and 6 is to impose a degree of control over the location of the various buildings and other structures on the appeal site and the avoidance of uncontrolled proliferations of structures is clearly appropriate for the site.
- 4.34 However, in the opinion of the Inspector, the wording of condition 4 is imprecise as he understands that it was not the intention of condition 4 to remove all 6 structures shown, but rather to relocate the buildings which require planning permission to the positions as set out on plan 60 together with the additional structures to be permitted. Subsequently, the Inspector recommends rewording condition No.4.
- 4.35 The Inspector proceeds to make reference to two additional “goat shelters” on skids located close to the permitted group of buildings. These goat shelters were not the subject of the planning application as the applicant was under the impression that they did not require consent. The Inspector raises this point in relation to condition No. 6 which again sought to control the proliferation of buildings across this site by restricting the erection of buildings or structures, temporary or not, to only those approved by consent 11/00755/FUL. Here, the Inspector appears to acknowledge the need for these two smaller shelters for goats and explains that if they were located close to the permitted structures as at present, their visual amenity could not be said to amount to a material harm to the appearance of the countryside, although that would not be the case if such structures were allowed to proliferate across the site. Notwithstanding this opinion, the Inspector concedes that in view of the amount of buildings and structures already permitted for this site, any additional structures

should only be permitted following a planning application submitted to and express permission granted by, the Council.

- 4.36 However, the Inspector concludes that condition 6 is defective as it makes reference to a red line on plan P60 when that plan neither shows the total extent of this site nor contains any red line and therefore the inspector recommends that the condition be reworded to remove this discrepancy.
- 4.37 Condition 7
- 4.38 The Inspector clearly acknowledges that the vehicular access to the appeal site is substandard in terms of width and visibility and expresses some concern over traffic travelling down hill (approaching from the north east) increasing normal stopping distance requirements on a length of road subject only to the national 60 mph speed limit. These points are raised because the inspector concedes that the condition restricting commercial activities, which could otherwise result in an increase in the volume of traffic attracted to this site is justified on grounds of highway safety.
- 4.39 The appellant raised concerns that as the animals were used as part of business purposes off site, i.e. the animals were housed on site but taken off site to shows and other activities that this condition would prevent that existing activity. The Inspector acknowledges that while the possibility of the appeal site being used as a commercial activity needs to be addressed, the condition could be reworded to ensure that the use of the site is appropriately controlled without preventing the animals on the site being taken by the appellant to shows and other events off site.
- 4.40 Inspectors conclusion
- 4.41 The inspector considered that condition 4 be replaced to provide further accuracy and clarify that the 2 shetland pony mobile shelters and 2 horse mobile shelters shown on plan 40, be relocated to the positions shown on plan 60 and that only the mobile goat shelters shown on plan 40 are required to be removed. All of which is required to take place within 3 months of the date of the decision letter.
- 4.42 In relation to condition 6, the inspector replaced this condition with a condition which references both plan 60 and plan 10 as plan 10 contains the red edge of the application site and plan 60 clearly shows the location of the approved buildings. This condition still commands that no buildings or structures, including any temporary buildings or structures other than those approved by consent 11/00755/FUL shall be erected within the application site (without consent from the LPA).
- 4.43 The Inspector chose to amend condition 7 to remove the reference of "connection" to any livery school/livery yard or any other business or commercial use to allow the site to be used in conjunction with business/commercial activities which take place off site. However, the replaced condition still commands that the development site itself shall not be used for the purposes of a riding school/livery yard or any other business or commercial use.
- 4.44 **Inspector's Decision:** Appeal allowed
- 4.45 Conditions 4, 6 and 7 relating to permission 11/00755/FUL are formally replaced by the following conditions:
- 4.46 Condition 4: Within 3 months of the date of this decision letter, the 2 Shetland pony mobile shelters and 2 horse mobile shelters shown on plan 40 shall be relocated in accordance with the proposed re-siting of these structures shown on plan 60. The mobile goat shelters shown on plan 40 received by the Local Planning Authority on the 16/09/2011 shall be removed;

- 4.47 Condition 6: No buildings or structures, including any temporary buildings or structures, other than those approved by this consent and located in accordance with plan 60, shall be erected within the application site as shown edged red on plan 10.
- 4.48 Condition 7: The development hereby permitted shall be for the stabling and grazing of horses and other livestock and shall not be used for the purposes of a riding school/livery yard or any other business or commercial use.
- 4.49 Appeal by **David Wilson Homes East Midlands** against the decision to refuse to grant planning permission for the erection of 28 dwellings and garaging, including, demolition of 261 Main Street at 261 Main Street, Stanton Under Bardon, Markfield Leicestershire,
- 4.50 In respect of this appeal, the Inspector identified the main issue as the effect of the proposal on the provision of housing within Stanton Under Bardon, with particular regard to its effect on the Hinckley and Bosworth Borough Council Local Development Framework (LDF) Core Strategy Spatial Vision.
- 4.51 Background
- 4.52 The Inspector initially outlines the circumstances in which this decision was made as it was considered by Planning Committee in June 2012 together with an outline planning application for a proposed development of 38 dwellings at land at the rear of 169 Main Street, Stanton Under Bardon. The Inspector notes that the Officer Report to the Committee offered 4 alternative options for consideration and suggested that there is only capacity for one of the residential developments within the village, but either of them were acceptable. The Committee resolved to approve the outline application at 169 Main Street, and the application subject to this appeal was refused on the grounds that it would result in an over provision of housing within Stanton Under Bardon and be detrimental to the Spatial Vision of the Council's Core Strategy.
- 4.53 The Inspector highlights that at the point of the consideration of the application mentioned above (June 2012), the committee report stated that the council was unable to secure a five year housing land supply of deliverable sites, based on October 2011 figures, however, since this date, the Council has identified a 5.02 year housing supply based on April 2012 figures. The Inspector proceeds to draw attention to paragraph 49 of the National Planning Policy Framework (Framework) which states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.
- 4.54 The Council has recently changed its method of addressing its previous shortfall in providing the number of houses per year required to meet this target from spreading it over the current five year period, which is known as the Sedgefield approach, to spreading it over the residual period. This change in approach was justified by suggesting that the shortfall would be compensated for later in the plan period, in accordance with the Inspectors report on the Core Strategy. However, the Inspector explains that circumstances have significantly changed since that report (with particular regard to the Area Action Plan) and as such the housing trajectories envisaged in that report have been significantly affected. In respect of this particular matter, having regards to all arguments and other appeal decisions, the Inspector found compelling reasons why the Sedgefield approach to calculating provision should be used as it would attempt to meet the shortfall experienced earlier in the plan period and thus be consistent with advice given in the Framework.
- 4.55 The Inspector moves forward to acknowledge the 5% buffer applied in the Council's calculations, consistent with para 47 of the Framework. However, it is explained that

para 47 also requires that a 20% buffer be applied in instances where there is a record of persistent under delivery. On this point the Inspector accepts that the Council over delivered in the period between 2001 and 2006 but explains that this is outside the plan period and clarifies that between the period of 2006 and 2012, the council has sufficiently delivered in only one of these years.

- 4.56 The argument put forward by the Council on this matter was that this under provision was not because of a lack of granting planning permission, but a lack of implementation of consented schemes. The Inspector dismissed this approach explaining that the Framework does not give this as a reason for persistent under delivery. Based on this, the Inspector concludes that a persistent under delivery has taken effect in the period of 2006-2012 and as such, a 20% buffer should be applied.
- 4.57 On the matter of housing supply the Inspector acknowledged the appellant's argument in respect of sites which they considered undeliverable for various reasons. Various sites across the borough were sited including Westfield Nurseries (10 dwellings), 59 High Street, Barwell (10 dwellings), Markfield Road, Groby (20 dwellings), Trinity Vicarage Road (13 dwellings). While questioning the figures of approved sites, the Inspector also gave particular attention to the councils projection for the Sketchley Brook Site in Burbage concluding that because of delays resulting from an outstanding section 106 agreement and ground works being required the site was likely to incur about an 18 month delay before the start of construction of the dwellings. The inspector considered that this delay was likely to result in 45 fewer dwellings than allowed for in the five year housing supply (375). On this point and in relation to the Barwell Sustainable Urban Extension Scheme, the Inspector dismissed the appellants attempt to discredit the projected housing figures anticipated for this site on the grounds that permission is yet to be granted even though the appellant refers to footnote 11 to paragraph 47 of the Framework to support their argument. Here the Inspector acknowledged that the scheme was likely to receive a grant of planning permission in light of the level of negotiations which have taken place and that whilst the current absence of planning permission provided a degree of uncertainty about the timescales and level of delivery on the site, the Inspector did not accept that this means that the development would not be deliverable given the level of commitment shown by the Council.
- 4.58 Summarising on the issue of five year housing land supply, the Inspector accepted the appellant's arguments with regards to the approach to address the shortfall (Sedgefield) and the level of buffer that should be applied (20%). The Inspector also finds that based on the evidence at the hearing, the Council has been optimistic with regards to the delivery of housing on some of the larger sites, even though he dismissed the arguments put forward in respect of the Barwell Sustainable Urban Extension. In conclusion, it is found that the housing land supply falls significantly short of what is required in the five year period.
- 4.59 The provision of housing
- 4.60 The Inspector explains that in the absence of a deliverable five year housing land supply, the relevant policies are not to be considered up to date and in accordance with the framework, and as such, the proposal should be considered in the context of the presumption in favour of sustainable development given in paragraph 14 of the Framework.
- 4.61 In respect of affordable housing, this scheme proposed eight affordable housing units and the Inspector draws attention to the Councils Affordable Housing report which identifies a substantial need for affordable housing in Stanton Under Bardon and policy 15 of the Core Strategy which requires at least 480 affordable dwellings in rural areas to contribute to its target of 2090 affordable homes in the Borough from 2006 to 2026. The Inspector reports that as the Council has not provided any

evidence to show that there is not a substantial need for affordable housing in the village, the contribution to affordable housing contained within the proposal carries significant weight.

- 4.62 The inspector then turns to the matter which formed the basis of the Council's reason for refusal- the impact the proposal would have on the Core Strategy Spatial Vision. As part of the informal hearing the Council reiterated this concern identifying that by permitting this development it would set a precedent for other similar developments in Rural Villages and would undermine the Spatial Vision. The Inspector highlights that the Council has not provided any information regarding similar sites that may come forward should permission be granted for this proposal. The Inspector concludes that he cannot see any harm that the proposal would cause to the spatial vision and proceeds to clarify this by identifying that each future case should be dealt with on its own individual planning merits in the light of prevailing policies and guidance.
- 4.63 The Council gave reference to appeal decision APP/K2420/A/102138596 in its reason for arriving at the decision it made. However, the Inspector considers that this decision was made under different circumstances, and was decided prior to the publication of the most recent policies given in the Framework and as such, draws no comparison to between the appeal decision and current appeal.
- 4.64 Other matters
- 4.65 The Inspector chose to accept the proposed provisions set out for affordable housing and financial contributions toward civic amenities, libraries, play and open space, and the National Forest and is satisfied that they meet the tests in CIL Regulation 122 and paragraph 204 of the Framework. However, regarding contributions towards bus and travel facilities the Inspector stated that insufficient information was provided to support the need for contributions toward bus passes, bus stops and travel packs and as such was not satisfied that the this particular contribution met the requirements of CIL Regulation 122 and paragraph 204 of the framework as it was not required to make the development acceptable in planning terms or was considered directly related to the proposed development.
- 4.66 Conclusion
- 4.67 Having considered all matters identified within the Inspector's decision the Inspector finds that the proposal would not have an adverse effect on the provision of housing within Stanton Under Bardon and that any potential harm that permitting this development would cause to the Hinckley and Bosworth Council LDF Core Strategy Spatial Vision is more than outweighed by the need for housing, including affordable housing within the Borough.
- 4.68 **Inspector's Decision:** Appeal allowed
- 4.69 **SPLIT DECISIONS**
- 4.70 Appeal by **Gary Smith** against an enforcement notice issued for the erection of two antennas to the south gable wall without planning permission (08/00483/UNAUTH) at 2 Hawthorne Rise, Groby.
- 4.71 Firstly the appeal is based on the burden of proof on ground (d) where the onus is on the appellant to show, on the balance of probability that the erection of two antennas to the south gable wall took place on or before four years from the date the enforcement notice was issued.

- 4.72 The four year period is between 21 September 2007 and 21 September 2011. The Inspector considered the use has continued without material interruption since that date. The appellant stated that the erection of Mast 1 took place in early 2006 and Mast 2 in early 2004, which was re-erected in mid-2006.
- 4.73 The appellants case was supported by three factors: (i.) a Google earth image dated 3 July 2006 which clearly shows a mast with the same physical features as Mast 2 and activity in the vicinity of Mast 1 which was not inconsistent with the appellant's case that it was erected in July 2006 (ii.) a photograph with a processing date of 15 April 2007 taken in early 2006 clearly shows Mast 2 (iii.) invoices related to items associated with the erection of the two Masts.
- 4.74 The Council was adamant that Mast 1 was erected on the south elevation of the house in October 2007 having previously been erected on the garage of the house at a lower level. In relation to Mast 2, the Council asserts that a different mast had been erected in the same position as mast 2 in early 2006 but in October 2007 the appellant materially increased its height. It was erected in breach of planning control less than 4 years before the issue of the enforcement notice. The Inspector then considered complaints to the Council, the actions and responses taken and the subsequent enforcement action after June 2010.
- 4.75 The Inspector found the Council could not give precise dates to when the position of Mast 2 was taken down and re-erected at a greater height other than there was general activity with masts at the site in October 2007. However, direct dates of the erection of the masts at the property were provided by those involved in the process of their erection.
- 4.76 Taking into account the evidence submitted by the appellant, the Inspector was inclined to the view that mast 2 was erected before 21 September 2007. In the absence of any substantive evidence from the council to contradict the appellant's evidence the Inspector found that Mast 2 had been erected in its present form since 2004. Thus at the time the enforcement notice was issued, it was too late to take action against Mast 2. The appeal under ground (d) in respect of Mast 2 succeeds.
- 4.77 The Inspector considered that the evidence submitted in respect of Mast 1 from either party is less clear than Mast 2. The photographic evidence that supported the appellants Mast 2 claims as to the date of its erection is not as compelling in respect of mast 1. The appellant claims that there is some activity in the vicinity of the mast 1 position in the Google Earth image but it is not clear. The Inspector noted no mast in the position of Mast 1 is visible on the photograph processed in April 2006.
- 4.78 The Council contended that a mast originally erected against the garage was re-sited and erected at a greater height as Mast 1. This was considered unlikely by the Inspector as it was explained by the appellant that the original (garage) mast was oxidised (old) and had a different specification / frequency range from Mast 1. The Inspector found, on the balance of probabilities, that the evidence submitted by the appellant in respect of Mast 1 does not meet the relevant test for submitted evidence set out in Circular 10/97. The onus of proof is firmly on the appellant and he has not provided credible evidence of his own to make the council version of events less than probable. The appeal on ground (d) in respect of mast 1 fails.
- 4.79 Overall the appeal was allowed by the Inspector in part and the enforcement notice was upheld with corrections. In summary the Inspector makes a split decision; Mast 2 succeeds and Mast 1 fails. The Inspector directs that the enforcement notice be corrected by the following: (i) the substitution of the plan annexed to this decision indicating the site and position of Mast 1 and Mast 2, (ii) the deletion from paragraph 3 of the words "two antennas" and the substitution therefore of the words "an antenna indicated as Mast 1 and marked as such in the plan attached to this notice" and (iii)

the deletion from paragraph 5 of the words “two unlawful antenna” and the substitution therefore of the words “unlawful antenna marked as Mast 1 on the plan attached to this notice”. The Inspector dismisses the appeal and upholds the notice.

4.80 **Inspector’s Decision:** Split decision

4.81 Appeal by **Mr & Mrs D Hughes** against the refusal to grant full planning permission for extensions and alterations (11/00876/FUL) at 1A Main Street, Thornton.

4.82 Firstly the Inspector describes the nature of the decision which has been split. The appeal is dismissed insofar as it relates to the construction of a 1½- storey ‘dormer style’ rear extension. The appeal is allowed insofar as it relates to the retention of the 2 velux windows within the existing kitchen extension as previously approved under application 10/00239/FUL.

4.83 The Inspector considered that the main issue was the effect of the proposal on the character and appearance of the existing dwelling. The Inspector noted that the proposal is for a two storey rear extension to an existing converted barn which has a simple gable ended form. Given its central position, projecting some three metres, it would occupy a substantial element of the rear elevation. It was considered by the Inspector to dominate the barn conversion through its bulk and mass as well as distracting from its simple gabled form. The fenestration details would have a poor relationship to the architectural proportions of the original barn conversion. The three roof lights to both roof planes would overcomplicate the roof form and detract from the simple quality of the existing roof with its well-spaced roof lights and dormers.

4.84 The Inspector was of the opinion that the proposed extension would have a detrimental impact on the character and appearance of the existing barn conversion. The design of the proposal would harm the character and appearance of the existing dwelling contrary to policy BE1 of the Local Plan.

4.85 The Inspector then commented that the two roof lights to the kitchen area would be well-spaced and reflect the form and nature of other roof lights on the property. Whilst noting that the Council raise no objection, the Inspector considered these two roof lights were acceptable and therefore proposes to issue a split decision as the windows have already been inserted, there are no appropriate conditions.

4.86 The Inspector dismissed the use of LP policy BE20 and the SPG: Conversion of Rural Buildings since this policy and guidance relates to the reuse and adaption of rural buildings and not to the extension of already converted buildings. However, the SPG clearly indicates the Councils intent in ensuring that the character of the original building is not overwhelmed or dominated by large inappropriate extensions.

4.87 In conclusion the inspector considered that the appeal should be allowed in respect of the two velux windows to the kitchen and dismissed in relation to the rear extension.

4.88 **Inspector’s Decision:** Split decision

4.89 **Cost decision for an award of costs**

4.90 Appeal by Gary Smith against an enforcement notice issued for the erection of two antennas to the south gable wall without planning permission (08/00483/UNAUTH) at 2 hawthorne Rise, Groby. The appellant also made an application for costs. In considering that application, the Inspector formed the following conclusions;

4.91 Matters to why it was expedient to take enforcement action was clearly stated on the enforcement notice and no wrong doing was done by the Council in this respect

4.92 The Council behaved appropriately doing site visits and investigations taking into account the views of the Parish Council and other interested parties in reaching its decision in September 2011.

4.93 An award of costs is not justified and therefore the Inspector refused the application for a full award of costs.

5. **FINANCIAL IMPLICATIONS [PE]**

5.1 There are no financial implications contained within the body of this report.

6. **LEGAL IMPLICATIONS (AB)**

6.1 None raised directly by this report

7. **CORPORATE PLAN IMPLICATIONS**

7.1 The Council needs to manage its performance through its Performance Management Framework in relation to appeals.

8. **CONSULTATION**

8.1 None

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 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

9.3 The following significant risks associated with this report / decisions were identified from this assessment:

Management of Significant (Net Red) Risks		
Risk Description	Mitigating Actions	Owner
Financial implications to the Authority in defending appeals	Take into account the risk in refusing planning applications and the likely success of an appeal	Simon Wood/Tracy Miller

10. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

10.1 None

11. **CORPORATE IMPLICATIONS**

11.1 None

Background papers: Application files and appeal documentation

Contact Officer: Tracy Miller, Development Control Manager, ext 5809