

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 January 2013 there have been 33 appeal decisions made by the Planning Inspectorate. 16 appeals allowed, 16 appeals dismissed; and 1 appeal with a split decision.

3.2 **Of the 16 allowed, 3 were recommended to committee for refusal and Members resolved to refuse the applications; 9 were recommended for approval and Members resolved to refuse the applications; 3 were officer delegated refusals and 1 was against a planning condition attached to an application recommended for approval and approved by Members.**

3.3 The table below provides a summary of the 33 appeal decisions:

Appellant	Site Address	Appeal Decision	Decision Level	Recommendation
Lighthouse Property Ltd	Gladstone Terrace/London Road, Hinckley	Dismissed (costs dismissed)	Committee	Member refusal contrary to officer recommendation
Jeffrey Allen	Land Adjacent Medworth, Desford Lane, Ratby	Allowed	Delegated	Officer Refusal
Sachkhand Nanak Dham	Stretton House, Watling Street, Burbage	Dismissed	Committee	Member refusal contrary to officer recommendation
Bloor Homes Ltd	Groby Road, Ratby	Dismissed	Committee	Member refusal as recommended by officers
Mr S Hallam	7 Brenfield Drive, Hinckley	Split Decision	Delegated	Officer Refusal
Mrs Clarke	66 Church Street, Burbage	Dismissed	Committee	Member refusal as recommended by officers
Mrs S McGrady	37 The Fairway, Burbage	Allowed (costs dismissed)	Committee	Member refusal contrary to officer recommendation
Frank Downes	36 Bowling Green Road,	Allowed (costs	Committee	Member refusal contrary to officer

	Hinckley	dismissed)		recommendation
Paul Cerone	29 Cunnery Close, Barlestone	Dismissed	Committee	Member refusal contrary to officer recommendation
Mr Choudry	102 Rugby Road, Hinckley	Allowed	Committee	Member refusal as recommended by officers
Mr Broderick	2 Aldridge Road, Burbage	Allowed	Committee	Member refusal contrary to officer recommendation
Benchmark	Wharf Yard, Coventry Road, Hinckley	Allowed	Committee	Member approval as recommended by officers
Mr Sohki	Bubbleboyz, Watling Street, Hinckley	Allowed (full costs allowed)	Committee	Member refusal contrary to officer recommendation
Mr R Jarvis	33 Newbold Road, Kirkby Mallory	Dismissed	Committee	Member refusal as recommended by officers
Miss Julie Hogben	1B Newtown Linford Lane, Groby	Allowed	Committee	Member refusal contrary to officer recommendation
David Wilson Homes	Shilton Road, Barwell	Dismissed	Committee	Member refusal as recommended by officers
Mr and Mrs Adcock	Barons Park, Leicester Lane, Desford	Dismissed	Committee	Member refusal as recommended by officers
Mr G Wragg	Barn B, Common Farm, Barton Road, Carlton	Dismissed	Committee	Member refusal as recommended by officers
Mr A Ingram	Gnarley Farm, Osbaston Hollow, Osbaston	Allowed	Delegated	Officer Refusal
Mr Chotai	18 Manor Road, Desford	Dismissed	Delegated	Officer Refusal
Asda Stores Ltd	Barwell Lane, Hinckley	Allowed	Committee	Member refusal contrary to officer recommendation
Helena Bull	3 Kinross Way, Hinckley	Dismissed	Delegated	Officer Refusal
Mr P Godden	Upper Grange Farm, Ratby	Allowed (full costs awarded)	Committee	Member refusal as recommended by officers
Mr H Egerton	Elms Farm, Atherstone Road, Appleby Parva	Dismissed	Committee	Member refusal contrary to officer recommendation
Mr S Johnson	3 Markfield Lane, Botcheston	Dismissed	Committee	Member refusal as recommended by officers
Sophie Johnson	1a Tithe Close, Stoke Golding	Allowed	Delegated	Officer Refusal
David Wilson Homes	Britannia Road, Burbage	Allowed (full costs	Committee	Member refusal contrary to officer

		awarded)		recommendation
David Wilson Homes	Britannia Road, Burbage	Allowed (full costs awarded)	Committee	Member refusal contrary to officer recommendation
Mr & Mrs Thompson	Lindridge Wood, Lindridge Lane, Desford	Dismissed	Delegated	Officer Refusal
Mr P Dodd	34 The Fairway, Burbage	Dismissed	Delegated	Officer Refusal
Lighthouse Property Ltd	Gladstone Terrace / London Road, Hinckley	Allowed	Committee	Member refusal contrary to officer recommendation
Mr Steve Powers	82 Coventry Road, Burbage	Allowed (Partial costs awarded)	Committee	Member refusal contrary to officer recommendation
Mr P Godden	Upper Grange Farm, Ratby Lane Markfield	Dismissed	Enforcement Notice	

4. **APPEALS ALLOWED**

- 4.1 Appeal by Mr Jeffery Allen against the refusal to grant outline planning permission for the demolition of redundant buildings and erection of one dwelling at land Adjacent Medworth, Desford Lane, Ratby. The application was refused under delegated powers on the grounds of unsustainable development.

The Inspector agreed with the local authority in that the scheme fails to meet the objectives of policies RES5 and NE5 which seek to restrict development to within existing urban and rural settlements. However, the Inspector considers in this instance the benefits in ensuring the removal of the current infrastructure that persists on site would outweigh the conflict relating to sustainable development.

- 4.2 Appeal by Mr S McGrady against the refusal to grant planning permission for a first floor extension to dwelling at 37 The Fairway, Burbage. The application was refused by Members contrary to Officer recommendation on the grounds that it would have an overbearing and unacceptable adverse impact on the amenities of the neighbour.

The Inspector noted that the existing kitchen window at the neighbouring property was compromised already by the boundary wall and the existing single storey extension at the appeal site and therefore it was questioned how living conditions would be further impaired. The Inspector recognized that the extension would be visible from the neighbours window but due to the shape of the site and orientation of the extension at a 45 degree angle it was considered that the extension would be acceptable and would not result in undue loss of daylight to the neighbours window.

The appellant applied for an award of costs but the Inspector concluded that the reason for refusal was specific and sufficiently realistic and therefore the Council had not acted unreasonably as such the costs application was dismissed.

- 4.3 Appeal by Mr Frank Downes against the refusal to grant planning permission for the erection of one dwelling at 36 Bowling Green Road, Hinckley. The application was refused by Members contrary to Officer recommendation on the grounds that the scale, footprint and siting of the dwelling would be harmful to the character of the area and would result in an overbearing impact, overshadowing and loss of amenity to the neighbours at No 34.

The Inspector noted that the site was well screened and that there was a varied character in the immediate area as such it was considered the proposal would not be out of keeping with the character and appearance of the surrounding area. The Inspector considered the impact on neighbours and concluded that the proposed property was sited at the far end of the garden of No 34, away from the common boundary; and it was a chalet design and, as such, whilst there would be some loss of sunlight to the rear portion of the garden it was not considered that the proposal would impact upon neighbours amenity.

The appellant applied for an award of costs but the Inspector concluded that the Council had not acted unreasonably in refusing the application.

- 4.4 Appeal by Mr Choudry against the refusal to grant planning permission under Section 73 to vary the opening hours under condition No. 4 of planning permission 10/00908/COU to 07:30 – 21:00 for one year at The Pantry, 102 Rugby Road, Hinckley. The application was refused by Members as recommended by Officers on the grounds of impact on the amenities of neighbouring properties by virtue of noise and general disturbance.

The Inspector noted that in the original appeal the previous Inspector concluded that the closing time of 8pm would likely disturb the neighbouring occupants in particular No 100 Rugby Road but no mention was made of the new development to the south. The Inspector considered that the new development to the south comprising a number of residential properties, an office and a car park serving the office would change the traffic movements in the area, and that Rugby Road remains relatively busy into the early evening and deliveries are carried out after 6pm adding to the ambient noise level. The Inspector also noted that No 100 Rugby Road was now in the ownership of the appellant and occupied by a member of the family involved in the business. As such the Inspector considered this appeal was appreciably different to the previous one and concluded that the extended opening hours would not give rise to any noise and disturbance to nearby residents and that it would be unnecessary to apply them on a temporary trial basis.

- 4.5 Appeal by Mr M Broderick against the refusal to grant planning permission under Section 73 to remove condition No. 4 of planning permission 09/00266/FUL and retain the existing access at 2 Aldridge Road, Burbage. The application was refused by Members contrary to Officer recommendation on the grounds that the retention of the access point would have an adverse impact upon highway safety by virtue of the close proximity of the access point to the junction of Aldridge Road and Rugby Road.

The Inspector considered that whilst Rugby Road is an important local route and there are times that drivers do not adhere to the speed limit the sight-lines and visibility from the site are good. There is no record of accidents or serious issues and therefore the Inspector considered that the situation would be little different to many situations within suburban areas throughout the country. The Inspector noted that the Council failed to explain why the application would not comply with the County Council's highway requirements and that County Highways had no objections.

- 4.6 Appeal by Mr R Sohki against refusal to grant planning permission for the retrospective change of use to hand vehicle wash at Land at Russell Francis Interiors, Watling Street, Hinckley. The application was refused by Members contrary to Officer recommendation on the grounds of the intensification of the use of an existing access and traffic turning onto or off the A5 Trunk Road to the detriment of highway safety.

The Inspector concluded that the Local Plan policy T5 makes no reference to highway safety and that it only applies to a change of use which involves a new access. He noted that although the road is heavily trafficked with a high proportion of

heavy goods vehicles the entrance is set well back from the highway and visibility was clear across the highway. He also noted that the use had been in place for 3 years with no Highway Agency records to suggest that serious accidents have occurred as a direct result of the use. He considered right turning would be difficult and an undesirable manoeuvre but it was a long established access and users would have to use common sense and a degree of care when exiting the site.

The appellant applied for a full award of costs on the grounds that the authority should have provided reasonable planning grounds for taking the decision and produced relevant evidence in appeal to support the decision. The Inspector noted the decision had been taken by elected Members contrary to Officer recommendation. He found that the Council had failed to produce relevant and substantive evidence of any intensification of use resulting in highway danger contrary to the view of the highway consultees as such he found unreasonable behaviour resulting in a full award of costs. The costs claim has been submitted and totals £1500.

- 4.7 Appeal by Miss Julie Hogben against refusal of the change of use for flat 2 to accommodate treatment rooms at 1B Newtown Linford Lane, Groby. The application was refused by Members contrary to Officer recommendation on the grounds of impact on neighbouring occupiers by virtue of the comings and going associated with the use leading to a level of noise and general disturbance; and that the applicant had failed to demonstrate an appropriate level of parking on site could be provided.

The Inspector noted that premises is located above an existing hairdressers and the pedestrian access was via a stairway shared with an existing adjoining flat and considered that the due to the size of the premises it would not be likely to generate substantial footfall by customers or staff. The use had been in place for some time during which the occupant of the flat has experienced no inconvenience or disturbance, which is also the case for the occupiers of No 3, the adjacent property. The Inspector concluded that through the control of the intensity of the use and a condition to ensure compliance with approved plans the use would not harm the living conditions of the occupiers of adjacent residential properties. The Inspector also noted that there are 3 existing parking spaces on the forecourt with one additional space for staff parking, along with on-street parking in the vicinity. In addition there is existing off-street parking nearby at the Village Hall and the Groby ex-Servicemen's Social Club as such there is sufficient parking to serve the development.

- 4.8 Appeal by Mr A Ingram against the refusal to grant planning permission for the change of use of existing lakes to a commercial fishing use. Change of use of fields for playing fields with portakabin style changing rooms. New access track and car parking to serve the fishing and playing fields at Gnarley Farm, Osbaston Hollow, Osbaston. The application was refused by Officers under delegated powers on the grounds of it being an unsustainable location and an unacceptable impact to the character and appearance of the surrounding countryside.

The Inspector considered as the appeal site access would only be located a few metres beyond the settlement boundary and that the playing fields would be in a reasonable walking and cycling distance for the village, the location would be sustainably located in relation to Barlestone. He also considered that the fishing lakes would also be sustainably located and with the amount of equipment that anglers use, travel other than predominantly by private car would be unrealistic. The Inspector noted that some hedgerow would need to be removed for visibility purposes the depth of highway grass verge would result in the predominantly rural appearance being retained. The Inspector considered that whilst the access track would cut through arable land it would only be visible to passers-by in glimpsed views along the site access and as such would not have a material effect on the character

and appearance of the area. The Inspector concluded that the car parking area along with the proposed portakabin changing room would be heavily screened from public vantage points by mature vegetation and would also not materially effect the character and appearance of the area.

- 4.9 Appeal by Asda Stores Limited against the refusal to grant permission to vary the condition relating to opening hours at Asda, Barwell Lane, Hinckley. The hours of opening were controlled by condition attached to an appeal decision in 2004, these were 08:30-20:00 Monday to Friday, 08:00-20:00 on Saturday and 10:00 to 16:00 on Sunday. The variation sought 07:00-22:00 Monday to Saturday with no change on Sunday. The application was refused by Members contrary to Officer recommendation on the grounds that the extended opening hours would lead to an increase use of the site which would increase the level of noise and general disturbance to the detriment of the amenities of neighbouring residents.

The Inspector noted the history of the site in particular the 2004 appeal where the previous Inspector considered Sunday opening would harm the living conditions of nearby local residents but that it would be outweighed by other considerations, namely a reduction in noise during the rest of the week through a proposed acoustic fence. The Inspector noted that the acoustic fence was now in place and that a noise assessment submitted with the application concluded that recommended reasonable guidelines would be achieved inside habitable rooms with windows open. The Inspector considered the report to be robust and noted that the findings were accepted by Environmental Health. He concluded that the extended hours would only have a limited impact on the amenity of neighbouring residents.

- 4.10 Appeal by Patrick Godden against the refusal of permission to vary the condition relating to the hours of operation at Upper Grange Farm, Ratby Lane, Markfield. The hours of operation were controlled by condition attached to a 2009 permission and restricted training classes to taking place between 18:00 to 20:00 Mondays to Fridays excluding bank holidays and between 10:00 to 18:00 on Saturdays, Sundays and Bank Holidays. The variation sought training classes to taking place between 10:00 to 20:00 Mondays to Fridays excluding bank holidays and between 10:00 to 18:00 on Saturdays, Sundays and Bank Holidays. The application was refused by Members as recommended by Officers on the grounds that the applicant had failed to demonstrate that the proposed use would not result in an adverse noise impact upon the amenities of nearby residents.

The Inspector noted that he fully understood the concerns of the Council and neighbours regarding the general noise and disturbance generated by dog training, however he also noted that the training fields were a substantial distance from the nearest residential properties, which were at a much higher level than the fields and separated by a combination of acoustic fencing, a large car park, an indoor training hall and the main dog kennel and reception building. The Inspector considered the variation in hours would allow dog training to take place during the day, a far less sensitive time to hold classes than during evenings and weekends which have already been found to be acceptable. Furthermore the use of the show field for dog training during the day was considered to be acceptable by the Council with planning permission granted for use of this field which is nearer to residential properties than the appeal site. As such the Inspector concluded that the variation of hours as proposed would not adversely impact on neighbours amenity.

The appellant applied for a full award of costs, the Inspector noted that the Council had refused the application to vary the hours of operation for dog training but had approved planning permission for dog shows and dog training on the show field. He also noted that both applications were recommended for refusal by officers but that the one for the show field was overturned by Members of Planning Committee. The Inspector considered that the dog training on one field would not be substantially

different to dog training on another field particularly as it is on a field further from residential properties. He concluded that the Council had acted unreasonably leading to unnecessary expense to the applicant in having to address the adequacy of information which was considered acceptable to justify other similar resulting in a full award of costs. The costs claim has been submitted and totals £3,128.

- 4.11 Appeal by Sophie Johnson against the refusal of planning permission for the conversion of a free standing garage and change of use to beauty salon at 1a Tithe Close, Stoke Golding. The application was refused under delegated powers on the grounds of loss of off-street parking provision resulting in overdevelopment of the site and impact upon neighbouring residents and the residential character of the area.

The Inspector noted that No 1a Tithe Close comprises a bungalow with a small detached garage which has been converted into the salon. The salon is run by the granddaughter of the occupier of No 1a, she is newly qualified and this is a start up business. The Inspector considered the arrangement is akin to home working, as the granddaughter lives next door, which is encouraged by local policy as it contributes to local needs and helps to sustain the village providing employment opportunities. The proposal is supported by the local Parish Council and Ward Member. Whilst the concerns of the Local Planning Authority and neighbours are appreciated, since if the business ceased to be a low-key operation or if the bungalow were occupied in the future by car users, activity may occur that could affect residential amenities or give rise to a parking shortage. However the Inspector refers to the NPPF which indicates that decision makers should look for solutions and should consider whether development could be made acceptable through the use of conditions. On this basis the Inspector considered a personal condition restricting the use of the salon to the period during which the appellants grandmother occupies the bungalow is appropriate.

- 4.12 Two appeals by David Wilson Homes against the refusal of planning permission for a re-plan and substitution of housetypes on Plots 40-45 and 47-49 of planning permission 12/00154/FUL (Appeal A) and the erection of 9 dwellings and associated infrastructure (Appeal B) at land off Britannia Road, Burbage. The applications were refused at planning committee against officer recommendation on the grounds of a poor layout by virtue of creating a poor visual end stop to the street scene (Appeal A) and unsustainable location outside the settlement boundary and within the countryside and that the applicant failed to demonstrate there was a need within the Borough that justifies the development of this Greenfield site for which there is no residual housing requirement (Appeal B).

The Inspector noted there was an identified need within Burbage for residential development and considered that Appeal B would help meet that need, it was considered that it would be sustainable development and that it would not be possible to accommodate all of the residual need within the existing settlement boundary on brownfield sites. The acceptability of Appeal B results in a requirement to re-plan part of the overall approved site and therefore Appeal A falls on the basis that the layout proposed would lead to the extension to the overall site and would not result in an unacceptable layout in design terms. Furthermore, the matter of an appropriate end stop to the layout could have been adequately address through the imposition of a condition.

The appellant applied for a full award of costs, the Inspector considered that the Council did not adequately demonstrate why the layout would be harmful, as such it was concluded that the Council had acted unreasonably by persisting in its objection and because it would have been possible to impose a condition on any approval. With regards to appeal B, the Inspector noted that there was no substantial evidence submitted at the appeal to warrant a refusal reason on the grounds of sustainability. Further the Inspector considered that it was demonstrated easily that there was a

residual requirement for residential development in Burbage and therefore refusal on these grounds was also unreasonable. This resulted in a full award of costs, the appellant has not yet submitted their claim and as such the costs are currently unknown.

- 4.13 Appeal by Benchmark against the granting of planning permission subject to condition No. 14 relating to the surfacing material for the driveway at Wharf Yard, Coventry Road, Hinckley. The application was reported to Planning Committee with a recommendation for approval subject to conditions and members subsequently approved the application. The Appeal was submitted against the condition requiring the surfacing of driveway, the reason for the condition was to reduce the possibility of deleterious material being deposited on the highway.

The Inspector considered that the site access is poorly surfaced and contains a number of potholes. It was noted that the site is a considerable distance from Coventry Road and at a slight incline therefore it would be unlikely that any loose material would be carried onto the highway. The Inspector considered the request to finish the surface in the vicinity of the appeal site with a solid bound material unreasonable as to leave the site would necessitate negotiating the unfinished track. The Inspector considered the retention of the condition in its current form unreasonable and unnecessary, failing to meet tests in Circular 11/95 as such the appeal was allowed and planning permission varied by the deletion of the condition and the substitution with a further condition that requires surfacing details to be submitted and approved prior to first use and occupation.

5. **APPEALS SPLIT DECISION**

- 5.1 Appeal by Mr S Hallam against the refusal to grant planning permission for the change of use of land to residential cartilage including extensions and alterations to dwelling and sunroom. The application was refused under delegated powers on the grounds of impact upon streetscene and visual amenity of the area.

The Inspector broadly agreed with the local authority that the introduction of a large featureless expanse of brick flank wall would be a dominant feature in the streetscene and the extension would unbalance the symmetry that currently exists between the semi-detached pair. The Inspector however noted that the local authority did not object to the change of use of the land, erection of fence and erection of sunroom and on this basis he issued a split decision to dismiss the appeal in respect of the house extension and allow the appeal in respect of the change of use of land, erection of fence and erection of sunroom.

5. **FINANCIAL IMPLICATIONS (KP)**

- 5.1 The Council has a total net budget for the administration of appeals for 2013/2014 of £149,740. This includes a budget of £46,310 specifically for legal costs
- 5.2 As at 31st December 2013, the Council had expended £18,336 of the legal fees budget noted above. Of this amount £4,593 relates to the costs awarded for those appeals detailed in section 4.
- 5.3 A proposal to set up an appeals reserve to manage costs associated with the appeals process was taken to Scrutiny Commission in November 2013. Establishment of this reserve will be proposed as part of the 2014/2015 budget setting process.

6. **LEGAL IMPLICATIONS (MR)**

- 6.1 None. The report is for information only.

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	Nic Thomas / 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

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