

**PLANNING COMMITTEE – 26 June 2011**

**REPORT OF THE DEPUTY CHIEF EXECUTIVE  
(COMMUNITY DIRECTION)  
RE: APPEALS LODGED AND DETERMINED**



**WARDS AFFECTED:** BURBAGE ST CATHERINES AND LASH HILL WARD;  
HINCKLEY CLAREDON WARD; TWYXCROSS, WITHERLEY AND SHEEPY WARD;  
GROBY WARD; RATBY, BAGWORTH & THRENTON WARD

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1. **PURPOSE OF REPORT**

To inform Members of appeals lodged and determined since the last report.

2. **RECOMMENDATION**

That the report be noted.

3. **BACKGROUND TO THE REPORT**

**Appeals Lodged**

**Appeal by Adept Care Group Ltd.** against the refusal to issue advertising consent for the erection of one non illuminated advertisement (12/00114/ADV) at the Moat House retirement home, New Road, Burbage  
*Written Representation*

**Appeal by Mr John Calladine** against the refusal to grant full planning permission for the change of use of land for the provision of four mobile homes (11/00693/FUL) at The Poplars, Watling Street, Hinckley  
*Informal Hearing*

**Appeal by Steven Plant** against condition 14 surfacing of driveway and parking area to planning permission (11/00808/FUL) at 5 Wharf Yard, Hinckley  
*Written Representation*

**Appeal by Mrs S Kerby** against the refusal to grant full planning permission for extensions and alterations (12/00214/HOU) at 7a Bilstone Road, Little Twycross  
*Written Representation*

**Appeals Determined**

**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.

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.

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.

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.

The Council were 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.

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.

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.

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.

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.

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 therefor 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.

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

The appellant also made an application for costs. In considering that application, the Inspector formed the following conclusions;

- 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
- 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

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

### **Inspector's Decision**

Split decision (Enforcement case)

**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.

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.

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.

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.

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.

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 adaptation 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.

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.

#### Inspector's Decision

Split decision (committee decision)

**Appeal by Mr D Price** against the refusal to grant full planning permission for the erection of a proposed agricultural building (11/00635/FUL) at Heath Lane, Bagworth.

The Inspector considered that the main issues with regards to this appeal include the effects of the proposed development on: (i) highway safety and (ii) the character and appearance of the area, having regard to relevant policy on development in the countryside.

The use of the proposed building would have the potential to generate significantly more vehicular trips than the current use of the appeal premises. It was noted current visibility at the north-western access is restricted by roadside vegetation and currently below the Council standard. The scheme would result in a significant increase in the risk to road users because of the additional number of vehicles likely to use this substandard access. The inspector considered this would have an unacceptable adverse effect on highway safety.

In response to the call made by the appellant that the issue could be overcome by the imposition of an appropriate planning condition, either with respect to the access shown or the use of the south eastern access, the Inspector notes that there is nothing to indicate that there is a reasonable prospect that a suitable visibility splay to the north-west could be achieved given the different land ownership. Whilst the inspector considered it might be more feasible to provide appropriate visibility splays here he was concerned that the use of this access would result in a significantly different scheme to that considered by the council and therefore other parties may be prejudiced

and such a revised scheme should be a matter for the council to consider in the first instance.

With regards to the first main issue on highway safety, the Inspector considered that the proposed development would result in an unacceptable increased risk to those using part of Heath Road. The harm to highway safety cannot be overcome by the imposition of reasonable planning conditions. Therefore the proposal is in conflict with Local Plan Policy T5, BE1(c) and BE1 (g) concerning safety.

In relation to the second issue on the schemes impact on character and appearance, the Inspector noted that the proposed building would be set further into the field compared to the existing buildings which are screened by high roadside hedge. It would occupy what is currently an open area and there are footpaths nearby that form part of an attractive recreation area.

Landscaping would be difficult due to local topography constraints and the building would still be visible during the time new planting matured. The Inspector considered by reason of its siting and size, that the proposed agricultural building would erode the openness of this part of the countryside and so would harm the landscape. On this second issue, the proposal would harm the character and appearance of the area and could not be overcome by the imposition of a landscaping condition.

Having regard to the National Planning Policy Framework, which identifies an economic, a social and an environmental dimension to sustainable development, the Inspector points out that the extent to which the proposed building would contribute towards a prosperous rural economy is a consideration to be weighed against the harm already mentioned above. However the Inspector states that limited evidence has been submitted by the appellant about the existing enterprise. There was no convincing case put forward over the likely benefits of the proposal to the enterprise and to the rural economy which would be sufficient to outweigh the harm to the rural landscape.

The appeal scheme does not represent sustainable development to which the presumption in favour cited in the Framework would apply. On the grounds that the proposal will harm highway safety and harm the character and appearance of the area, the Inspector concludes that the appeal should be dismissed.

#### Inspector's Decision

Appeal dismissed (committee decision)

#### 4. FINANCIAL IMPLICATIONS [CB]

Any potential costs arising from the appeals lodged can be met from existing budgets.

#### 5. LEGAL IMPLICATIONS [EP]

There are no legal implications arising from this report as the report is for noting only.

6. CORPORATE PLAN IMPLICATIONS

This document contributes to Strategic Aim 3 of the Corporate Plan

- Safer and Healthier Borough.

7. CONSULTATION

None

8. RISK IMPLICATIONS

None

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

None

10. CORPORATE IMPLICATIONS

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

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|---------------------------------|------------------------------|
| - Community Safety implications | None relating to this report |
| - Environmental implications    | None relating to this report |
| - ICT implications              | None relating to this report |
| - Asset Management implications | None relating to this report |
| - Human Resources implications  | None relating to this report |
| - Voluntary Sector              | None relating to this report |

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Background papers: Appeal Decisions

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