

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



Wards affected – Burbage, Desford, Hinckley,

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

- 3.1 **Appeal by Mr & Mrs S Adcock** against refusal for extensions and alterations to dwelling at Barons Park, Leicester Lane, Desford.

Format: Written Representations

- 3.2 **Appeal by Mr H Chotai** against refusal for the retrospective installation of solar panels on the roof at 18 Manor Road, Desford.

Format: Written Representations.

Appeals Determined

- 3.3 **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 report to Planning Committee with a recommendation of refusal and subsequently refused by Members for the following reason.;

“In the opinion of the Local Planning Authority the proposed extension of opening times over a one year period would lead to a level of noise and general disturbance that is likely to be significantly detrimental to the amenities of neighbouring residents contrary to Saved Policy BE1 (criteria i) of the adopted Hinckley and Bosworth Local Plan and the Council's Supplementary Planning Document on Shopping and Shop Fronts (Part 3)”.

The Inspector considered the main issue of the appeal to be the implications for the living conditions of nearby residents with regards to potential noise and disturbance.

The Inspector considered that the application only sought to extend the opening times on a temporary period for one year and made reference to the two previous appeals on site. The initial appeal for a hot food takeaway was dismissed as the Inspector at the time concluded that the closing time of 20:00 would likely disturb neighbouring occupants, in particular No 100 Rugby Road. The Inspector noted that no mention of the large development to the South of the site was made, although it was unclear if this information was available at the time. The subsequent appeal allowed the hot food takeaway on the basis that the previous issues were addressed through an earlier closing time of 18:00 and soundproofing mitigation to the party wall with No. 100.

Information was supplied by the appellant's agent to the Inspector for consideration regarding the major redevelopment of the area along with the access to the main car park serving the development to be along Willowbank Road, adjoining the appeal site. The Inspector considered that this redevelopment would have significant implications for traffic in the immediate vicinity once fully occupied.

The Inspector considered the information provided by the commissioned traffic count and concluded that even in the early evening, Rugby Road remains relatively busy. The Inspector also noted that deliveries are currently carried out from the premises after the hours of 18:00, generating traffic activity and adding to ambient noise.

The Inspector noted that No 100 Rugby Road is now within the ownership of the appellant and occupied by a member of the family involved in the business, therefore, this appeal is appreciably different to the previous one where the owners of 100 Rugby Road objected. The Inspector concluded that the extended opening hours would not likely give rise to any appreciable noise and disturbance to nearby residents and that it would be unnecessary to apply them on a temporary trial basis. Having regard to the closing time set out in the SPD for Shop Fronts and Policy BE1 of the Hinckley and Bosworth "saved" Local Plan, the Inspector considered that given the mixed nature of the locality, the suggested closing time of 21:00 strikes a reasonable balance between needs of the business and living conditions of nearby residents.

Conclusion

The appeal be allowed and planning permission granted for change of use in accordance with 12/00749/CONDIT without compliance of condition No. 4 of 10/00908/FUL, but subject to a revised condition

stating that the use shall not be permitted outside the hours of 07:30 to 21:00 Mondays to Saturdays, including Bank Holidays or at any time on Sundays.

- 3.4 **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 reported to Planning Committee with a recommendation of approval but was overturned by Members for the following reason:-

“In the opinion of the Local Planning Authority, the proposed 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 proposal is considered contrary to Policy T5 of the adopted Hinckley and Bosworth Local Plan”.

The Inspector considered the main issue of the appeal to be whether or not the disputed condition is reasonably necessary in the interests of highway safety.

In the view of the Inspector, although Rugby Road is an important local route and there are times when drivers fail to comply with the 30mph speed limit, the sight-lines and visibility from the site are good. Objections from residents regarding inconveniences whilst waiting for vehicles to manoeuvre were noted; however no evidence was provided of any accidents or serious issues and therefore the Inspector considered that the situation 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 Leicestershire County Council's normal highway requirements in line with Policy T5 of the “saved” Local Plan, considering that the LCC had no objections to the application subject to certain conditions. The Inspector concluded that there was no reason that the proposal would conflict with Paragraph 32 of the National Planning Policy Framework.

Conclusion

The appeal be allowed and planning permission granted for extensions and alterations to bungalow and part change of use to teaching facility in accordance with 12/00548/CONDIT without compliance with condition No. 4 of 09/00266/FUL, subject to a revised condition.

- 3.5 **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 and subsequently approved by Members subject to conditions. The condition under dispute is as follows:-

“Before first use and occupation of the buildings hereby approved, the driveway and areas to be used by vehicles as shown as ‘rough tarmac’ on drawing no. 001B shall be surfaced with tarmacadam, concrete or similar hard bound material (as agreed by condition 6) and shall be maintained that way thereafter”.

The reason given for the condition is as follows:-

“To reduce the possibility of deleterious material being deposited in the highway (loose stones etc.) to accord with Policy T5 of the adopted Hinckley and Bosworth Local Plan”.

The Inspector considered that the main issue in the appeal was the implications of the condition for the safety of road users, bearing in mind the tests for conditions in Circular 11/95.

The Inspector concluded that the access road to the site is poorly surfaced and contains potholes and that the condition in question only relates to the land in the vicinity of the appeal site and would have no bearing on the access road. The site lies a considerable distance away from Coventry Road and the Inspector noted that bearing in mind the slight incline to the main road, it would be unlikely that any loose material would be carried onto the highway and therefore there would be no or negligible implications to road users should the condition be amended.

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 access track. The Inspector also noted that an unconsolidated surface would only be a hazard to wheelchair users and pedestrians dependant on the quality of the finished surface.

The Inspector considered the retention of the condition in its current form unreasonable and unnecessary, failing to meet tests in Circular 11/95.

Conclusion

The appeal be allowed and planning permission 11/00808/FUL for dental laboratory and clinic with 2 No. office units and 9 No. apartments with vehicular access and parking is varied by deleting condition No. 14 and substituting it for the following revised condition:-

“Before first use and occupation of the buildings hereby approved, the driveway and areas to be used by vehicles as shown as “rough tarmac” on drawing No 001B shall be surfaced with a permeable material, details of which shall be first submitted to and approved in writing by the local planning authority. The surface shall be maintained that way thereafter”.

3.5 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 reported to Planning Committee with a recommendation of approval but was subsequently overturned by Members for the following reason:-

“In the opinion of the local planning authority the proposed hand vehicle wash, due to the vehicular traffic which it attracts would result in an intensification of use of the existing access and traffic turning onto or off the A5, Watling Street, Trunk Road where traffic volumes and speeds are generally high, to the detriment of highway safety. The proposed development is therefore contrary to policies T5 of the adopted Hinckley and Bosworth Local Plan”.

The Inspector considered the main issue of the appeal to be the effect of the proposal on highway safety on the A5 trunk road.

The Inspector concluded that the policy referred to in the Council’s reason for refusal, makes no direct reference to highway safety and that it only applies to a change of use which involves a new access, not the case in this appeal as the accesses have clearly been in place for a considerable amount of time, presumably from the previous use of the site. The Inspector noted the referral of the policy to the Council’s Highway Design standards, despite there being no suggestion from any party that the visibility on the road was substandard. Although the road is heavily trafficked with a high proportion of heavy goods vehicles, the Inspector considered that the entrance was set well back from the highway and visibility was clear across the highway.

The Inspector considered the Council’s primary concern over the use generating significant vehicular movement, posing a risk of accidents to users of the A5, especially those turning right out of the accesses. The Inspector concluded that the use has been in place for 3 years with no Highway Agency records to suggest that serious accidents have occurred as a direct result of that use. It was agreed that turning right would be a difficult and undesirable manoeuvre but it is a long established access, serving not only the appeal site, but the other businesses on the site and the Inspector concluded that a little common sense and a degree of care should be taken on exiting the site. The Inspector also noted that the site is identified as an Employment site and it would be likely that any use on the site would

be likely to result in vehicular movement from the site using the existing accesses.

The Inspector noted that they are in agreement with the Council's suggested condition to restrict car washing to a designated area to alleviate the issue of drainage and pollution raised by residents, but referred to all other issues raised as a matter for Environmental Health. The Inspector concluded that the use should be restricted by opening times to protect the living conditions of nearby residents and the business operation of the adjacent Bengali Restaurant.

Conclusion

That the appeal be allowed granting planning permission for the change of use to a hand car vehicle wash subject to conditions.

Application for an award of Costs

An application for the award of costs was made by the applicant on the basis that given the emphasis in the NPPF on the importance of economic development it should not have been necessary for the matter to be brought to appeal.

In line with Paragraph B20 in the Annex to Circular 03/2009, 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 that the decision was taken by the elected members of the Council's planning committee contrary to the recommendation of the Council's officers. He found that the Council have failed to produce relevant and substantive evidence of any intensification of use resulting in highway danger in order to provide the clear and rational explanation necessary to justify a decision contrary to the views of the highway consultees and to their own officers' recommendations. He therefore found that unreasonable behaviour resulting in unnecessary expense had been demonstrated and that a full award of costs was justified.

The applicant will now submit to the Council details of his costs with a view to reaching agreement as to the amount

4. FINANCIAL IMPLICATIONS [DMe]

There are financial costs associated with one of the appeals logged in this report and at present we do not have the actual estimate of the full award of costs. Any award of costs will have to be met from the council's existing appeals legal costs budget of £43,000 base budget. If this budget is utilised to cover the full award of the appeal logged, then the base budget will be reduced to defend any future decisions.

Any further costs above £43,000 of the base budget, a supplementary request will be required in accordance with the council's financial procedures.

5. LEGAL IMPLICATIONS [MR]

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

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

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.

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 cost of taking decisions with no evidence or policy basis	Planning committee to review outcomes of appeals and take into account Inspector decisions when considering future applications	Tracy Miller
Reputation regarding making unsound decisions where there is no policy foundation	Recommend Scrutiny to review basis of decision and advise Members accordingly	Tracy Miller

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

This report is for information purposes only to draw member's attention to recent appeals lodged with the Authority and appeal decisions issued by the Planning Inspectorate. As this report is not seeking a decision it is envisaged that there are no equality or rural implications arising as a direct result of this report.

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 |

Background papers: Committee Reports and Appeal Decisions:

Appeal Decision APP/K2420/A/12/2176710 – Wharf Yard, Coventry Road, Hinckley

Appeal Decision APP/K2420/A/13/2190670 – 2 Aldridge Road, Burbage

Appeal Decision APP/K2420/A/12/2186834 – The Pantry, 102 Rugby Road, Hinckley

Appeal Decision APP/K2420/A/12/2186862 – Land at Russell Francis Interiors, Watling Street, Hinckley

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