

**PLANNING COMMITTEE – 25th June 2013**

**REPORT OF THE DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION)**

**RE: APPEALS LODGED AND DETERMINED**



Hinckley & Bosworth  
Borough Council

*A Borough to be proud of*

**Wards affected – Market Bosworth, Groby, Kirkby Mallory, Barwell, Ratby, Burbage, Stoke Golding, Hinckley.**

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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**

- 3.1 **Appeal by Mr Peter Mayne** against refusal for the erection of solar panel field and associated infrastructure at The Stables, Pine Close, Stoke Golding.

Format: Written Representations

- 3.2 **Appeal by David Wilson Homes East Midlands** against refusal for the erection of 9 dwellings and associated infrastructure at Land South of 26 to 28 Britannia Road, Burbage.

Format: Informal Hearing.

- 3.3 **Appeal by Mr Patrick Godden** against refusal for variation of condition No 4 of planning permission 09/00770/COU to amend the hours of operation at Upper Grange Farm, Ratby Lane, Markfield.

Format: Written Representations.

- 3.4 **Appeal by Alan Jones** against refusal of variation of condition of planning permission 03/00247/CONDIT to vary opening hours at Asda, Barwell Lane, Hinckley.

Format: Written Representations.

**Appeals Determined**

- 3.5 **Appeal by Mr Roy Jarvis** against the refusal to grant planning for the conversion of barn to dwelling including replacement of upper walls and roof at 33 Newbold Road, Kirkby Mallory.

The application was originally reported to Planning Committee for refusal and was subsequently refused by Members for the following reasons:

1. The proposed development is incapable of conversion without significant adaptation and thus is tantamount to the building of a new dwelling in the countryside, contrary to Para 55 of the NPPF.
2. The proposed development results in un-sympathetic alterations and additions, detrimental to the character and appearance of that building and of the surrounding countryside, contrary to BE1 of the Local Plan and NPPF.
3. The proposed development would have an unacceptable adverse impact on the amenities of the occupiers of No. 33 Newbold Road in terms of overlooking, contrary to BE1 of the Local Plan.
4. The proposed development would lead to an increase in traffic using an unsuitable access resulting in increased dangers for road users, contrary to T5 and BE1 of the Local Plan.

The Inspector considered the main issues were the effect on the character and appearance of the countryside, the effect on highway safety and the effect on the living conditions and privacy of the occupiers of No 33 Newbold Road.

#### Countryside

The barn lies adjacent to No 33 Newbold Road, along with the adjoining paddock to which it is in conjunction with, both currently occupied. At the time of the Inspector's site visit, the building was being used for storage of an assortment of domestic items and in the Inspector's view, the building was of little aesthetic merit. There were also some unoccupied buildings on site and a ménage and paddock, all to be removed, allowing the proposed residential curtilage to cut through where the existing ménage stood and allowing the front paddock to revert to agricultural use.

In the view of the Inspector, the conversion would be located within the countryside, contrary to National Planning Policy Framework (The NPPF), which identifies that new isolated development should be avoided. The few existing dwellings in the locality are sporadic and within a rural setting, the Inspector concluded that the new dwelling would be some way away from any settlement with services and would also result in an increase in length and number of motorised journeys. With this and the lack of footpaths or street lighting, the Inspector considered the site an unsuitable location.

The Inspector considered that the NPPF does allow for new isolated homes in the countryside but only where development would re-use redundant buildings, enhancing the immediate setting; however, in this instance only the steel framework and the lower block work of the building would remain, creating a rebuilding rather than a conversion.

The Inspector noted that although the appellant's personal circumstances no longer require the use of the building as stabling in association with the dwelling, it has not been demonstrated that the building is no longer suitable for equestrian use.

In the view of the Inspector, the removal of the ménage and railings and landscaping the frontage, would have a limited enhancement to the area, but

would not result in a substantial improvement to the appearance of the area, the character of which would be harmed by the increased domestic occupation.

The Inspector noted the presence of other examples of barn conversions in the area, but clarifies that they all relate to traditional barn structures which were of some merit. The Inspector concluded that the development would harm the character and appearance of the countryside, contrary to policy BE1 of the Hinckley and Bosworth Local Plan.

#### Highway Safety

In the view of the Inspector, the access would be via an existing drive onto Newbold Road and therefore policy T5 of the Hinckley and Bosworth Local Plan would not apply; however, the Design and Access Statement specifies that over recent years, the barn has had little use with the equestrian activities principally undertaken by the appellant's children. The Inspector concluded that for this reason, little extra traffic would have been generated since its use in association with the dwelling, as apposed to the contrast in the conversion to a four bedroom dwelling, which would generate additional traffic movements, making it reasonable to consider the adequacy of the access.

The Highway Authority judged that visibility splays would be necessary, 2.4m by 38m to the left and 2.4m by 60m visibility to the right. The Inspector commented that the visibility to the left could be achieved; however, it was not demonstrated that the visibility to the right would be provided and in the absence of that evidence it could not be concluded that adequate visibility could be provided, contrary to policy BE1 of the Hinckley and Bosworth Local Plan. The Inspector also noted that although there have been no accidents as a direct result of the access and that horse related activity may cease, it does not justify putting additional drivers at risk, the development would be harmful to highway safety.

#### Living Conditions

The orientation of the building would be north/south, meaning that the dwelling would face towards No 33 Newbold Road. There would be first floor bedroom windows facing the rear garden of No. 33 and first floor glazing serving the landing, however the landing would be set back. The garden separating the building from the common boundary with No 33 would be 16m in length, exceeding the minimum length of 12.5m specified in the Council's New Residential Development Design Guide. Due to the orientation of No 33, there would be no overlooking and therefore the Inspector concluded that the development would not harm the living conditions of the occupiers of No 33 in respect of privacy, in line with policy BE1 of the Hinckley and Bosworth Local Plan.

#### Conclusion

The Inspector concluded in favour of the Local Planning Authority and agreed that the development would be contrary to policy BE1 of the Hinckley and Bosworth Local Plan and that notwithstanding the conclusion on the living conditions, the appeal be dismissed for the first two main reasons.

**APPEAL DISMISSED**

3.6 **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 originally recommended for approval by officers but was subsequently overturned by Members at Planning Committee and refused for the following reasons:

1. The comings and goings associated with the use will lead to a level of noise and general disturbance likely to be detrimental to the amenities of the neighbouring occupiers, contrary to BE1 of the Local Plan.
2. The applicant has failed to demonstrate that an appropriate level of on-site parking would be made to serve the development causing a detriment to highway and pedestrian safety contrary to T5 of the Local Plan.

The Inspector considered that the main issues of the appeal were the effect on the living conditions of the occupiers of adjacent residential properties and the adequacy of on-site parking provision.

#### Living Conditions

The Inspector noted that policy BE1 of the Hinckley and Bosworth Local Plan seeks to ensure development does not adversely affect the amenities of neighbouring properties. No 1B is located above an existing hairdressers and pedestrian access would be via an external staircase serving only the premises and the existing first floor flat, No 1A. The stairway is a shared existing access and due to the small size of the proposed unit, the Inspector considered that it would not be likely to generate substantial footfall by customers or staff.

The use has been in place for some time, during which, the occupant of the flat has experienced no inconvenience or disturbance from the use, the same goes 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 the compliance with approved plans, that the use would not harm the living conditions of the occupiers of the adjacent residential properties.

#### Car Parking

The Inspector concluded that there are three existing parking spaces on the forecourt, with one more space for staff parking, along with on-street parking not too far away. There is the Village Hall car park nearby and the Groby ex-Servicemen's Social Club have given permission for the use of their car park by customers, although that is not secured through a Legal agreement. This accords with the County Council Parking Standards, one space per 50 square metres, with a minimum of two spaces.

The Inspector also noted that the provision of double yellow lines in the vicinity of the premises, prevents on-street parking which could be prejudicial to highway safety. Therefore, the development complies with policy T5 of the Hinckley and Bosworth Local Plan.

## Conclusion

The Inspector agreed with the original recommendation of officers and considered that the appeal be allowed, granting planning permission for the change of use of flat above hairdressers to accommodate treatment rooms in accordance with the terms of the application reference 12/00900/COU, subject to conditions relating to accordance with approved plans and the restriction of the use in conjunction with the hairdressers only, not as a separate retail unit.

## APPEAL ALLOWED

- 3.7 **Appeal by David Wilson Homes East Midlands** against refusal of planning permission for the erection of 24 dwellings and associated infrastructure at Land at Shilton Road, Barwell.

The application originally went to Planning Committee with a recommendation for refusal by officers and was subsequently refused by Members for the following reasons:

1. The proposed development is outside of the settlement boundary and within the Green Wedge resulting in a loss of Green Wedge, contrary to Policies 3 and 6 of the Core Strategy and principles of the NPPF.
2. The applicant has failed to demonstrate that the development will not result in the loss of an identified ecological asset, contrary to BE1 of the Local Plan and Section 11 of the NPPF.

## Preliminaries

The Inspector noted that a Statement of Common ground was agreed between the principal parties and submitted at the hearing detailing the matters of the appeal and including a list of draft conditions and appendices. An obligation made under Section 106 of the Act was also submitted in the form of a Planning Agreement at the hearing. Within the Agreement, provision is made for 5 affordable houses and the payment of a number of contributions. The Inspector took account of both documents in the determination of the appeal.

The Inspector considered that the main issues of the appeal were whether a 5 year supply of deliverable housing land is locally available and the impact of the proposed development on the Hinckley/Barwell/Earl Shilton/Burbage Green Wedge.

## Five Year Housing Land Supply

Paragraph 47 of the National Planning Policy Framework is in place to boost the supply of housing by identifying and updating a supply of specific deliverable sites available to deliver 5 years worth of housing. The Council's Core Strategy records the requirement in the Borough to be 9000 between 2006-2012 – equivalent to 450 houses per year. Between the period 2008/9, the amount was achieved in a single year when 474 were built; however, other periods varied between 227 and 438 per year. The dispute between the parties is over the most appropriate way to deliver the shortfall, the appellant argued that it should be made up as rapidly as possible by adding 526 units

to the current 5 year requirement, the Council argued that the more appropriate method would be to spread the shortfall across the rest of the plan period. The appellant's approach results in a current 5 year supply of 2,776 dwellings, the Council's approach results in 2,445.

The Inspector noted that that the Framework expresses no preference for a particular method and attention was drawn to previous alternatives adopted from two recent appeals – Stanton under Bardon for 28 dwellings, which favoured the Sedgfield approach, meeting the shortfall earlier in the plan and – Groby for 91 dwellings, which favoured the Liverpool approach, concluding that a 5 years supply of land was deliverable.

In the view of the Inspector, there is little purpose in aspiring to a target that would be undeliverable and unrealistic in the current economic climate. The Inspector considered that a more realistic and preferred approach would be to anticipate a slow and steady recovery over a protracted period, and noted that in the respect of the two recent appeals, the Liverpool approach for the Groby site was a preferred and more cautious adoption for the calculation of the requirement.

The Inspector noted that not only does Paragraph 47 identify the requirement, but also requires an increase by either a 5% or a 20% buffer. This is to ensure choice and competition in the market for land and to provide a realistic prospect of achieving the planned supply and should be applied where there is persistent under delivery. The Council favours the 5%, but the appellant favours the 20% addition. The Inspector concluded that the rate of building cannot be dictated entirely on the result of planning decisions, there is potential for achieving the planned supply in a buoyant economy with an increase of 20%; however, at present it does not appear to be a realistic prospect. The Inspector also noted that the Council do not appear to have been obstinate in relation to the under-delivery and that the persistence referred to in Paragraph 47 has not been demonstrated. The Inspector concluded that a 5% buffer would be the favoured option in this case.

The Inspector noted that the appellant referred to several sites where it is considered the dwellings are unlikely to come forward as predicted and refers to the depressed state of the housing market. The Parties disagree in the estimate of the supply of housing land, the appellant estimates 2,548 dwellings are deliverable, whilst the Council estimate 2,757.

The Inspector concluded that although the Site Allocations and Generic Development Control Policies DPD is available in draft form only, significant progress has been made on the Earl Shilton and Barwell Area Action Plan to deliver 2,500 houses and the proposal is being actively pursued by means of an outline application. In light of the evident effort already applied to the site, the Inspector saw no reason why the prediction of 505 dwellings over the next 5 years would not be attained by the Barwell SUE. In that respect, the Inspector considered in agreement with the Stanton under Bardon case.

The Inspector concluded that the calculation of land supply is not an exact science and that a 5 year supply of deliverable housing has been demonstrated and is locally available, all policies relevant to the supply of housing continue to attract their full weight.

## Green Wedge

The Inspector considered Policy 6 of the Core Strategy, which seeks encouragement of the appropriate recreational facilities and positive management of the land to maintain or enhance the green wedge. Specific uses are identified, not including housing, to retain the functions of the green wedge and the visual appearance of the area. The appellant considered that the scheme would have no material impact on the green wedge as it would occupy under 0.3% of the total area and is not included in the recently issued Green Wedge Review as a sensitive area. The Inspector's attention was drawn to a recent successful appeal for 4 dwellings at St. Mary's Court, Barwell, which was also located within the green wedge.

The Inspector considered the appeal site against the criteria for designation of the green wedge and made reference to Paragraph 9.2.3 of the Green Wedge Review, which recognises the argument that Barwell and Earl Shilton have already been merged, and agreed with the appellant that the scheme would have little consequence in preserving their differences. Notwithstanding that, the Inspector also recognised that green wedges have a significant effect on guiding the overall form of the growth of settlements and that the existence of the green wedge has played a significant part in forming the planned expansion of Barwell to the north-west and Earl Shilton to the south-west. The current scheme would have proposed the expansion of Barwell to the south-east and the Inspector considered that although a small project in comparison, there would be limited conflict with the purpose of the designation.

The Inspector considered that given the conclusions in relation to the above purposes, the purpose of providing a green lung to urban areas would be adversely affected by the scheme. The undeveloped land acts as a particularly attractive extension of the countryside into the built-up area. Paragraphs 9.4.3 and 10.4.2 of the Green Wedge Review refer to the importance of topography and lengthy views from Shilton Road and the Inspector considered that the scheme would extinguish this important aspect of the green wedge. The Inspector concluded that although the land has no particular recreational use, the contribution to local residents who can overlook the site and enjoy the countryside views would be denied this amenity should it be developed.

## Conclusion

The Inspector took into consideration the matters raised by both parties including the sustainable location of the site, the benefits of the scheme and provision of affordable housing; however, no matters outweigh the harm to the green wedge. The Inspector clarified that had the opposite conclusion been made regarding the first main issue, the scheme would still have been in breach of Policy 6 of the Core Strategy, and the appeal was therefore dismissed.

## APPEAL DISMISSED

- 3.8 **Appeal made by Mr and Mrs J Hitchcock** against the refusal of planning permission for the erection of dwelling with detached garage and formation of associated vehicular access at Land Between 3 and 15 Shenton Lane, Market Bosworth.

The application originally went to Planning Committee with a recommendation of refusal by officers and was subsequently refused by Members for the following reason:

1. The applicant has failed to demonstrate that an appropriate and safe vehicular access would be provided, which could result in dangers to road users, contrary to T5 of the Local Plan.

The Inspector considered the first main issue with the appeal to be the fact that the site is within the Conservation Area but agreed with the Council's opinion that the design, mass and materials of the proposal would enhance and preserve the character and appearance of the area. The second issue raised by the Inspector was the effect of the proposed development on highway safety and free flow traffic along Shenton Lane.

### Highway Safety

In the view of the Inspector, Shenton Road is a narrow Class III highway with a speed limit of 30mph with vehicles parked along both sides, particularly in front of the appeal site and adjacent dwellings. The Inspector applied great weight to Saved Policy T5 of the Hinckley and Bosworth Local Plan, National Planning Policy Framework and the Leicestershire County Council's 'The 6C's Design Guide' in relation to the requirements for new development requiring new access, in that they comply with the current highway standards.

"Manual For Streets" (MFS1) and the updated (MFS2) make reference to development in built-up areas, which applies to the appeal site. Standard visibility is set out in these documents and in this case should be 2.4m (x) by 43m (y). The (x) distance should normally be used in built-up areas as this represents a reasonable maximum distance between the front of a car and a driver's eye. The (y) distance is calculated by the traffic speeds and safe stopping distances. Based on the speed limit of Shenton Lane, 30mph, 43m is the relevant safe stopping distance. However, the appellant undertook a Classified Automatic Traffic Count which confirmed that the average speed was 25mph, allowing the (y) distance to be reduced to 33m. The Inspector noted that although the appellant stated that the visibility splays could be achieved, it was not taken into account the regular parking that occurs within the visibility splays. However, MFS1 and MFS2 state that parking in visibility splays within built-up areas is common and in some circumstances, where the speeds are slow, some encroachment may be possible.

The Inspector considered that although there would be sufficient turning space within the site for vehicles to turn and exit forward from the site, the existing ground level would be lowered by 1m, not allowing the driver to see above parked vehicles as indicated by the appellant. This would therefore be hazardous. The Inspector also considered that there would be further risk to road users and pedestrians as the carriageway width is 5.3m adjacent to the proposed access, meaning only one vehicle can proceed along the road when cars are parked along one side of the road, resulting in the likeliness of vehicles having to reverse up the road or back over the footway into the appeal site should they be emerging from the site.

In consideration of Paragraph 7.8.5 of MFS1 and 10.7.1 of MFS2 indicating that defined parking bays should be provided outside the visibility splay, the



Inspector considered that there is a lack of parking bays along Shenton Lane and that it would be difficult to negotiate the proposed entrance or see pedestrians on the footway, should there be vehicles parked close to the proposed entrance. Taking this and other points into account, the Inspector concluded that the (y) distance is compromised, making visibility in both directions inadequate.

The appellant argued that the proposed access close to the existing access to No 3 could provide a passing place, however the submitted drawing did not make it clear that a car would not park between the two accesses and therefore was given little weight. The Inspector noted that there have been no accidents and that there are other existing vehicular accesses onto Shenton Lane close to the on-street parking; however it was concluded that the existence of other accesses is not a good reason to introduce another access which would be unsatisfactory and hazardous.

Several previous appeal decisions were referred to by the appellant; however, the Inspector considered that the appeal would be determined on its own merits and therefore little weight was given to the other decisions.

#### Conclusion

The Inspector considered that the appeal proposal would not have a detrimental impact on the character or appearance of the conservation area; however no matter outweighs the main issue in respect of highway safety, which the Inspector concluded to be contrary to MSF1, MSF2 and Saved Policy T5 of the Hinckley and Bosworth Local Plan and the appeal was therefore dismissed.

#### Costs

An application for full costs was made by the appellant for the reason of unreasonable behaviour by the Council, resulting in unnecessary expense, as described in Circular 03/2009. The Inspector concluded that there had been no evidence demonstrated to confirm this and the full award for costs was found unjustified..

#### APPEAL DISMISSED

#### 4. FINANCIAL IMPLICATIONS [DMe]

None arising directly from this report.

#### 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
None	None	

## 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:

- |                                 |                              |
|---------------------------------|------------------------------|
| - 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: Committee Reports and Appeal Decisions:

Appeal Decision APP/K2420/A/12/2189548 – 33 Newbold Road, Kirkby Mallory.

Appeal Decision APP/K2420/A/13/2192402 – 1B Newtown Linford Lane, Groby.

Appeal Decision APP/K2420/A/12/2188915 – Land at Shilton Road, Barwell.

Appeal Decision APP/K2420/A/12/2185544 – Land Between 3 & 15 Shenton Lane, Market Bosworth.

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