

PLANNING COMMITTEE – 29 April 2014

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 – Cadeby Carlton Market Bosworth and Shackerstone, Ambion, Markfield Stanton and Fieldhead.

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 Charles Church North Midlands** against refusal for the erection of 65 dwellings and associated works including 2 no. balancing ponds, formal play area space, and public open space at Land at Station Road, Market Bosworth.

Format: Informal Hearing

Appeals Determined

- 3.2 **Appeal by Mr Michael Taberer** against the refusal to grant a certificate of lawful use or development for the use of land as domestic residential curtilage and amenity space ancillary and incidental to the enjoyment of the existing dwelling at 48 Roseway, Stoke Golding. The land is described as being to the north of 48 Roseway, Stoke Golding.

The application was refused by Officers on the grounds that the applicant had failed to provide sufficiently precise and unambiguous to demonstrate that on the balance of probability, for a continuous period of ten years back from the date of the application the site has been used as residential amenity to no. 48 Roseway. .

The inspector first considers that for a Lawful development Certificate (LDC) to be granted the decision maker must be satisfied that the use has taken place for a continuous period of 10 years prior to the date of the application and, in this case, the land should also form the part of the curtilage to the appeal property.

The inspector notes that there is no authoritative definition of curtilage for the purposes of planning control, however notes that planning case law has determined that in determining what may constitute a curtilage, regard may be had to the following: (a) physical layout; (b) ownership (past and present); and (c) use (past and present). Whilst the inspector does not dispute the applicants claim that the land was acquired in 1980, he notes that the

appellant to some extent falls into the trap of confusing curtilage with use of land. The inspector considers that the land cannot form part of the curtilage to the appeal property due to its layout as it does not read as forming part of an extended curtilage to the appeal property.

The appellants evidence consisted of statutory declarations from friends and family, consisting of broad assertions as to its use and not supported by other evidence. The inspector had two concerns with the evidence submitted. First the appellant states that no attempt was made to hide his family's use of the land, yet there is no evidence from neighbours to support this. Secondly, the appellants daughter says that she lived at the house from 1973-1991 and the land was used as garden land during this time, however the land was only purchased in 1980. Given these the inspector questions whether the appellants evidence of the use and its continuous nature is sufficiently precise and unambiguous to support his case.

Given the above the inspector concludes that the councils refusal was well founded.

APPEAL DISMISSED

- 3.3 **Appeal by Milner Arable** against the refusal to grant planning permission for the erection of up to 25 dwellings with associated parking, vehicular access and surface water balancing pond at land adjacent to Stanton under Bardon Primary School, Main Street, Stanton under Bardon (outline application access only)

The application was refused by Members on the grounds that the applicant has failed to demonstrate that there is a housing need within Stanton under Bardon that justifies the development of the Greenfield site and significantly exceed the locally derived housing requirement for Stanton under Bardon; and that the applicant has failed to demonstrate that the proposal is in a location where services and travel choices are readily available.

The inspector considered that the main issues were whether the location of the proposed development was in accordance with the development plan, and whether the proposal was a form of sustainable development.

The inspector noted the location of the development outside the defined settlement boundary and therefore is contrary to policies NE5 and RES5 of the Local Plan. However at the appeal the council relied on the more recent Core Strategy, which focuses new development within urban areas and applies a hierarchy approach to other settlements. This supports limited housing within such settlements as Stanton under Bardon to support Local services. Since the adoption of the Core Strategy two developments have been granted planning permission in the village providing 66 new houses, well above the minimum of 30 required by the Core Strategy. This application would take the total to 91. The inspector concluded that the proposal would result in the village contributing disproportionately more housing against the Core Strategy and thereby causing some harm to the spatial vision for the District.

The inspector next considered if the proposal was sustainable development. The inspector noted the services on offer within Stanton under Bardon, including the frequency of the bus services, and deemed it capable of meeting some day to day needs of its residents. The bus services allowed

residents to commute to and from work and the local secondary school, however it was noted that the settlement is not readily accessible on foot or bicycle, and therefore reasonable to assume that residents would choose to commute by car. Notwithstanding this, the inspector concluded that given the presence of the bus service residents have the opportunity to make sustainable transport choices.

The inspector noted that non of the local businesses were struggling, and the additional houses would benefit the economy of the area and planning obligations would enable additional capacity at the local primary school to meet the additional need caused by the proposal. Taking all factors into account the inspector concluded that the proposal would be sustainable development in accordance with the NPPF.

Next the inspector considered other matters, the first of these being housing land supply. Paragraph 47 of the NPPF advises that local planning authorities should have sufficient deliverable sites to deliver housing over a 5 year period to meet the target of the Local Plan. Hinckley and Bosworth have an annual target of 450. The inspector notes that for the first 7 years the building rate has lagged behind this target resulting in a shortfall of over 600 units.

There was a difference of opinion between the appellants and the local authority on over what length of time the shortfall should be addressed and whether the authority has persistently under delivered. The inspector considered 4 appeals that were drawn to his attention, which came to different conclusions. The inspector found the fourth and most recent decision of most relevance partially due to the arguments being tested at inquiry, having regard to the other decisions. This found that there had been persistent under delivery, and that the shortfall should be addressed over the next 5 years, rather than spreading it for across the length of the remaining plan period. Notwithstanding the appeal decisions, the inspector in undertaking a separate assessment, taking into account the recently published Planning Practice Guidance, current time tables for the adoption of site allocations and progress of the Sustainable Urban Extensions found that a shortfall exists, and whilst the development plan seeks to deliver a 5 year supply it is not doing so. The inspector noted that since the adoption of the core strategy 7 years ago the council had only met the housing supply target once, and considers that such under performance amounts to persistent under delivery and therefore in accordance with paragraph 47 of the NPPF a 20% buffer should be applied. The inspector concluded that the site would be a deliverable site which would contribute towards the housing shortfall.

The inspector found that the proposal would have adequate visibility and would not generate significant vehicular movements that would result in a danger to pedestrians.

The inspector considered the proximity of the site to Cliffe Hill Quarry and obligations contained within a signed unilateral agreement against the Community Infrastructure Regulations.

In conclusion the inspector although finding that the proposal was contrary to policies RES5 and NE5 of the Local Plan and policy 12 of the Core Strategy, found that the Council does not have a 5 year housing supply resulting in the inspector giving limited weight to adopted housing supply policies as stipulated by paragraph 215 of the NPPF. In such instances applications

should be considered in the context of presumption in favour of sustainable development. The inspector found that the proposal would be a form of sustainable development and would not demonstrably harm the character and appearance of the area and therefore the appeal should be allowed.

APPEAL ALLOWED

4. FINANCIAL IMPLICATIONS [SJE]

The Council currently has a total net budget for the administration of appeals for 2014/15 of £105,978, with a specific budget of £28,280 for legal costs.

No costs have been awarded for the cases noted above at this time, and so therefore, there are no financial implications arising directly from this report.

5. LEGAL IMPLICATIONS [MR]

None

6. CORPORATE PLAN IMPLICATIONS

This document contributes to Strategic Aim 1 of the Corporate Plan

- Creating a vibrant place to work and live.

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:

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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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