



PLANNING AND ENFORCEMENT APPEAL DECISIONS
REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION)

WARDS AFFECTED: ALL WARDS

1. PURPOSE OF REPORT

1.1 To inform Members of the Planning and Enforcement appeal decisions that have been made during the last 6 months of 2014.

2. RECOMMENDATION

2.1 That Scrutiny Commission notes the report.

3. BACKGROUND TO THE REPORT

3.1 Since the last report to the Scrutiny Commission on 3 July 2014 there have been 13 appeal decisions. The table below provides a summary of the appeal decisions.

3.2 The key issues and learning points arising in the appeal decisions are:

- i) The Council's five-year housing land supply remains a key issue and can outweigh other planning considerations such as landscaping and the Core Strategy growth numbers (*Spinney Drive and Sketchley House*).
- ii) The Council is not considered to be a persistent under deliverer in housing numbers (*Sketchley House*)
- iii) The delivery of affordable housing can be a significant positive material consideration (*Spinney Drive and Sketchley House*).
- iv) Design and impact on the character of the area needs to be significant and similar features need to be taken into account (*31 The Fairway*)

| Appellant | Site Address & Proposal | Method & Decision Level | Appeal Decision & Date of Decision | Recommendation |
|-------------------------|---|---|--|-----------------------|
| Kidsaw Puzzle Furniture | 40 High Street Earl Shilton <i>(Demolition of existing factory and erection of 15 dwellings (outline - access and layout only))</i> | Written Reps Committee | Dismissed 18.06.14 Costs submission refused. | Officer Refusal |
| Mr Andy Gilliver | 12 Warwick Gardens, Hinckley Leicestershire <i>(Extensions and alterations to dwelling)</i> | Householder Appeal Service Officer | Dismissed 20.06.14 | Officer Refusal |
| Mr Simon Taylor | 163 The Park Market Bosworth Nuneaton <i>(Erection of a</i> | Written Reps Officer | Dismissed 08.07.14 | Officer Refusal |

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| | <i>dwelling with associated access and parking)</i> | | | |
| Alexander Bruce Estates Ltd | Land Off Spinney Drive and South of Brookside, Barlestone <i>(49 dwellings, landscaped open space & wetland habitat / access) ('Appeal A')</i> | Hearing Committee | Dismissed 18.08.14 | Member refusal contrary to officer recommendation |
| Alexander Bruce Estates Ltd | Land Off Spinney Drive and South of Brookside, Barlestone <i>(49 dwellings with landscaped open space) ('Appeal B')</i> | Hearing Committee | Allowed 18.08.14 | Member refusal contrary to officer recommendation |
| Mrs Helen Dodd | Land Adjacent To 20 Church Lane Fenny Drayton <i>(Erection of two detached houses)</i> | Written Reps Committee | Dismissed 27.08.14 | Member refusal contrary to officer recommendation |
| Mrs Clare Goodwin | 1 Temple Hall Farm Cottages Bosworth Road Wellsborough <i>(Extensions and alterations to dwelling (retrospective))</i> | Householder Appeal Service Committee | Dismissed 04.11.14 | Officer refusal |
| Mr Roger Neep | Forest View Farm Peckleton Lane Desford <i>(Erection of 1 No. wind turbine measuring 24.6m to the hub and 34.2m to the tip and associated kiosk)</i> | Written Reps Committee | Dismissed 06.11.14 | Member refusal contrary to officer recommendation |
| Mr & Mrs Jennings | 31 The Fairway Burbage <i>(Extensions and alterations to dwelling house)</i> | Householder Appeals Service Committee | Allowed 12.11.14 | Member refusal contrary to officer recommendation |
| Mr Robert Wright (PDTR Limited) | 1 Burton Road Twycross Atherstone <i>(3 bedroomed detached dwelling and revised car parking layout to serve existing neighbouring dwellings)</i> | Written Reps Committee | Dismissed 17.11.14 | Member refusal contrary to officer recommendation |
| Rainier | Land Surrounding | Public Inquiry | Allowed | Member refusal |

| | | | | |
|------------------------------|---|---------------------------------|--|------------------------------------|
| Properties Ltd | Sketchley House Watling Street Burbage <i>(Erection of up to 135 Dwellings (Outline - Access Only)</i> | Committee | 18.11.14 | contrary to officer recommendation |
| Mr Patrick Reilly | Good Friday Caravan Site, Bagworth Road, Bagworth, Leicestershire | Public Inquiry Committee | Dismissed and a varied Enforcement Notice Upheld 17.12.14 | Officer Refusal |
| Mr Patrick Reilly and others | Good Friday Caravan Site, Bagworth Road, Bagworth, Leicestershire | Public Inquiry Committee | Dismissed 17.12.14 | Officer Refusal |

APPEALS ALLOWED

- 3.3 Appeal at Land off Spinney Drive Two appeals considered together (summarised as Appeal A and Appeal B), both for 49 dwellings. In view of the lack of a 5 year housing land supply at the time of the appeal, a key issue for the Inspector related to the weight to be given to the different affordable housing offers.
- 3.4 In the case of Appeal A the provision of 12 units on site equates to about 24% affordable units whereas for Appeal B the 15 units is just over 30% provision. Both schemes have a tenure split close to the policy requirement. Appeal B also included an off-site affordable housing contribution of £98,000.
- 3.5 The appellant submitted appraisals of the schemes which were considered to be robust. However, the schemes produce different affordable housing numbers. The explanation is that in an attempt to gain permission from the Council following the initial refusal, the landowner was prepared to take less return on the land value with Appeal B than the 'industry standard'.
- 3.6 Overall, in allowing the appeal the Inspector concluded that Appeal B would comprise sustainable development for which there is a presumption in favour. The adverse impacts of the development would not significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole. There are no specific policies in the Framework that indicate that development should be restricted. For Appeal A, which was dismissed, the adverse impacts, primarily the shortfall in affordable housing provision, would significantly and demonstrably outweigh the benefits such that planning permission should not be granted and the presumption in favour of sustainable development does not apply.
- 3.7 A costs application by the appellant was refused.
- 3.8 Appeal at 31 The Fairway, Burbage. The Inspector noted that the extension would project further forwards than the neighbouring bungalow, but it would also provide for some similarity in the street scene. The proposed extension was considered to be distinctive to the host property and this would be reflective of the varied character of the surrounding area.

- 3.9 Appeal at Land Surrounding Sketchley House, Watling Street. Following a complex appeal, the Secretary of State reached the following conclusions relating to housing land supply and need:
- The decision supports the 450 dwellings per year Assessed Housing Need as set out in the adopted Core Strategy
 - The Council has not been persistent in under-delivery of housing (reducing the buffer of housing land necessary to demonstrate a five-year supply)
 - The 5-year supply and the calculation of this figure should take account the complexity in the delivery of strategic sites and smaller sites being delivered first.
 - The need to delivery of affordable housing (at 40% - which was over the provision sought) was a significant reason to approve the application.
 - There was no landscape value that would outweigh the housing supply issues.

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- 3.10 Appeal at Land rear of 44-78 Ashby Road (The Big Pit). The Inspector concluded that subject to mitigation measures, which could be secured by conditions, the development would not unacceptably worsen the living conditions of neighbours or future residents, and it would not adversely affect nature conservation interests.
- 3.11 The Inspector also found that there would be appropriate provision for affordable housing and infrastructure by means of the planning obligation, and the contribution of the proposed housing to the supply in Hinckley and Bosworth is a matter of significant weight.
- 3.12 A costs decision was allowed against the County Council as there was no substantive evidence that the development would result in an increase in flood risk and the reason for refusal was unjustified. This decision highlights that a technical reason for refusal (e.g. noise and flooding) need to be supported by clear evidence of harm.

4. FINANCIAL IMPLICATIONS(SJE)

- 4.1 None arising directly from this report. The Council has a 2014/15 budget for appeals of £189,249, and at the time of writing this report, no budget pressures are expected to year end.

5. LEGAL IMPLICATIONS(MR)

- 5.1 None arising directly from the report but HBBC needs to continue to be alert to the provisions in section 62A of the TCPA 1990 whereby a local planning authority can be `designated` as under-performing if more than 20% of major applications decisions are overturned on appeal which would then allow certain applications for planning permission to be made directly to the SoS.

6. CORPORATE PLAN IMPLICATIONS

- 6.1 The Council needs to manage performance through its Performance Management Framework in relation to appeals.

7. CONSULTATION

- 7.1 None

8. RISK IMPLICATIONS

- 8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.
- 8.2 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.
- 8.3 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 Council in defending appeals | Take into account the risk in refusing planning applications and the likely success of an appeal | Nic Thomas / Andrew Thompson |

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

- 9.1 The report provides an update to Scrutiny Commission relating to recent planning appeal decisions. The implications of these decisions are determined on a case by case basis and can affect the planning balance when considering individual planning applications affecting all sections of the community.
- 9.2 As this report does not propose any amendment to a service or policy, an Equality Impact Assessment is not relevant.

10. CORPORATE IMPLICATIONS

- 10.1 By submitting this report, the report author has taken the following into account:
- Community Safety implications
 - Environmental implications
 - ICT implications
 - Asset Management implications
 - Human Resources implications
 - Planning Implications
 - Voluntary Sector

Background papers: Application files and appeal documentation

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