



Hinckley & Bosworth
Borough Council

A Borough to be proud of

SCRUTINY COMMISSION

6 OCTOBER 2016

WARDS AFFECTED: ALL WARDS

PLANNING AND ENFORCEMENT APPEAL DECISIONS UPDATE REPORT

Report of DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION)

1. PURPOSE OF REPORT

- 1.1 To inform Members of the Planning and Enforcement appeal decisions that have been made in the first six months of 2016.

2. RECOMMENDATION

- 2.1 That the Scrutiny Commission notes the report.

3. BACKGROUND TO THE REPORT

- 3.1 In the period since January 2016 and June 2016 there have been 22 appeal decisions. The table below provides a summary of the appeal decisions.

- 3.2 The key issues and learning points from the decisions are:

- i) The Council's five year housing land supply has been recognised and upheld as a positive supply position at the current time (*Land Off Dorchester Road, Sherborne Road and Illminster Close, Burbage Land Adj Hill Rise, Station Road, Desford; Land Rear Of 99 To 107, Lutterworth Road, Burbage; Northwood Farm Stud, Wood Lane, Higham On The Hill*).
- ii) When refusing permission against recommendation the Planning Committee should avoid vague, generalised or inaccurate assertions about a proposed development's impact where those impacts are not supported by objective analysis. Where such assertions are made there is a heightened risk of an award of costs against the Local Planning Authority (*Asda, Barwell Lane, Hinckley*).
- iii) Emerging policies of the Site Allocations and Development Management Policies Development Plan Document (SADMP) have started to be given weight in the determination of appeals. The policies of the SADMP will become more important in forthcoming decisions following the adoption of the SADMP as part of the Council's statutory Development Plan in July 2016. (*36 Station Road, Stoke Golding; Asda, Barwell Lane, Hinckley*)

Appellant	Site Address & Proposal	Method	Appeal Decision	Recommendation
Mr S Goodman 23 Jubilee Road Newbold Verdon Leicestershire LE9 9LL	Craigmore Farm Merrylees Road Newbold Heath Newbold Verdon <i>(Erection of one new dwelling and detached garage with associated access)</i> 14/00944/FUL	Written Reps Delegated	Dismissed 07.01.16	Officer refusal
Ms Judi Cookes 2A Drayton Lane Fenny Drayton Nuneaton Leicestershire CV13 6AZ	2A Drayton Lane Fenny Drayton Nuneaton Leicestershire CV13 6AZ <i>(Erection of 2 dwellings (outline - all matters reserved))</i> 15/00205/OUT	Written Reps Delegated	Dismissed 12.01.16	Officer refusal
Mrs Rebecca Dawe 28 Lutterworth Road Burbage Hinckley Leicestershire LE10 2DN	28 Lutterworth Road Burbage Hinckley Leicestershire LE10 2DN <i>(Erection of a dwelling)</i> 14/01121/FUL	Written Reps Committee	Allowed 11.02.16	Officer refusal
Mr Tuhel Miah 49 Herbert Street Loughborough LE11 1NU	23 Station Road Ratby Leicestershire LE6 0JQ <i>(Without planning permission the change of use from the use within Class A3 of the Use Classes Order 1987 (as amended) (the Order) for the sale of food or drink for the consumption on the premises to a mixed use for the sale of food and drink for consumption on the premises and for the sale of food and drink for</i>	Written Reps Enforcement	Allowed 09.03.16	Following an enforcement notice served by officers

Appellant	Site Address & Proposal	Method	Appeal Decision	Recommendation
	<i>consumption off the premises Class A5 of the Use Classes Order 1987 (as amended) (the Order))</i> 14/00175/UNBLDS			
Plesvale Ltd C/o Perjay Estates Ltd 7 Brantwood Road Salford Manchester M7 4EN	Land West Of Dodwells Road Hinckley Leicestershire LE10 3BZ <i>(Erection of two storey "drive-through" restaurant with associated parking and landscaping)</i> 14/00924/FUL	Written Reps Committee	Allowed 10.03.16	Member refusal
Mrs Andrea Bailey 40D Ratby Lane Markfield Leicestershire LE67 9RJ	40D Ratby Lane Markfield Leicestershire LE67 9RJ <i>(Part change of use of dwelling to nursery/childcare)</i> 15/00186/COU	Written Reps Committee	Allowed 15.03.16	Member refusal
Mr Michael Taberer 48 Roseway Stoke Golding Nuneaton Leicestershire CV13 6HQ	48 Roseway Stoke Golding Nuneaton Leicestershire CV13 6HQ <i>(Proposed dwelling and associated access)</i> 15/00077/FUL	Written Reps Delegated	Dismissed 15.03.16	Officer refusal
Miss Rebecca Meek RES UK & Ireland Ltd Beaufort Court Egg Farm Lane Kings Langley Hertfordshire WD4 8LR	Land North West Of Barlestone Road Bagworth Leicestershire <i>(Installation of 1 No. wind turbine (up to 94 metres in tip height) and associated infrastructure)</i> 14/00729/FUL	Written Reps Committee	Dismissed 21.03.16	Officer refusal

Appellant	Site Address & Proposal	Method	Appeal Decision	Recommendation
Mrs Gill Moore 42 Coventry Road Burbage Hinckley Leicestershire LE10 2HP	42 Coventry Road Burbage Hinckley Leicestershire LE10 2HP <i>(Erection of a dwelling following demolition of existing garage (outline - access only))</i> 15/00061/OUT	Written Reps Committee	Dismissed 23.03.16	Member refusal
Mr And Mrs N Axon 55 Greenmoor Road Burbage Hinckley Leicestershire LE10 2LS	55 Greenmoor Road Burbage Hinckley Leicestershire LE10 2LS <i>(Erection of a single storey dwelling)</i> 15/00778/FUL	Written Reps Delegated	Dismissed 08.04.16	Officer refusal
Mr & Mrs K Young 34 Grace Road Desford Leicestershire LE9 9FZ	34 Grace Road Desford Leicestershire LE9 9FZ <i>(Single storey front extension, garage conversion & erection of detached garage)</i> 15/01255/HOU	Written Reps Delegated	Allowed 13.04.16	Officer refusal
Mrs Brenda Featherstone Little Markfield Farm Forest Road Markfield Leicestershire LE67 9UN	Land At Little Markfield Farm Forest Road Markfield Leicestershire LE67 9UN <i>(Erection of 1 No. wind turbine (up to 76 metres in hub height and up to 100 metres in tip height) with associated infrastructure including access track, turbine foundations, crane hardstanding, substation, associated</i>	Written Reps Committee	Dismissed 13.04.16	Officer refusal

Appellant	Site Address & Proposal	Method	Appeal Decision	Recommendation
	<i>underground cabling and temporary meteorological mast)</i> 14/01258/FUL			
Jelson Ltd. 370 Loughborough Road Leicestershire LE4 5PR	Land Off Dorchester Road, Sherborne Road And Illminster Close Burbage Leicestershire (Residential development (outline - access only)) 14/00475/OUT	Public Inquiry Committee	Dismissed 04.05.16	Member refusal
Mr Peter Christie 152 Wolvey Road Burbage Hinckley Leicestershire LE10 2JJ	152 Wolvey Road Burbage Hinckley Leicestershire LE10 2JJ (Erection of perimeter fence and gate) 15/00794/HOU	Written Reps Delegated	Dismissed 05.05.16	Officer refusal
Mr R Raynor Land Adj Hill Rise Station Road Desford Leicestershire LE9 9FP	Land Adj Hill Rise Station Road Desford Leicestershire LE9 9FP (Erection of 5 dwellings (outline - all matters reserved)) 15/00996/OUT	Written Reps Delegated	Dismissed 19.05.16	Officer refusal
Mrs Julia Newton Winfield 231 Shaw Lane Markfield Leicestershire LE67 9PW	231 Shaw Lane Markfield Leicestershire LE67 9PW (Unauthorised Change Of Use - She has approx 40 dogs on the property and she has applied for a licence) 11/00351/S	Written Reps Enforcement	Dismissed 25.04.16	Following an enforcement notice served by officers
Mr Tom Knapp 5 Sketchley Hall	Land Rear Of 99 To 107	Written Reps	Dismissed 22.04.16	Officers refusal

Appellant	Site Address & Proposal	Method	Appeal Decision	Recommendation
Gardens Burbage LE10 3JP	Lutterworth Road Burbage Leicestershire <i>(Erection of a dwelling and associated parking)</i> 15/00437/FUL	Delegated		
Mr Julian Carlyle 36 Station Road Stoke Golding Nuneaton Leicestershire CV13 6EZ	36 Station Road Stoke Golding Nuneaton Leicestershire CV13 6EZ <i>(Erection of single dwelling (outline - access only))</i> 15/00618/OUT	Written Reps Delegated	Dismissed 08.06.16	Officers refusal
Mr Kevin Jarvis 89 Brookside Burbage Hinckley Leicestershire LE10 2TG	89 Brookside Burbage Hinckley Leicestershire LE10 2TG <i>(Erection of one new dwelling (outline - all matters reserved) (revised scheme))</i> 15/01024/OUT	Written Reps Delegated	Dismissed 15.06.16	Officer refusal
Mr T Barton Northwood Farm Stud, Wood Lane Higham On The Hill Leicestershire CV13 6AA	Northwood Farm Stud Wood Lane Higham On The Hill Nuneaton Leicestershire CV13 6AA <i>(Erection of a dwelling (outline - access only) (resubmitted scheme))</i> 15/00579/OUT	Written Reps Delegated	Dismissed 15.06.16	Officer refusal
Asda Stores Ltd C/O Mr Robert Parkes Asda House Southbank Great Wilson Street Leeds LS11 5AD	Asda Barwell Lane Hinckley Leicestershire LE10 1SS <i>(Demolition of Nos. 26 & 28 Barwell Lane and the erection of an</i>	Written Reps Committee	Allowed 28.06.16	Member refusal

Appellant	Site Address & Proposal	Method	Appeal Decision	Recommendation
	<i>automated petrol filling station)</i> 15/00694/FUL			
P A Wright & Sons C/o Agent	1 Burton Road Twycross Atherstone Leicestershire CV9 3PR <i>(Variation of condition 2 of planning permission 10/00133/FUL to allow for the removal of two car parking spaces)</i> 15/00624/CONDIT	Written Reps Committee	Allowed 28.06.16	Member refusal

KEY APPEALS SUMMARY

Land West Of Dodwells Road, Hinckley

Erection of two storey "drive-through" restaurant with associated parking and landscaping

- 3.3 The planning application was refused at Planning Committee contrary to recommendation to approve. The two reasons for refusal related to danger to users of the highway and adverse impact on the security and functioning of the neighbouring employment premises.
- 3.4 The Inspector allowed the appeal subject to conditions relating to various matters and confirmed in doing so that, although there was some dispute over the nature of the traffic on Dodwells Road, it was accepted by all parties that vehicles travelling south towards Dodwells Island during peak hours, consistently queue past the site access.
- 3.5 The Local Highway Authority had requested that the proposed development include local carriageway widening to enable a 'ghost island' right turning lane to be provided. These mitigation measures, together with central pedestrian refuge islands in Dodwells Road, could be secured through a condition. It was accepted that the proposed development would generate additional traffic onto the local highway network. However on the basis of the submitted information, the majority of this traffic would be either 'passing-by' or undertaking a minor alteration to their route, and would not be new traffic to the locality. The Inspector took into consideration the effect of the increase in traffic on the local highway network and specifically on queues leading onto Dodwells Island and the functioning of this junction. In doing so they had regard to representations which disputed the new traffic predictions and concerns that future traffic growth in the area had not been considered.
- 3.6 However, it was considered that the submitted transport information demonstrated that the proposal would not have an adverse effect on the function of Dodwells Island and that the increase in traffic would not compromise the safe functioning of the junction. This view was supported by the Local Highway Authority and no objections

were raised to the proposal, subject to mitigation. Highways England also had no objection to the proposal.

- 3.7 It was concluded that the proposal would not have a significant effect on highway safety and that there was therefore no conflict with Local Policy nor conflict with paragraph 32 of the National Planning Policy Framework (the Framework) which advises that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
- 3.8 On the second key issue, regarding impact on the neighbouring employment site, the Inspector concluded that the proposed development would not have a significant or harmful effect on the operation of the neighbouring employment premises, with particular regard to security, parking and service provision. There was therefore no conflict with [*then extant*] Local Plan policy with regard to the safety and security of both individuals and property.
- 3.9 On other matters, the Inspector had regard to concerns that the site was not sequentially preferable or sustainably located, and that the proposal does not make adequate provision for pedestrians and could cause danger to cyclists. It was noted that the Council accepts that it has been demonstrated that no sequentially preferable sites in town centres are available, that the loss of land identified for employment purposes is justified and that in principle the proposed use in such a location is appropriate. There was no substantive evidence before the Inspector to conclude otherwise.
- 3.10 The Inspector noted that the proposed development would include dedicated pedestrian links to the footways on the adjacent highways and pedestrian refuges could be provided within the carriageway on Dodwells Road where there is also a cycleway. They also noted that the Local Highway Authority had not raised any objections to the proposals on these grounds and from the Inspector's inspection of the site they concurred with the Highway Authority's views.

Asda, Barwell Lane, Hinckley

Demolition of Nos. 26 & 28 Barwell Lane and the erection of an automated petrol filling station

- 3.11 The planning application was refused at Planning Committee contrary to recommendation to approve. The appeal was allowed and planning permission was granted for the demolition of a pair of semi-detached houses and the redevelopment of the site for an automated petrol filling station and associated infrastructure adjacent to Asda's existing store.
- 3.12 The main planning issues in this case were the effect of the development on the living conditions of adjacent residents; highway safety and the character and appearance of the area.
- 3.13 During the course of considering the appeal the Council determined a slightly amended application for a similar development on the site. Although that too was refused, highway concerns were not cited on the decision. The Council's highway concerns in relation to the appeal were therefore withdrawn and the Inspector considered the issue in relation to the objections raised by local respondents.
- 3.14 The Inspector confirmed their decision on 28 June 2016 and therefore referred to policies in the emerging Site Allocations and Development Management Policies

Development Plan Document (DMP) gave them some weight in their decision. [before their adoption – see key issues and learning points in Paragraph 3.2 above].

- 3.15 A main part of the consideration appears to be the existing site conditions and development, with the Inspector making reasonable assumptions regarding the existing impacts on living conditions, highway safety and the character and appearance of the area. For example, the assumption that the store currently has an effect on the living conditions of surrounding residents due to the noise and activity on the car park from the early morning until the late evening, as well as from the disturbance caused by delivery traffic and increased vehicular activity at the entrance and on Barwell Lane. The Inspector effectively concluded that any additional impacts from the proposed development would not be unacceptable given those prevailing conditions and the current planning policy context.
- 3.16 The Inspector reaffirmed that they took into account the many objections from local residents and that their conclusions were contrary to those views. However, in doing this they also reiterated that the number of objections alone is not a basis to resist a scheme and that the development would not cause material harm to the various issues discussed.
- 3.17 The appeal was also the subject of a successful claim for a full award of costs by the appellant against the Council's decision.
- 3.18 The Inspector confirmed that the national Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
- 3.19 The Inspector accepted the Planning Committee is entitled to come to a different conclusion to that recommended by its officers, but confirmed that where it does so it should avoid vague, generalised or inaccurate assertions about a proposal's impact, when those assertions are unsupported by objective analysis.
- 3.20 With specific regard to noise impacts, the Inspector considered that there was no basis or analysis offered to put aside the findings of the applicant's noise survey. With regard to highways issues, no evidence was submitted to support the second reason for refusal. With regard to the impact of lighting the Inspector confirmed their view that the site is within a suburban location, with street lights and lighting on the car park, it was therefore not been shown by the Council why the effect of this additional lighting could be sufficient to warrant refusal.
- 3.21 The Council is liable to pay the appellant's full costs of undertaking the appeal proceedings.

1 Burton Road, Twycross

Variation of condition 2 of planning permission 10/00133/FUL to allow for the removal of two car parking spaces

- 3.22 The planning application was refused at Planning Committee contrary to recommendation to approve. The appeal was allowed by the Inspector. The appeal proposal sought planning permission for the demolition of existing dwellings and erection of four new dwellings without complying with a condition attached to planning permission Ref 10/00133/FUL, dated 15 July 2010. The condition in dispute was No.2 which states that: The permission hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details. The

reason given for the condition was “For the avoidance of doubt and in the interests of proper planning”.

- 3.23 The base planning permission was granted in 2010 for the demolition of existing dwellings and the erection of four new dwellings. The effect of varying condition no.2 would be to replace the approved drawings with those that reflect an amended scheme, removing two car parking spaces. The main issues in the appeal were therefore the effect of the amended scheme on highway safety and on the living conditions of nearby residents, in particular with regard to noise and disturbance.
- 3.24 The Inspector considered that the removal of 2 parking spaces leaving a total provision of 6 spaces would be justified in this case. This would be adequate to serve the four residential properties and would not result in an unacceptable increased pressure for car parking on adjacent land or on the highway. Therefore the proposal would not lead to noise and disturbance affecting the living conditions of nearby residents.
- 3.25 The Inspector confirmed that the amended scheme would not have a severe impact on the highway network or cause material harm to highway safety and would comply with relevant planning policies which aim to ensure the adequate provision of car parking in new development and that these policies are consistent with the objectives of the National Planning Policy Framework.
- 3.26 In allowing the appeal the Inspector considered that a new condition was required to ensure that existing parking spaces are unallocated in order to provide appropriate parking to serve the development.

4. EXEMPTIONS IN ACCORDANCE WITH THE ACCESS TO INFORMATION PROCEDURE RULES

- 4.1 The report is to be taken in open session.

5. FINANCIAL IMPLICATIONS [TF]

- 5.1 The current appeals budget is £50,000 with £39,000 spent to date this year.
- 5.2 Additional costs are forecast for the planning appeal at Dorchester Road where the appellant has challenged the Secretary of State’s decision. There are also anticipated costs from the appellant following the Asda appeal decision listed in the report.
- 5.3 Any additional budget required above the current £50,000 will require approval in accordance with financial procedure rules. Potentially, these could be funded from the appeals reserve.

6. LEGAL IMPLICATIONS [MR]

- 6.1 None

7. CORPORATE PLAN IMPLICATIONS

- 7.1 The Council needs to manage its performance through its Performance Management Framework with regard to appeals.

8. CONSULTATION

8.1 None

9. RISK IMPLICATIONS

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

9.2 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.

9.3 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 for the Council in defending appeals	Take into account the risk of refusing applications and the likely success of an appeal	Nic Thomas

10. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

10.1 The report provides an update to Corporate Operations Board and Scrutiny Commission relating to recent 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.

10.2 As this report does not propose any amendment to a service or Policy, an Equality Impact Assessment is not relevant.

11. CORPORATE IMPLICATIONS

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

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Procurement implications
- Human Resources implications
- Planning implications
- Data Protection implications
- Voluntary Sector

Background papers: Appeal Decisions listed in this report

Contact Officer: Jeff Upton, ext 5970
Executive Member: Councillor Stan Rooney