



## Hincley & Bosworth Borough Council

Forward timetable of consultation and decision making

Scrutiny Commission 14 December 2023

WARDS AFFECTED: ALL WARDS

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### Planning Appeals

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Report of the Head of Planning

#### **1. Purpose of report**

1.1 To update members on planning appeals for 2022/23 and into 2023/24.

#### **2. Recommendation**

2.1 That the report be noted.

2.2 That the financial implications of planning appeals and the impact of planning appeals performance be acknowledged.

#### **3. Background to the report**

3.1 The Planning Service forms part of the Community Services Directorate. It includes the work areas development management, planning enforcement, regeneration/economic development, conservation/heritage and planning policy. This report sets out an update on planning appeals.

3.2 Planning appeals include where a planning application has been refused or where an applicant has appealed against non-determination of a planning application or appealed against a planning enforcement notice served. Planning appeals are processed by the Planning Inspectorate, with Planning Inspectors appointed by the Secretary of State for Levelling Up, Housing and Communities to determine appeals.

3.3 The format for processing a planning appeal can include through written representations, a hearing or a public inquiry. The majority of planning appeals are considered via a written representations procedure, with larger scale appeals or those with complex matters to consider heard by way of either a hearing or an inquiry. A hearing will typically last for one to two days

and is a structured discussion led by the Inspector whereas an inquiry may last several days and will include an element of cross examination of professional witnesses by legal advocates.

- 3.4 In all three appeal procedures public participation is allowed, through either written responses or addressing an Inspector at a hearing or an inquiry.
- 3.5 An update on progress with planning appeals is presented to Planning Committee as a standing item on the monthly agenda.

#### **4. Appeals**

Appeals update

- 4.1 A list of planning appeals from 2022/23 and to date in 2023/24 is set out in Appendix A to this report.
- 4.2 Appendix A shows that 28 appeal decisions were received in 2022/23. Of these 28 appeal decisions, nine were for major proposals (proposals above 10 dwellings or above 1000sqm) with the remaining 19 for minor proposals. The list of appeals includes four applications where a decision was not made by the Council, with the appeal made against non-determination of the planning application.
- 4.3 Of the 28 appeals in 2022/23, 14 of these (50%) were allowed (granted permission) with the other 14 dismissed. Of these 14 allowed decisions, this includes six appeals that were for major proposals and allowed at appeal. These six are highlighted in orange in Appendix A.
- 4.4 At the time of writing, 19 appeals have been determined thus far in 2023/24. Of these, five are major appeals with the remaining 14 as minor appeals. Of the 19 appeals, five have been allowed, including three major appeal decisions, and the rest dismissed. Two of the 19 appeals in 2023/24 have been against the non-determination of the planning application.
- 4.5 Of the total appeal decisions received in 2022/23 and thus far in 2023/24, three of these relate not to planning applications but instead relate to planning enforcement cases, with an appeal received against an enforcement notice served. Of the three planning enforcement appeals, one was allowed (The Paddocks, Earl Shilton) and two have been dismissed (Breach Lane Farm, Earl Shilton and The Old Cottage, Shackerstone).
- 4.6 In addition to the appeals listed in Appendix A, Members should be aware that the Council has a number of appeals for major planning applications in the next few months. These include a decision awaited for Land north of the A47, Hinckley (475 dwellings) and with forthcoming hearings or inquiries early in the new year scheduled for Aston Flamville Road, Burbage (343 dwellings), Desford Lane, Ratby (225 dwellings), Hunts Lane, Desford (100 dwellings) and Brascote Lane, Newbold Verdon (239 dwellings).

## Appeals allowed

- 4.7 Of the appeals allowed in 2022/23 (14 decisions), three of these were against non-determined applications, five were against decisions taken by Planning Committee against the recommendation of Planning Officers and six were against either delegated Officer decisions or decisions taken by Planning Committee in line with a recommendation for refusal.
- 4.8 For 2023/24, of the five allowed appeal decisions, four were taken by Planning Committee against the recommendation of Planning Officers and with one a delegated Officer decision.
- 4.9 Of the allowed appeals across 2022/23 and into 2023/24 the key reasons given by Inspectors in allowing planning appeals are:
- Lack of a national policy requirement of a 5 year housing land supply;
  - Relevant housing target policies of the Local Plan being out of date;
  - Limited or localised only landscape harm;
  - Limited impact on highway safety; and
  - Allocation within an adopted Neighbourhood Plan.
- 4.10 In all allowed appeals for major developments, the above factors have been balanced against the benefits of the proposed developments, namely the delivery of housing and affordable housing against an identified shortfall of both in the Borough. As the Council is unable to demonstrate a 5 year housing land supply and the relevant policies with regards to housing supply of the Core Strategy are out of date, all recommendations and decisions make reference to paragraph 11 of the National Planning Policy Framework and the presumption in favour of development. This states that planning applications for development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 4.11 This test of paragraph 11 of The Framework sets a very high bar for the Council to refuse an application. This high bar has been met with two appeals recently, both public inquiries, for Land east of The Common, Barwell (110 dwellings) and Land north of Shenton Lane, Market Bosworth (125 dwellings) and in a major written reps appeal for holiday lets (Kyngs Golf Club, Market Bosworth). In determining these appeals, the Inspectors considered that the harm to the landscape and impact on the green wedge (Barwell) and harm to the landscape and impact on heritage assets (Market Bosworth) significantly and demonstrably outweighed the benefits of the proposals of the delivery of market and affordable dwellings.

## Appeal Performance

- 4.12 Planning appeal performance remains a key requirement of government. Under-performance can lead to government intervention by removing decision-making powers from local planning authorities. The government measures performance at appeal against all decisions over a rolling 2 year

period. No more than 10% of all decisions should be overturned at appeal, split between major and minor appeals. It should be noted that at the end of the 2 year period there is a further 9 months to take account of an applications still in the appeal system which for each rolling period is up to the 31<sup>st</sup> December. The figures set out below in Table 3 therefore have the ability to increase between the time of writing and December 2023.

Application Type	National Indicator	Performance
Major Applications	10%	5.7%
Non Major Applications	10%	1.1%

Table 2: Quality of decision making (1 April 2020 to 31 March 2022)

- 4.13 Performance on Majors of 5.7% (up from 4.5%) was on the basis that of the 86 major applications in this timeframe 12 were appealed and of these 5 were allowed.
- 4.14 Performance on non-majors was 1.1% (down from 1.5%) on the basis that of the 1250 applications determined, 45 were appealed and of these only 14 were allowed. The Council is therefore significantly below the 10% which is the level at which the government would intervene in relation to minor and other applications.
- 4.15 It should be noted that these performance measures are based on the most recently published figures from the Department for Levelling Up, Housing and Communities. These figures will therefore change given the number of major appeals that we have awaiting a decision and with the number of major appeals awaiting a start date or an inquiry/hearing date, with recent appeals allowed in Desford and Burbage and with three appeal inquiries and two appeal hearings expected in the first three months of 2024.
- 4.16 For 2022/23 as a standalone year, of the 50 major applications determined within this timeframe, six were allowed on appeal. This equates to 12% of major applications being allowed on appeal, above the Government threshold of 10% that could lead to designation of the Council and with intervention by removing decision-making powers for major applications for any applicants that choose to bypass the Council.

## 5. Exemptions in accordance with the Access to Information procedure rules

- 5.1 Open

## 6. Financial implications - CS

- 6.1 The current budgeted impact of appeals and historic data is summarised below:

	Budget	Actual costs	Overspend
2020/21	£43,000	£147,582	£104,582
2021/22	£43,000	£274,568	£231,568

2022/23	£43,000	£144,896	£101,896
2023/24*	£93,000	£198,000 (estimated)	£105,000 (estimated)

\*Note: the budget for 2023/24 was increased by £50,000

- 6.2 The forecast for 2023/24 is based upon written representations appeals covered by officer time only (no additional costs), hearings cost around £15,000 per hearing and inquiries costing around £50,000+ per inquiry. The above costs do not include any past or forecast for any costs awards against the Council.
- 6.3 Appeals that go through to hearing or inquires have a significant impact on the general fund budget. Additionally, if the number of appeals continue to breach the 10% threshold there is a risk of government intervention as reported in 4.16 above.
- 6.4 The MTFs does not include recurring appeals costs at the higher levels being incurred, and to continue to overspend on planning appeals will increase the future pressure on the Council's finances.
- 6.5 It was noted in the report that there is a risk if appeals continue at the current level as it could breach the Government threshold of 10% which may lead to designation of the Council and with intervention by removing decision-making powers for major applications. If this was to occur, then the loss of income to the Council could be on average (last 3.5 years) £705,000.
- 6.6 Members should note that a £40,000 budget increase equates to just above a £1 increase in Council Tax.
- 7. Legal implications**
- 7.1 Set out in the report.
- 8. Corporate Plan implications**
- 8.1 The planning service contributes to all three priorities of the Corporate Plan, helping People stay healthy and reducing crime; improving Places through improved quality of homes, affordable housing, urban design and heritage facilities; and by delivering Prosperity by supporting town centre regeneration, tourism and economic growth.
- 9. Consultation**
- 9.1 None
- 10. Risk implications**
- 10.1 It is the council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.
- 10.2 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.

- 10.3 The following significant risks associated with these report / decisions were identified from this assessment:

Management of significant (Net Red) risks

Risk description	Mitigating actions	Owner
<p>DLS.19 - Recruitment &amp; retention of staff</p> <p>Failure to recruit &amp; retain staff leads to failure to maintain staffing levels within Development Services to deal with works required and increases use of agency staff with associated higher costs.</p> <p>For appeals this could lead to a greater number of non-determination appeals should resources decrease. Further, the resourcing impact of additional appeals on existing resources, financial and staff time need to be considered.</p>	<p>Appointment of recruitment consultants</p> <p>Supporting Officers Careers through training and modern apprenticeships</p> <p>Benchmarking against surrounding authorities to ensure competitiveness.</p>	Chris Brown
<p>DLS.44 - Five year housing land supply</p> <p>Failure leads to speculative unplanned housing developments plus additional costs incurred due to planning appeal process</p>	<p>The council to maintain a 5YHLS. All Members have received training and further briefing to this effect. SLT and officers are working closely with Members to plan a positive way forward to address this.</p>	Chris Brown
<p>DLS.51 Housing Delivery Test</p>	<p>DLUHC published the Housing Delivery Test results in January 2021 and the Council has delivered 86% of it's housing requirement HBBC will continue to work on delivering new homes to ensure it does not continue to fail the HDT.</p>	Chris Brown

## **11. Knowing your community – equality and rural implications**

11.1 The planning services takes account of equality and rural issues as part of all the decisions taken.

## **12. Climate implications**

12.1 The planning service considers the climate impact of all decisions it takes in accordance with the Council's strategy and Government Policy and Guidance.

## **13. Corporate implications**

13.1 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

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Background papers: None

Contact officer: Chris Brown, Head of Planning  
Executive member: Cllr W Crooks

## Appendix A – List of planning appeal decisions 2022/23 and 2023/24 (partial)

### 2022/23

No.	Application Number	Site Address	Proposal	Appeal Decision	Date of Planning Decision	Date of Appeal Decision	Major / Minor
1	21/00692/OUT	Factory Units, 23 Wood Street, Hinckley	Change of use to residential use	Dismissed	N/A	26.04.22	Major
2	19/00464/OUT	Factory Units, 23 Wood Street, Hinckley	Change of use to residential use	Dismissed	04.03.21	04.05.22	Major
3	21/00775/FUL	102 Druid Street, Hinckley	Change of use from 6 to 8 person HMO	Allowed	27.09.21	06.05.22	Minor
4	20/00511/FUL	Land of Beech Drive, Thornton	49 dwellings	Allowed	22.07.21	12.05.22	Major
5	21/00581/OUT	Land At Crabtree Farm, Hinckley Road, Barwell	25 dwellings	Allowed	N/A	01.06.22	Major
6	21/01149/OUT	Land North 258 Ashby Road, Hinckley	5 dwellings	Dismissed	N/A	07.06.22	Minor
7	21/00307/OUT	7 Assheton Lane, Twycross	1 dwelling	Dismissed	05.03.21	10.06.22	Minor
8	21/00687/OUT	Land at Higham Lane, Stoke Golding	1 dwelling	Dismissed	N/A	14.06.22	Minor
9	21/00196/FUL	24 Main Street, Ratby	dropped kerb	Dismissed	03.08.21	16.06.22	Minor
10	20/01011/FUL	Wide View, Fenn Lane, Fenny Drayton	Change of use from agricultural to storage	Dismissed	14.07.21	17.06.22	Minor
11	21/01080/FUL	8 Sketchley Meadows, Burbage	Householder - fencing and gates	Allowed	N/A	05.08.22	Minor
12	21/01400/OUT	48 Clarence Road, Hinckley	Householder - loft conversion	Dismissed	21.03.22	08.09.22	Minor
13	21/00130/FUL	236 Ashby Road, Hinckley	2 dwellings	Allowed	23.7.22	15.09.22	Minor
14	20/01003/FUL	Oldlands, Fenn Lanes, Dadlington	indoor menage	Dismissed	14.06.22	23.09.22	Minor
15	21/00556/FUL	Land at The Coppice, Burbage	8 dwellings	Allowed	30.04.22	27.09.22	Minor
16	21/00889/CLE	78 Main Street, Bagworth	CLE for outbuilding use as workshop	Allowed	09.09.21	03.10.22	Minor
17	21/00159/OUT	Land Adj, Four Acres, Leicester Lane, Desford	1 dwelling	Dismissed	04.02.21	24.10.22	Minor
18	21/00981/FUL	84 Leicester Road, Hinckley	6 dwellings	Dismissed	13.05.22	02.11.22	Minor
19	22/00459/HOU	7 Norwood Close, Hinckley	Householder - extension	Dismissed	07.07.22	08.11.22	Minor
20	20/00278/UNBLDS	The Paddocks, Bungalow Farm, Leicester Road, Earl Shilton	Creation of access	Allowed	25.11.21	25.11.22	Minor
21	22/00078/FUL	Land North of Lindley Wood, Fenn Lane	Erection of gates and wall	Dismissed	27.01.22	08.12.22	Minor
22	22/01131/OUT	Land off Sketchley Lane, Burbage	150 dwellings	Allowed	16.06.22	04.01.23	Major
23	21/00439/FUL	Land to the Rear of 122 Station Road, Market Bosworth	1 dwelling	Allowed	30.05.22	16.01.23	Minor
24	21/00787/OUT	Land north east of Ashby Road, Markfield	93 dwellings (cross boundary with Charnwood BC)	Allowed	24.05.22	17.02.23	Major
25	20/01012/OUT	Land off Workhouse Lane, Burbage	40 dwellings	Allowed	28.08.20	07.03.23	Major
26	21/00674/FUL	19 - 21 Ratby Road, Groby	Change of use to commercial and erection of 2 dwellings	Allowed	18.03.22	16.03.23	Minor
27	21/01470/OUT	Land East Of The Common, Barwell	110 dwellings	Dismissed	07.12.22	24.03.23	Major
28	21/00695/FUL	Land at Crabtree Farm, Barwell	51 dwellings	Allowed	N/A	31.03.23	Major



## 2023/24 (partial)

No.	Application Number	Site Address	Proposal	Appeal Decision	Date of Planning Decision	Date of Appeal Decision	Major / Minor
29	21/00020/FUL	The Oak Lodges, Kirkby Mallory	1 dwelling	Dismissed	01.07.2022	12.04.23	Minor
30	21/00937/FUL	6A Shakespeare Drive, Hinckley	Demolition of bungalow and erection of 2 dwellings	Dismissed	28.04.22	24.04.23	Minor
31	22/00801/FUL	59 Merrylees Road, Newbold Verdon	1 dwelling	Dismissed	01.11.22	24.04.23	Minor
32	22/00284/HOU	14 The Hawthorns, Markfield	Householder - extensions	Allowed	17.03.22	02.05.23	Minor
33	22/00572/OUT	Land North 258 Ashby Road, Hinckley	5 dwellings	Dismissed	N/A	10.05.23	Minor
34	22/00447/FUL	17 Bridge Lane, Witherley	2 dwellings	Dismissed	25.11.22	03.07.23	Minor
35	22/00989/HOU	39 Wykin Road, Hinckley	Retention of fence	Dismissed	28.11.22	17.08.23	Minor
36	22/00167/OUT	Land north of Shenton Lane, Market Bosworth	125 dwellings	Dismissed	N/A	17.08.23	Major
37	22/00776/FUL	Spring Hill Farm, Wood Lane, Higham on the Hill	1 dwelling	Dismissed	11.08.22	18.09.23	Minor
38	22/01227/OUT	Ashfield Farm, Kirkby Road, Desford	120 dwellings	Allowed	19.12.22	05.10.23	Major
39	22/00916/FUL	12 Rodney Gardens, Sheepy	Change of use agricultural to curtilage	Allowed	30.11.22	13.10.23	Minor
40	20/00080/UNBLDS	Breach Lane Farm, Earl Shilton	Commercial use - vehicles	Dismissed	11.07.22	24.10.23	Minor
41	22/00058/OUT	Winter Cottage Stanton Lane, Stanton	1 dwelling	Dismissed	18.02.23	24.10.23	Minor
42	22/00733/FUL	314a Station Road, Bagworth	3 dwellings + 1 HMO	Dismissed	27.07.22	27.10.23	Minor
43	22/00192/OUT	Land at Lychgate Lane, Burbage	85 dwellings	Allowed	24.01.23	30.10.23	Major
44	21/00502/OUT	Land to the Southwest of Lutterworth Road, Burbage	80 dwellings	Allowed	16.08.22	30.10.23	Major
45	21/00195/FUL	Kyngs Golf and Country Club, Market Bosworth	9 holiday cabins	Dismissed	16.12.22	31.10.23	Major
46	23/00457/ADV	Hilltop Works 2 Keats Lane, Earl Shilton	illuminated billboard advert	Dismissed	08.05.23	07.11.23	Minor
47	21/00203/UNBLDS	Land at The Old Cottage, Main Street, Shackerstone	unauthorised outbuilding to dwelling	Dismissed	06.07.23	13.11.23	Minor