



Planning Management Committee – 10 June 2020

Appeal Decision Monitoring Report

Purpose of report

Update on appeal decisions from the Planning Inspectorate and an analysis of the main issues, to monitor consistency between the council's and Planning Inspectorate's decisions.

Attachment(s)

Appendix 1 - Appeal decisions from 11 January 2020 to 15 May 2020

1.0 Introduction

1.1 This report advises on the outcome of planning appeals determined by the Planning Inspectorate from Appeal decisions from 11 January 2020 to 15 May 2020 and analyses the decisions made by the Planning Management Committee and officers under delegated authority. Details of costs awarded against the council (if any) are also given.

2.0 Equality and Diversity Implications

2.1 There are no equality and diversity implications.

3.0 Legal Implications

3.1 There are no legal implications.

4.0 Risk Management

4.1 There are no significant risks.

5.0 Financial implications

5.1 There are no financial implications except for those decisions where costs have been awarded against the council.

6.0 Privacy Impact Assessment

6.1 There are no privacy implications.

7.0 Constitutional Implications

7.1 There are no constitutional Implications

8.0 Implications for our Customers

8.1 There are no implications for our customers.

9.0 Corporate Outcomes

9.1 The report supports priority outcomes set out in the Corporate Plan – Effective Management and Value for Money.

10.0 Recommendation

10.1 The Committee is recommended to note the report.

Legal	Power: Planning and Compulsory Purchase Act 2004				
	Other considerations: None				
Background Papers: Office Files					
Person Originating Report: Carolyn Tait, Principal Development Management Officer ☎ 01832 742321 ✉ rjohnson@east-northamptonshire.gov.uk					
Date: 05 May 2020					
CFO		MO		CX 28/05/20	<i>D. Oliver</i>

East Northamptonshire Council

DM Appeal Results

For Period from: 11 Jan 2020 to : 15 May 2020

Officer

Case Ref. No.	Procedure Appellant Proposal	Location	Appeal Type Date Decided	Decision
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Amie Baxter

Written Representations

19/00994/LDE	Mr Roger and Harry Denton	TL007744 Blotts Barn Brooks Road Raunds	Against Refusal 19/03/2020	Dismissed D
	Use of site for external storage of building materials			

The appeal was made against the Council's refusal of a Lawful Development Certificate for the use of the land as external building materials and containers. The most current application and subsequent appeal followed a refusal of 18/01387/LDE which was for the use of the site as a builders' yard.

The Inspector highlighted the distinction between the two cited uses and notes that the second application (the subject of the appeal) seeks to confirm that the lawful use of the land is for open storage in use class B8, as opposed to a builders' yard.

The previous application was refused on the basis that the applicant had not submitted sufficiently precise and unambiguous evidence to indicate that the site had been in the stated use continuously for a period of 10 years, as directed by the National Planning Practice Guide. The application associated with the appeal was refused for the same reason.

The inspector noted that the shipping containers on site were being used for the storage of a VW camper van, metal frames and building materials, alongside a skip full of building materials. Bricks, roof tiles, timber logs and scrap metal were also seen around the site.

The inspector shared the Council's concerns relating to the detailed use of the site, to the lack of precision and the ambiguities that are raised in the application. The evidence was not precise enough to show the site had been used from June 2009 or whether storage had been part of that use or whether the whole site was incorporated into the use. The inspector noted that the Council's overall conclusion was sound and the appeal was dismissed.

Costs Claim: The appellant was awarded partial costs as the Inspector concluded that the Council did not sufficiently distinguish between the description of development for the first application and the second application to which this appeal relates.

Carolyn Tait

Householder Appeal

19/01453/FUL	Mr Thomas Crewe	Ashley Farm House Main Street Upper	Against Refusal 14/04/2020	Dismissed D
	Proposed detached garage			

The appeal was made against the Council's refusal of Planning Permission for a detached garage to the front of the property within the garden space because it would compromise the setting of the host dwelling and result in an incongruous feature within the street scene. It was also considered that the proposal would cause harm to the significance of the listed building and the character and appearance of the designated Upper Benefield Conservation Area.

A previous application for a larger garage in this location was also refused for similar reasons and was dismissed at appeal.

The inspector agreed with the Council's decision in terms of the negative impact on the Listed Farmhouse and wider Conservation area, noting that the proposal appeared incongruous within the street scene and the materials detracted from the significance of the Listed building and defined character of the area.

The inspector also noted the open nature of the frontage of the property and those immediately surrounding it and the appeal was dismissed.

Informal Hearing

18/02459/OUT Lourett Developments Land Rear Of 7 - 12 The Willows Thrapston
Outline: Proposed residential development to erect four dwellings

Against Refusal
24/01/2020

Allowed D

This appeal against the Council's refusal to grant outline planning permission for four dwellings on a greenfield site in Thrapston was conducted by way of informal hearing.

The planning application was refused for five reasons:

1. The principle of development was not supported by the development plan;
2. Unsatisfactory housing mix – 4 large dwellings;
3. Impact on the character and appearance of the area – backland development;
4. Impact on biodiversity;
5. Loss of open space.

The latter two reasons were withdrawn by the Council during the appeal, following submission of additional information / evidence by the Appellant.

As part of the appeal, the Appellant sought to challenge the Council's 5 year housing land supply position. Based on the evidence presented at the appeal, the Inspector concluded that ENC was only able to demonstrate a 4.28 year housing land supply. Central to that decision was the question of whether sites not listed in the definition of 'deliverable' in the Glossary to the NPPF could, in principle, be considered. The Inspector ruled that he could not and discounted a large number of units from the supply.

In relation to issues 1-3 (above), the Inspector concluded the proposal did harmfully undermine the adopted spatial strategy (issue 1), but that it did not inherently result in a housing mix of larger properties (issue 2) or harm the character and appearance of the area (issue 3). In light of his determination that ENC could not demonstrate a 5 year supply of deliverable housing sites, he considered that this consideration outweighed the conflict with the development plan and consequently allowed the appeal.

Applications for costs were submitted during the appeal, both by the Appellant and the Council. Having considered the applications, the Inspector awarded partial costs against the Council in relation to the housing supply matter.

Following the decision of the Inspector, ENC lodged a S.288 Appeal. Having considered the grounds of the Appeal the Secretary of State conceded that he erred in his interpretation of the definition of deliverable within the glossary of the National Planning Policy Framework as a 'closed list'. It is not. The proper interpretation of the definition is that any site which can be shown to be 'available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years' will meet the definition; and that the examples given in categories (a) and (b) are not exhaustive of all the categories of site which are capable of meeting that definition.

In the Secretary of State conceding, the Council can now continue to confidently confirm that it does have a 5 year housing land supply.

The Court have given permission for the Council to bring a Judicial Review of the decision, but it is hoped by all parties that such a hearing will not be required as the main terms of a Consent Order agreed by all parties has been reached and is due to be lodged with the High Court shortly. At the time of writing, the Council's planning solicitor is continuing to negotiate the recovery of the Council's costs in respect of the S.288 Appeal application.

It is anticipated that the outcome of the Appeal process is for the original planning application to be remitted back to the Planning Inspectorate for reconsideration by a different Planning Inspector.

Written Representations

18/02140/FUL Mr S Mistry
Conversion of first and second floor offices at 3 to 10 Newton Hall to form 9 residential units

Newton Centre 9 Newton Road Rushden
Against Refusal
28/01/2020

Allowed D

Planning permission was refused because it was not considered that the access would have been suitable for a mixture of residential and commercial uses. As such it was concluded that the proposal would have resulted in a detrimental impact on highway safety.

An additional reason for refusal was added because the SPA payment had not been received at the time of issuing the decision. However, this was later paid and did not form part of the appeal.

The Inspector concluded that the existing access was already used by a mixture of different uses and the addition of residential properties would not worsen this situation. In addition he did not see that the access was dangerous to pedestrians accessing the proposed flats and considered that there would be suitable visibility, as well as pedestrian routes within the car park.

Written Representations

19/00840/FUL Ms Renee Watters Rockleigh 3 Winding Way Thrapston Against Refusal
Erection of a new, 3-bedroom dwelling with access road and parking to the rear. 28/01/2020 **Allowed D**

Planning permission was refused for three reasons relating to highway safety, impact on neighbouring amenity and non-payment of the SPA contribution.

The Inspector considered that a 6.6 metre distance between the proposal and the neighbouring property's south elevation was sufficient to prevent a detrimental level of overshadowing. This was also taking into account the boundary hedging between the two sites and the neighbouring property's windows only serving a kitchen and bathroom.

In regards to highway safety, the Inspector concluded that the addition of one dwelling would only create a minimum level of intensification and that the nature of the road would ensure that vehicles are travelling slowly and would not increase the risk to other motorists or pedestrians.

The SPA contribution was paid during the appeal process and as such, this reason was not defended and did not form part of the appeal decision.

Dean Wishart

Informal Hearing

18/01388/FUL Mr T.Button And Mrs Land East Of Brindley Close Northampton Against Refusal
Full planning permission for 80 dwellings, highways layout, open space 13/03/2020 **Allowed C M**

Decision

Planning permission was refused against officer advice for being unsustainable development due to its scale, cramped form, poor design and layout. Insufficient amenity space for individual plots, a lack of usable amenity space for the development as a whole, and unsatisfactory parking arrangements; particularly the abundance of tandem parking formed part of the decision notice. The appeal was allowed and planning permission granted, subject to conditions and a Section 106 agreement.

The Inspector noted the "*compact and tight urban grain*" of the proposal but was ultimately satisfied that the scale, density and layout were acceptable and would not result in a poor relationship with the surrounding area. On living conditions, the Inspector noted the variety of garden sizes and the amount and type of open space proposed. He concluded that the proposal would provide a sufficient quantity and quality of open space which would provide benefits in terms of visual amenity, play space, informal recreation space and green, open and landscaped space around and within the development.

On car parking provision, the Inspector's attention was drawn to two previous appeal decisions (Midland Road, Thrapston and Midland Road, Rushden) where other inspectors have found against the Committee's dislike of tandem parking. He noted that the County Council's parking standards do not forbid such arrangements and that they do not form part of the development plan. In terms of the impracticalities of tandem parking, he concluded that he had not been presented with any compelling evidence to demonstrate that vehicles are more likely to be parked on the highway, or that the act of shuffling vehicles around would, in the context of the development's proposed layout, be prejudicial to highway safety.

On more general parking / highway matters, he noted local residents concerns about traffic, but in the absence of an objection from either the Local Highway Authority or Highways England concluded that the proposal was acceptable in this regard.

There were no matters of dispute relating to the Section 106 provisions and SPA mitigation, which were found to be acceptable, as was the list of conditions, subject to minor alterations.

Costs

The appellant won a full award of costs. The Inspector concluded that the Council's behaviour had been unreasonable. This was due to the vague and largely unsubstantiated (in policy terms) reasons for refusal, in the context of the proposal being on an allocated site and that the minimum number of properties was to be provided.

He drew attention to the Council's continued approach on tandem parking despite what previous and recent appeal decisions have said on the matter, noted the lack of technical objections and was unconvinced that harm had been demonstrated.

The inspector noted that the Committee was not duty bound to follow officer advice, but went on to say that if a different decision is reached, "*the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning*".

He was not convinced this was the case and concluded by saying "*In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted and the reason for refusal has not subsequently been supported by clear objective analysis or evidence. The unreasonable behaviour which has been demonstrated by the Council has left the appellant faced with the unnecessary expense of lodging the appeal.*"

At the time of writing, the costs claim had not been made to the Council. Any update to this position will be reported at the meeting.

Jacqui Colbourne

Householder Appeal

19/00614/FUL Mr And Mrs Simon 47 Manor Road Rushden Northamptonshire Against Refusal
Two-storey Side Extension 27/03/2020 **Allowed D**

Planning permission was refused for reasons relating to design and impact on neighbouring amenity in terms of light.

The Inspector concluded that the driveway that would remain to the side of No 45 would ensure that the proposal would not result in a terracing effect as asserted by the Council. In addition the Inspector concluded that the extended dwelling would not be prominent in the street scene. The lower ridge height would assist in this regard and having regard to nearby properties within Manor Road which have been extended to the side over 2 storeys, the proposal would not be harmful to the character and appearance of the area.

In regard to impact on neighbouring amenity, the Inspector concluded that the outlook from the door and windows at No 45 is currently limited because of the relationship of them to the side wall of No 47. Although the proposal would be closer to these features, sufficient space would remain between these features such that the new extension would not be overly intrusive or overbearing and would not have an unduly enclosing impact on these openings. No substantive evidence was provided to demonstrate that light to the rooms that the windows and door serve would be affected to the degree that would make these rooms less pleasant to use.

Householder Appeal

19/00897/FUL Mr And Mrs Daniel 64 Church Street Nassington Peterborough Against Refusal
Demolition of existing porch to be replaced with new porch and entrance lobby 26/03/2020 **Allowed D**

Planning permission was refused for reasons relating to impact on neighbouring amenity.

The Inspector concluded in relation to the impact on number 68, that the proposal includes a single storey flat roofed element which would ensure that there would still be an acceptable level of outlook from the windows of No. 68. This, together with the design of the roof form would not be an unacceptable impact on any future occupiers of No. 68. The orientation of the appeal property and the direction of the sun from sunrise to sunset, meant the loss of sunlight, would not be so significant to warrant the withholding of planning permission; the existing building also provides a degree of sunlight blockage at the present time. Consequently, there would not be an undue loss of daylight.

With regard to number 66, the Inspector concluded that there would not be any significant loss of sunlight or daylight to the habitable rooms of this dwelling when compared to the existing situation. The outlook from this property is already dominated by the side elevation of the existing property and the Inspector concluded that the proposed extension would not have any great impact over and above the existing situation.

Joe Davies

Written Representations

19/00705/FUL Mr Andrew Pick - 33 Wood Road Kings Cliffe Northamptonshire Against Refusal
Proposed new bungalow 27/02/2020 **Dismissed D**

Planning permission was refused for harm to the character and appearance of the street scene and the setting of the adjacent Conservation Area, loss of biodiversity and a significant adverse impact in relation to overlooking and loss of privacy.

On character and appearance, the Inspector agreed with the Council, noting that the open character of this part of the street would be affected, and that some degree of harm would be caused to the setting of the Conservation Area. On living conditions the Inspector partially disagreed with the Council's argument regarding the impact on Plot 2 to the north of the site, but agreed that the living conditions for occupants of the new bungalow would conflict with JCS Policy 8 e).

On biodiversity, the Inspector concluded that there would not be significant harm, but when taking the issues cumulatively, he dismissed the appeal.

Patrick Reid

Written Representations

19/00430/FUL Mr Derya Duzgunoglu 33 High Street Rushden Northamptonshire Against Refusal
Single storey rear extension (resubmission of 18/01364/FUL) 12/02/2020 **Dismissed D**

Planning permission was refused under delegated powers on 23 August 2019 due to harm on the Rushden Conservation Area (RCA) as the proposed extension would not be sympathetic to the host property.

The Inspector agreed with the consideration that the proposed flat roofed extension would not reflect the character of the existing building or that of the nearby building styles. It would therefore result in harm to the character of the host building and the wider RCA.

The public benefits of the extension were considered to be 'very limited' and the application therefore fails the requirements of the NPPF paragraph 196. The appeal was accordingly dismissed in line with the Council's decision.

Written Representations

19/00784/FUL Kingly Care 2 Essex Road Rushden Northamptonshire NN10 Against Refusal
Demolition of detached two storey outbuilding; extension of existing 8 bedroom Care Home 24/03/2020 **Dismissed C M**

On 4 October 2019 the application was refused following the resolution of the committee. The first reason for refusal related to the design and associated visual impact of the extension on the adjacent Essex Road. The second reason related to the extension resulting in an inadequate level of external amenity space.

The Inspector found the southern extension to be overly dominant in the streetscene. In respect of the outside amenity space, the Inspector noted there was limited information on the conditions of the residents, their treatment and rehabilitation. The Inspector concluded it had not been demonstrated that the loss of outside space would not harm the amenity of current or future residents.

The appeal was dismissed for the two reasons set out on the decision notice.

Written Representations

19/00902/FUL Mr Mark Tilley 107 Wood Road Kings Cliffe Northamptonshire Against Refusal
Part demolition of existing bungalow and construction of new house 29/04/2020 **Dismissed D**
(Re-submission of 19/00257/FUL)

The appeal was against a refusal of planning permission dated 19 July 2019. The application was refused under delegated powers for two reasons: the first relating to the proposed dwelling being out of character with the area, the second due to a lack of on-site turning space.

The Inspector also concluded the development would result in significant harm to the character and appearance of the area and as such would conflict with Policy 8 d) of the JCS and BE1 of the Neighbourhood Plan.

In regard to the second reason for refusal (access), the Inspector concluded the proposal would not cause a danger to highway safety and the proposal was acceptable in this respect. As such the appeal was dismissed solely on the grounds relating to the development being out of character with the area.

Written Representations

19/01077/FUL Mr Mander - Resham 13 - 19 High Street Irthlingborough Non-determination
Proposed Extension & Conversion of Retail to Residential (6No Flats) 07/05/2020 **Dismissed**
(13 - 19 High Street) including access, parking & amenity space.

The appeal was against the non-determination of the application. As part of the appeal, the LPA expressed that they had no objection to the proposal and were of the view it should be approved.

The Inspector's report confirms they were content with all aspects of the development except for the mitigation of the impact on the upper Nene Valley SPA. The applicant had made the requested mitigation contribution and the LPA were content with this. However, they identified that in the associated Supplementary Planning Document (SPD) that the amount is to be index linked to reflect inflation. As the amounts have not been updated since 2016, the Inspector was not satisfied that the mitigation accords with the adopted Mitigation Strategy. The inspector therefore found conflict with Policy 4 of the JCS.

The appeal was dismissed for this sole reason.

Pete Baish

Written Representations

19/01115/FUL Mr M Siggery Hilltop Stables Denford Road Ringstead
Change of use of an agricultural building to a single dwelling

Against Refusal
12/02/2020

Dismissed D

The application was refused on 8th October 2019 for resulting in the creation of a dwelling in the open countryside away from the established settlement without appropriate justification.

The planning inspector concluded that under 'normal' circumstances the re-use of a redundant or disused building in the countryside would be policy compliant as long as it enhances its immediate setting. In this instance however, the inspector saw on his site visit that the appeal building was being used in connection with the wider appeal site. Whilst it was accepted that this was not the same level of activity which is likely to have justified the building back in the 1970s, it still performs a beneficial use today. In that sense, from the evidence before the inspector, it was concluded that the building was neither redundant or disused. Therefore, the circumstance put forward that the development would be supported by paragraph 79c) was not demonstrated. The appeal was therefore dismissed on this basis.

Decided Appeals Dismissed :	8	58.00%
Decided Appeals Allowed :	6	42.00%
Decided Appeals Withdrawn :	0	0.00%
Decided Appeals Total :	14	100.00%

M – Denotes Member decision against officer advice

C – Denotes Committee decision

D – Denotes delegated decision