

**Decision Maker:**        **DEVELOPMENT CONTROL COMMITTEE**

**Date:**                    **Wednesday 18<sup>th</sup> March 2020**

**Decision Type:**        Non-Urgent                    Non-Executive                    Non-Key

**Title:**                    **APPEAL DECISIONS - MAJOR APPLICATIONS**

**Contact Officer:**        Tim Horsman, Assistant Director (Planning)  
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**Chief Officer:**        Director of Housing, Planning, Property and Regeneration

**Ward:**                    (All Wards);

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1. Reason for report

Following the Council being within the criteria for designation in 2019 on the quality of major application decisions, a number of measures have been implemented to help improve this position. One of these measures is to report back to Development Control Committee any major appeals which are allowed by the Planning Inspectorate with a brief summary of the reasons to help inform future decision making.

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2. **RECOMMENDATION(S)**

**Members are asked to note the report with a view to informing the future determination of major planning applications**

## Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
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## Corporate Policy

1. Policy Status: Existing Policy:
  2. BBB Priority: Excellent Council Quality Environment Vibrant, Thriving Town Centres Regeneration:
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## Financial

1. Cost of proposal: Estimated Cost: A successful costs claim accompanied one of the allowed appeals, however the amount is yet to be determined
  2. Ongoing costs: Non-Recurring Cost: Any planning appeal can be accompanied by a claim by the appellant for costs if they consider the Council has behaved unreasonably
  3. Budget head/performance centre: Planning
  4. Total current budget for this head: £1.653m
  5. Source of funding: Revenue budget 2019/20 (dependant on amount claimed)
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## Personnel

1. Number of staff (current and additional): 66.8FTE
  2. If from existing staff resources, number of staff hours:
- 

## Legal

1. Legal Requirement: Non-Statutory - Government Guidance:
  2. Call-in: Not Applicable:
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## Procurement

1. Summary of Procurement Implications: N/A
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## Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
- 

## Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments:

### 3. COMMENTARY

- 3.1 The Council was at risk of ‘designation’ in 2019 in respect of the quality of major application decision making. This was based on the number of allowed major appeals.
- 3.2 Following this a report will be submitted to Development Control Committee for every six month period summarising any major allowed appeals where appeal decisions were received within that period. This report covers the period from 1<sup>st</sup> September 2019 to 29<sup>th</sup> February 2020. In that time there have been three major appeals allowed. The appeal decisions are appended to this report.

Appeal Ref: 3235672 (LBB Ref 18/01537/FULL1) – 34 West Common Road, Hayes BR2 7BX

- 3.3 This appeal was against the Council’s refusal of planning permission for “Demolition of existing buildings and redevelopment to form 28 sheltered apartments for the elderly, including communal facilities, access, car parking and landscaping.” The application was refused at Plans Sub Committee No.3 on 14<sup>th</sup> February 2019 and was recommended for refusal by Officers.

- 3.4 The Council’s reasons for refusal were as follows:

*The proposed development by reason of its prominent siting, height, scale, massing, dominant design and excessive degree of site coverage in this prominent location, represents an uncharacteristic punctuation in the streetscene out of character and context to the scale and massing of the existing buildings and general pattern of lesser scale of development in the vicinity harmful to the visual and residential amenities of the area and contrary to Policies 4 and 37 of the Bromley Local Plan (2019) and Policies 7.4 and 7.6 of the London Plan (2016).*

- 3.5 Subsequent to the refusal of the appeal scheme, the Council granted planning permission for a smaller proposal. In determining the appeal, the Inspector considered this to be a planning permission for a similar form of development at the site which he regarded as a credible fallback position for the applicant. Although the later scheme was smaller, the Inspector disagreed with the Council’s view that the appeal scheme would be more harmful in the streetscene and following a detailed assessment of the impact in the appeal decision, concluded that the proposal was acceptable.

- 3.6 The Inspector also considered that the delivery of housing for older people for which there was a national and local need, carried significant weight.

Appeal Ref: 3233855 (LBB Ref 18/05565/OUT) – Phoenix Lodge, 14A Woodlands Road, Bickley BR1 2AP

- 3.7 This appeal was against the Council’s refusal of planning permission for “Demolition of existing dwelling and erection of thirteen apartments with associated access and parking”. The application was refused at Plans Sub Committee No. 4 on 20<sup>th</sup> June 2019 and was recommended for permission by Officers.

- 3.8 The Council’s reasons for refusal were as follows:

*The proposed development results in an increase in the number of units which would reduce the quality of the accommodation and intensify the activities associated with the development and would result in a cramped, overdevelopment of the site that would impact detrimentally on the special character, appearance and spatial standards of the Bickley Area of Special Residential Character, contrary to Policies 4, 37 and 44 of the Local Plan, Policy 3.5 of the London Plan and paragraph 127 of the National Planning Policy Framework.*

- 3.9 Following the refusal of this application, the applicant submitted a new application for 12 units which had been the subject of a resolution to grant planning permission at a subsequent committee, and at that time the applicant had informed the committee that they would withdraw this appeal if permission were granted. Unfortunately there were complications with the s106 legal agreement for the 12 unit scheme, and before the permission could be issued this appeal had been determined. There was unfortunately no way of requiring the applicant to withdraw the appeal and they decided they would not withdraw until the planning permission for the 12 unit scheme was issued. It is to be noted that the applicant could not be bound to this offer.
- 3.10 In this case, as with the first appeal, there was a previously approved scheme for nine flats which were contained within a building of the same design and size as the appeal proposal. The only issue that could be raised therefore was the intensification of the use from 9 to 13 flats.
- 3.11 The Inspector concluded that the size of the site and its well vegetated nature would absorb the intensification of use despite additional vehicle movements, parking and noise and the character of the ASRC would not be harmed. The Inspector also awarded costs against the Council finding that the Council had sought to prevent a development that clearly should have been permitted and failed to adequately substantiate its reason for refusal.

Appeal Ref: 3225672 (LBB Ref 18/02700/FULL1) – Bassetts Day Care Centre, Acorn Way, Orpington BR6 7WF

- 3.12 This appeal was against the Council's refusal of planning permission for "the proposed replacement of consented 3 no. 4 bed houses and 3 no. 5 bed houses (plots 39-40 and 49-52) of application ref. 15/04941/FULL3 and the replacement with two three storey blocks of flats to provide 10 no. one bed units and 12 no. two bed units with 24 associated vehicle spaces and 36 cycle spaces." The application was refused at Plans Sub Committee No.2 on 29<sup>th</sup> November 2018 and was recommended for permission by Officers.

- 3.13 The Council's reasons for refusal were as follows:

*The proposal, by reason of its design, massing and scale, constitutes a cramped overdevelopment of the site, which would be detrimental to the character and spatial standards of the area, contrary to Policies BE1 and H7 of the Unitary Development Plan and Policies 3.5 and 7.4 of the London Plan, and Policy 4 (Housing Design) and Policy 37 (General Design of Development) of the Draft Local Plan.*

*The proposal would be detrimental to the amenities that the occupiers of neighbouring residential properties might reasonably expect to be able to enjoy by reason of its dominance and visual impact, contrary to Policy BE1 of the Unitary Development Plan, and Policy 37 (General Design of Development) of the Draft Local Plan.*

*The proposal would undermine the housing mix within this planned development, contrary to Policies BE1 and H7 of the Unitary Development Plan, and Policy 37 (General Design of Development) of the Draft Local Plan.*

- 3.14 The Inspector in this case disagreed with the Council's approach to the housing mix, preferring to consider the changes proposed in the context of the entire development site. The Inspector also concluded that he was happy with the tenure across the site.
- 3.15 The Inspector did not see any conflict with the policies regarding design of development and did not see the proposal as an overdevelopment of the site as suggested by the Council nor that the proposal would harm the character of the area. He did not see the changes from the approved scheme as significant.

3.16 The Inspector also did not see any likely harm to the amenities of neighbouring properties.

### Conclusions

3.17 In all three cases it is clear that there were previous permissions for similar development at the appeal sites, and the Inspectors in each case gave this more weight than the Council in deciding whether to grant planning permission (albeit the sequence of events for West Common Road was somewhat unusual).

3.18 Where there is only a limited change from a previously approved scheme, it can be difficult to mount a sustainable argument that can survive an appeal. Although it should be noted in the West Common Road case, the permission for the smaller scheme was granted after the refusal of permission for the appeal scheme.

3.19 It is worth noting that the decisions to refuse these applications were taken prior to the Council being at threat of designation and embarking upon its Planning Service Improvements programme which is reported elsewhere on this agenda, and therefore it may be expected that decisions in the future will be positively impacted by the various strands of the improvement programme. There are however some helpful points to be taken from the decisions above, including that committee should be wary of pledges made by developers that may not be enforceable.

## **4. FINANCIAL IMPLICATIONS**

4.1 Major planning appeals can result in extra-ordinary costs for the Council in contesting the appeal, in particular if the appeal procedure is a Public Inquiry. In some cases external consultants are used if there is insufficient in house expertise or resource.

4.2 A successful costs claim accompanied one of the allowed appeals referred to in this report, however the amount is yet to be determined. This will ultimately depend on whether the applicant actually makes a claim following their successful application. Any planning appeal can be accompanied by a claim by the appellant for costs if they consider the Council has behaved unreasonably. A successful costs claim will not always result from an allowed appeal, however it is more likely.

4.3 The cost of any successful claims will be managed in the first instance within existing budgets. However, more significant claims may require additional non-recurring funding from Contingency in the event that this is not possible.

## **5. PERSONNEL IMPLICATIONS**

Major planning appeals can have staff resourcing implications, in particular if the procedure is a Public Inquiry.

<b>Non-Applicable Sections:</b>	<b>IMPACT ON VULNERABLE ADULTS AND CHILDREN POLICY IMPLICATIONS LEGAL IMPLICATIONS PROCUREMENT IMPLICATIONS</b>
Background Documents: (Access via Contact Officer)	