

Report to:	PLANNING COMMITTEE
Relevant Officer:	Susan Parker, Head of Development Management
Date of Meeting:	16 June 2020

PLANNING/ENFORCEMENT APPEALS LODGED AND DETERMINED

1.0 Purpose of the report:

1.1 The Committee is requested to note the planning and enforcement appeals lodged and determined.

2.0 Recommendation(s):

2.1 To note the report.

3.0 Reasons for recommendation(s):

3.1 To provide the Committee with a summary of planning appeals for information.

3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council's approved budget? Yes

3.3 Other alternative options to be considered:

3.4 None, the report is for information only.

4.0 Council Priority:

4.1 The relevant Council priorities are both 'The Economy: maximising growth and opportunity across Blackpool' and 'Communities: creating stronger communities and increasing resilience'.

5.0 Planning Appeals Lodged

5.1 19/0686 – 2 Woodmans Centre, Vicarage Lane – lodged 29/05/20

5.2 20/0061 – 41 Webster Avenue – lodged 27/05/20

5.3 19/0761 – Palladium Buildings, Waterloo Road – lodged 17/04/20

5.4 19/0749 - 150 Bond Street – lodged 17/04/20

5.5 17/0787 – 19-21 Boscombe – lodged 13/03/20

6.0 Planning/Enforcement Appeals Determined

6.1 19/0787 - 19–21 Boscombe Road Blackpool FY4 1LW. The use for which a certificate of lawfulness is sought is C2 residential care home.

6.1.1 Appeal dismissed

6.1.2 From the evidence before the Inspector, on the balance of probability, he concluded that there has been a material change of use at the property from a residential care home to a House in Multiple Occupation. In light of the above, any lawful use rights conferred by the express planning permissions at the site have been lost as a result of the intervening unlawful use and there is no right of reversion to the last lawful use. He concluded that the Council's refusal to grant a certificate of lawful use or development in respect of the residential care home was well-founded and that the appeal should fail.

6.1.3 The Planning Inspectorate decision letter can be viewed online at <https://idoxpa.blackpool.gov.uk/online-applications/search.do?action=simple>

6.2 18/0256 – 8 Yates Street, Blackpool – Certificate of Lawfulness for the existing use of the ground floor as two self-contained flats.

6.2.1 Appeal dismissed

6.2.2 The Inspector noted that planning permission was granted in 2007 for the use of the property as six, self-contained holiday flats. This permission was subject to a condition that limited occupancy to holiday-makers only. The Inspector judged on the basis of the evidence available that this planning permission had been implemented and that the conditions therefore applied. The failure of the applicant to discharge some of the other conditions attached to the permission did not invalidate the permission.

6.2.3 The Inspector agreed with the Council that permanent occupation of the two ground floor flats had to be demonstrated over a ten-year period in order for a Certificate to be granted. To achieve this, permanent occupation must have started on or before 19 April 2008.

6.2.4 With regard to flat 1, the Inspector noted that permanent occupancy was only recorded from May 2008. Whilst the Inspector did not accept the Council's argument that the flat had been occupied by a caretaker, he nevertheless concluded that a Certificate in respect of flat 1 could not be granted.

6.2.5 With regard to flat 2, the Inspector accepted the Council's evidence that there had been no continuous use as a permanent flat since 19 April 2008. He judged the evidence presented by the applicant to be insufficient to demonstrate permanent use and noted that the witness giving evidence had occupied the flat on an intermittent basis only. The Council enforcement records indicating short-term occupation were accepted. On this basis, the Inspector

6.2.6 concluded that a Certificate could not be granted in respect of flat 2.

6.2.7 In light of the above, the Inspector dismissed the appeal.

6.2.8 The Planning Inspectorate decision letter can be viewed online at <https://idoxpa.blackpool.gov.uk/online-applications/search.do?action=simple>

6.3 19/0149 – Anchorsholme Methodist Church, North Drive, Blackpool – Erection of a convenience store with associated access, parking and landscaping.

6.3.1 Appeal allowed

6.3.2 The main issues were judged to be the effect of the proposal on:

- existing designated local centres nearby and on local community facilities;
- highway safety.

6.3.3 Existing designated local centres nearby and on local community facilities

The appeal site comprises a vacant piece of land located at the junction of North Drive and Luton Road. The surrounding area is predominantly residential, though the site is within walking distance of a number of community facilities including a library, school and the East Pines Drive Local Centre, a small parade of shops including two convenience stores, one containing a post office.

6.3.4 The proposed retail building has a gross floor area of 418 sqm and a net retail floor area of 279 sqm. The appeal site is not located within a designated local centre and as such Policy CS4 of the Core Strategy requires proposals for new retail development in such locations to demonstrate that they meet the listed criteria. This includes that there are no more centrally located/sequentially preferable, appropriate sites available for the development: and that the proposal would not cause significant adverse impact on existing centres.

6.3.5 A Retail Impact Assessment was submitted with the application and an updated statement was submitted with the appeal. In addition, a Sequential Assessment was submitted with the application. The retail and sequential assessment evidence was initially accepted by Council officers at the application stage but the retail evidence was subsequently rejected by the Council's Planning Committee and the sequential assessment was also now being challenged by the Council as sequentially preferable sites are now considered to be available.

6.3.6 The submitted assessment concluded that the proposal would not cause significant adverse impact on existing centres. It also appeared that this view was endorsed by the Council's retail advisors notwithstanding that some concerns were raised in relation to a number of assumptions used in the retail assessment. The Inspector concluded that the impact on existing centres would not be adverse.

6.3.7 The evidence appeared to show that the nearby local centres at East Pines Drive, Anchorsholme Lane East/West and Fleetwood Road were all performing well and that vacancy rates were low. Although concerns were raised in relation to the potential loss of the

post office at East Pines Drive, there was no substantive evidence to suggest that this would be a likely consequence of the proposal being approved or that it would result in the loss of any other local community facilities.

6.3.8 Similarly, whilst the Inspector noted the relative position of the site to Anchorsholme Academy and parking provision at East Pines Drive and as proposed on the site, she did not accept that it is inevitable that a significant proportion of parents dropping off/picking up at/from the school would necessarily change their shopping habits to the detriment of the East Pines Drive local centre.

6.3.9 Although the Council initially accepted that there were no more sequentially preferable sites available for the development, in its appeal statement it referred to three others, which it stated had now become available. The appellant considered that none of them were suitable. Having considered the evidence none appeared to meet the requirements of the proposal in that they were either too small or presently unavailable. The Inspector was therefore satisfied that there were no sequentially preferable sites available.

6.3.10 Taking the above matters into consideration, the Inspector concluded that the proposal would not have a significant adverse effect on existing designated local centres nearby and on local community facilities and that it therefore accorded with Policy CS4, of the Core Strategy and with paragraphs 89 and 90 of the National Planning Policy Framework (NPPF). These policies seek, amongst other things, to protect existing retail centres. Although the Council's second reason for refusal refers to policies CS7 and CS12 of the Core Strategy, these policies did not appear to be directly relevant to the proposal and to the concerns raised by the Council.

6.3.11 Highway Safety

The appeal site is located in a predominantly residential area on the corner of North Drive and Luton Road. North Drive is a straight and reasonably busy road with a bus stop on the opposite side of the road to the site. There are no parking restrictions near to the site although there are a number of driveway entrances to dwellings. The road has a 30 mph speed restriction and a roundabout at the junction with Luton Road. The position of the site near to Anchorsholme Academy means that North Drive, Luton Road and surrounding roads are used by both vehicles and pedestrians to access the school, particularly at certain times of the day.

6.3.12 Vehicular and pedestrian access to the site would be via North Drive with the vehicular access in a similar position to the access to the former Church. Servicing would take place to the rear and 21 parking spaces are proposed. A Transport Assessment was submitted with the application and a Highway Statement was submitted with the appeal. Both concluded that the proposed access arrangements would be safe and suitable for the predicted traffic that would be generated by the proposal. No objections were raised by the Highway Authority subject to an approved servicing strategy.

6.3.13 However, in its Statement of Case, the Council stated that there were a number of issues relating to highway safety that had not been addressed by the submitted assessments. In addition, further representations had been made by interested parties regarding highway

safety matters and the Inspector had regard to these in determining the appeal.

6.3.14 The Inspector stated that in her experience it was common practice to use the TRICS (Trip Rate Information Computer System) database in predicting traffic generation and that indeed this methodology used by the appellant was accepted by the Highway Authority. Although the appellant accepted that as with the case with any kind of forecast, actual traffic generation associated with a development may vary, they considered that even if it were to be as high as now stated by the Council, the evidence indicated that this would not significantly impact on the operation of the highway network, which the Council appeared to accept is not at critical capacity.

6.3.15 Though regard has been had to the concerns raised by the Council, local Councillors and residents, that the road is busy and that there are large amounts of traffic near to the site at certain times of the day, there was no substantive evidence to contradict the appellant's evidence. In the absence of this and in light of the evidence before the Inspector, she found that any additional traffic likely to be generated by the proposal would not have a harmful effect on highway safety. Road safety records for the roundabout for the last five years showed that whilst some accidents have occurred, the number has been relatively low and none had been fatal. Though the site and the proposed access are positioned close to the roundabout, having regard to the scale and nature of the proposal and to the number of vehicle movements likely to be associated with it, there was no evidence to suggest it would be likely to increase the number of accidents at the roundabout or near to the site access.

6.3.16 The Inspector, in reaching her decision, had regard to the significant level of local opposition and to the nature of the concerns raised. For the reasons stated above, she considered that the proposal would not have a harmful effect on either existing designated local centres nearby, on local community facilities or on highway safety.

6.3.17 An award of costs was made as follows:

National Planning Practice Guidance (NPPG) advises that costs may be awarded where a party has behaved unreasonably and that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

6.3.18 Paragraphs 46-49 set out the circumstances when the behaviour of a local planning authority (LPA) might lead to an award of costs. These can either be procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. Examples of unreasonable behaviour by an LPA includes introducing fresh and substantial evidence at a late stage; prolonging the proceedings by introducing a new reason for refusal; deliberately concealing relevant evidence at planning application stage or at subsequent appeal; failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact unsupported by any objective analysis.

6.3.19 The case for the appellant is essentially that the Council has behaved unreasonably in that it used a draft policy to justify the provision of a retail impact assessment; it concealed and failed to have regard to advice received, it misapplied policies CS7 and CS12 of the Core Strategy; that it failed to produce evidence to substantiate the reasons for refusing the

application and finally that it introduced fresh evidence regarding sequentially preferable sites at the appeal stage. As can be seen from the Inspector's decision, the appeal was allowed and planning permission granted, as she did not consider that the Council's reasons for refusal were justified.

- 6.3.20 A Retail Impact Statement (RIA) was submitted with the application, and with the previously withdrawn application and an updated statement was submitted with the appeal. The appellant questioned the need for such a statement having regard to the threshold set out in the NPPF and the status of Policy DM16 of the emerging local plan but states that one was submitted in order to progress the application. Paragraph 89 of the NPPF refers to a "proportionate, locally set floorspace threshold" but does not state what form this threshold should take. The Council's Executive agreed to the introduction of a locally set floorspace threshold in July 2018 having regard to the findings of the Blackpool Retail, Leisure and Hotel Study (2018).
- 6.3.21 Irrespective of what weight ought to be given to the threshold a RIA was submitted and considered by the Council. The Council did not refuse the application on the basis of the lack of an assessment. If the appellant felt so strongly that one was not required then they had the option of not submitting one. Under these circumstances, the Inspector did not consider that it had been demonstrated that the Council behaved unreasonably, particularly given that no reference was made to Policy DM16 or to the locally set floorspace threshold in the Council's reason for refusal.
- 6.3.22 It appears that the Council sought retail advice when considering the previous application for the site and reference was also made to advice having been received from the Council's retail consultants in the Committee minutes relating to the appeal application. The appellant contended that the Council had sought to conceal the advice and that in refusing the application it had not had due regard to it. Although the Council did not submit a copy of the advice with the appeal or directly refer to it in its Committee report, the Inspector understood that it was received in relation to the previous application. The Inspector stated that she had seen no evidence to suggest that the Council had purposefully sought to conceal the advice and it was not duty bound to act upon the advice it received from them. The Council cannot be said to have acted unreasonably provided that sufficient evidence has been produced to substantiate the reason for refusal relating to retail impact.
- 6.3.23 With regard to the alleged misapplication of Core Strategy policies CS7 and CS12, although these policies were referred to in the Council's second reason for refusal, no specific analysis of them and their relevance to the proposal was included within the Council's Statement of Case. In light of the limited evidence in relation to these policies, the Inspector was of the view that they were of limited relevance to the proposal.
- 6.3.24 Given the Inspector's findings in relation to the relevance of these policies to the proposal and having regard to the limited evidence and analysis put forward by the Council regarding them, she considered that the Council had behaved unreasonably in referring to these policies in reason for refusal 2 and that this has caused the appellant unnecessary expense in the appeal process.
- 6.3.25 With regard to the substance and quality of the evidence put forward by the Council in

defending its decision, the Inspector noted that the Council's decision ran contrary to the advice that it received from the Highway Authority and to the advice that it received on a previous application from its retail consultant. Nevertheless, the Council had produced evidence and set out reasons explaining why it considered the proposal to be unacceptable. Although its evidence had not been produced by highway or retail specialists, it sought to set out why the particular circumstances of the site meant that the proposal would have an unacceptable impact. Whilst the Inspector disagreed with the Council's conclusions on the impact of the proposal, he was nevertheless satisfied that it produced sufficient evidence to substantiate its reasons for refusal.

6.3.26 Although the Council accepted that there were no sequentially preferable sites at the application stage, at appeal it considered that three other sequentially preferable sites were available. The Inspector stated that she had seen no evidence to suggest that these sites were available when the application was determined and so could have been referred to any earlier by the Council. Although the Council had not specifically stated why they were considered to be suitable other than that they are within or on the edge of existing centres, the Inspector did not consider that this in itself constitute unreasonable behaviour given that the appellant has had the opportunity to consider and comment on them.

6.3.27 For the reasons set out above the Inspector found that unreasonable behaviour resulting in unnecessary expense described in the NPPG has been demonstrated in relation to the misapplication of policies CS7 and CS12 but not in relation to the other matters cited by the appellant. Accordingly, a partial award of costs was justified.

6.3.28 The Planning Inspectorate decision letter can be viewed online at <https://idoxpa.blackpool.gov.uk/online-applications/search.do?action=simple>

7.0 Does the information submitted include any exempt information? No

8.0 List of Appendices:

8.1 None.

9.0 Legal considerations:

9.1 None

10.0 Human Resources considerations:

10.1 None

11.0 Equalities considerations:

11.1 None

12.0 Financial considerations:

12.1 None

13.0 Risk management considerations:

13.1 None

14.0 Ethical considerations:

14.1 None

15.0 Internal/ External Consultation undertaken:

15.1 None

16.0 Background papers:

16.1 None