Purpose of report

To provide a monthly overview of appeal decisions and any lessons learnt. This is separate to the quarterly appeals report which will contain the statistical analysis against government targets and any other larger trends and overview. This report provides an overview of the appeals received since the last Planning Committee Meeting on the 8 February 2018.

1.0 Recommendations

The meeting is recommended:

1.1 To note the report.

2.0 Introduction

2.1 The report identifies and summarises any notable trends, topics and lessons to be learned from the appeal decisions issued.

3.0 Report Details

3.1 This month two appeal decisions have been received, along with an award of costs related to an Enforcement Appeal.

Inspector agrees that new business park between Silverstone and Towcester represents unsustainable development and was contrary to the development plan

3.2 The application proposed circa 3,650sqm of commercial development and a solar farm on land adjacent to Linnells Wood Yard, to be accessed off the roundabout on the northern-side of the A43/A413 flyover. It is within open
countryside and not allocated for development within the development plan. The application was refused due to **principle** (being contrary to policy); **visual impact** (harmful industrialising visual impact upon the rural landscape and by the proposed solar park); failure to demonstrate the **quality of agricultural land** lost; and failure to demonstrate the proposed **non-mains foul drainage** was adequate.

3.3 In term is **principle**, the applicant argued that there was a need generally for additional employment in rural areas (as referred to in the Draft Local Plan part 2) and that this site was close to a proposed expansion of the Shocks Barn business park on the southern side of the A43/A413 flyover (also within the Draft Local Plan Part 2). However, given the early stage of this emerging plan the inspector placed limited weight on that document. He therefore considered that whilst there were some economic benefits to the proposal, these did not outweigh the strong policy conflict with the local plan. He also considered the proposal not to represent sustainable development.

3.4 The Inspector also agreed that the **visual harm** caused by the proposal (which could be seen from many footpaths) would be substantial upon a landscape that was overwhelming rural and distinguished by gently rolling countryside, interrupted by sporadic groupings of farm buildings and woodland.

3.5 The Inspector did not however find significant harm from the scheme on matters of best and most versatile **agricultural land** (as the land uptake was relatively small in his view). A satisfactory **foul drainage** scheme was submitted prior to the appeal decision being reached and therefore officers did not need to defend that reason for refusal.

3.6 Full details of the application and appeal decision can be found here: http://snc.planning-register.co.uk/plandisp.aspx?recno=95540

An expansion to an existing Gypsy & Travellers site allowed despite the Council arguing that there is no longer a need for additional pitches in the district

3.7 The appeal relates to the site at Mini Farm near Abthorpe that is an established small scale Gypsy & Traveller site. An application to expand the number of pitches from 3 to 5, as well as provision of hardstanding and erection of day room was refused on the grounds of **principle** (whether a traveller site is acceptable in principle in this location); **need** (whether there is a need for gypsy/traveller sites locally and whether the Council can demonstrate a five year supply of deliverable new sites; **visual impact** (the effect on the character and appearance of the area); **highway safety**; **foul drainage**; and **special need** (the appellant and family’s personal circumstances).

3.8 On the issue of **principle**, whilst the Inspector did agree that the development was in conflict with saved policy H6 and EV2, he concluded that only limited weight can be given to saved Policies because there is a lack of consistency.
with the much more recent guidance in the PPTS. In conclusion the Inspector considered that the principle was acceptable.

3.9 With regards need, the Inspector highlighted that the Governments Planning Policy for Travellers Sites August 2015 (PPTS) requires Councils to plan for the needs of gypsies and travellers in their area and identify, and annually update, a specific supply of deliverable sites sufficient to provide a 5 year supply of sites. The Inspector considered the details of JCS policy H6 but also accepted that changes to the definition of gypsies and travellers set out in Annex 1 of the PPTS has resulted in the need for the TANS being updated. The Council’s updated TANS was produced 3 months before the appeal was lodged and the Inspector noted the appellants objections to the report during the hearing.

3.10 In considering the information provided the Inspector stated that there is a fundamental conflict between the provisions of the development plan which recognises a clear and continuing need for an additional 12 gypsy and traveller pitches up to 2022 based on evidence gathered before 2013, and the more recent TANS indicating no such requirement. Notwithstanding this the Inspector considered that this more recent TANS has not been subject to independent scrutiny and will not be so until later in about 2019 when it can be considered as background evidence to a policy under examination as part of the Local Plan - Part 2, whereas the JCS provisions were subject to such scrutiny. For these reasons the Inspector considered that greater weight should be given to the provisions of the development plan in terms of the recent and present needs of gypsies and travellers. Therefore on the balance of probability the Inspector concluded that there is an unmet need for a modest number of gypsy and traveller sites in the district at the moment.

3.11 In terms of visual impact, the Inspector noted that from the crossroads the caravans and buildings at Mini Farm are visible in the distance above the close-boarded fence. With this backdrop the Inspector did not consider that the proposed extension of the site with two touring caravans, associated vehicles and the amenity building would be particularly noticeable from around this area. From Blakesley Road frontage the Inspector noted the mature hedgerow and that this screened the development from the public realm. The Inspector did however accept that from the public right of way to the north there would be some visual impact particularly in the rural landscape especially when seen from the public footpath to the north of the site, but in the context of the existing development this impact would be limited in extent. Overall the Inspector concluded that the proposal, with additional landscaping proposed would not have a harmful effect on the countryside landscape of the area and would not be in conflict with part (e) of JCS Policy H6.

3.12 In terms of Highway safety the Inspector was not convinced that a visibility splay of 215m in each direction is necessary for the local speed of traffic as required by NCC Highway Engineers suggesting that that standard is normally used for trunk roads. The Inspector therefore concluded that the existing access into the site has reasonable visibility and would provide safe access for the proposed addition.
3.13 Having regard to the guidance in paragraph 20 of the national Planning Practice Guidance (PPG) (Ref. ID 34-20-20140306) the Inspector considered that there is no **foul mains drainage** in the vicinity of the site which would be practical to connect to. Therefore some other form of treatment and disposal would be environmentally acceptable. Overall while the Inspector accepted that there are few details provided the Inspector was satisfied that the principle of the use of either a small treatment works or a septic tank would be adequate and satisfactory in principle. The submission of details of a suitable scheme and the implementation and retention of the scheme approved could be covered by a condition.

3.14 On the basis of the oral and written evidence put forward during the hearing the Inspector was satisfied (in terms of **special need**) that the appellant and his extended family have a nomadic habit of life as gypsies and travellers and continue to travel subject to their dependants educational needs. Further, the best interests of the children are best served by having a settled base from which they can continue their education locally and was a factor to which he applied significant weight.

3.15 Overall the Inspector concluded that the proposals were consistent with the provisions of the development plan and the balance of considerations set out in the PPTS and allowed the appeal.

3.16 The lesson learnt to be learnt here is that the need in the development plan took precedence over the recent evidence base as that had not yet been subject to scrutiny. Furthermore, whilst there was some degree of visual harm it was limited and outweighed by the need.

3.17 Full details of the original application and appeal can be found here: [http://snc.planning-register.co.uk/plandisp.aspx?recno=93619](http://snc.planning-register.co.uk/plandisp.aspx?recno=93619)

**Award of costs given to applicant following the Council withdrawing an Enforcement Notice**

3.18 This relates to an Enforcement Notice against change of use at a piece of land outside of the village confines of Hinton in the Hedges. The notice alleged the change of use of the land from agriculture to residential and required the use be ceased and the operational development associated with the use including buildings, track and landscaping to be removed and the land reinstated.

3.19 The applicant appealed the Enforcement Notice but the Council withdrew the Notice whilst the appeal was live. The applicant then sought costs against the Council for withdrawing the notice. In defending the costs claim Officers explained to the Inspectorate that upon receipt of the appellants full statement and the evidence held by the Council it was clear, following Counsel advice, that the notice as issued was flawed in that we had insufficient evidence to prove that the land was originally agriculture even though there was some photographic and empirical evidence from complainants.
3.20 The Inspector noted that it is the responsibility of LPAs to exercise great care before taking enforcement action to ensure that it is expedient to do so as to take action may represent a substantial financial burden to an appellant. He also noted that he understood the notice was withdrawn following Counsel’s advice, however, he also found it reasonable to conclude that had the Council obtained this legal opinion and reached the conclusion before taking enforcement action, the notice would not have been issued. The Inspector criticised the Council’s approach and questioned whether the Council’s investigations were sufficiently rigorous or conclusive before the notice was served. He therefore noted that by their withdrawal of the enforcement notice ‘the Council has effectively conceded that they did not have “reasonable” grounds for considering it “expedient” to have issued it in the first place.’

3.21 The Inspector therefore concluded that ‘the Council acted unreasonably in this case’ and that whilst he accepts that the Council’s decision to withdraw the enforcement notice will have minimised the parties’ costs of attending the arranged inquiry, ‘the practical consequences of the Council’s actions were that the appellants incurred the unnecessary and wasted expense of appealing against an enforcement notice that was later withdrawn. A full award of these costs will therefore be made.’

3.22 Officers did anticipate an award of costs when withdrawing the notice, but we were advised that to proceed to the inquiry was unwise and would lead the Council to be liable for significant costs and that instead we should withdraw the notice before too many costs had been incurred and to re-serve the notice against the operational development which had taken place outside of the curtilage of the dwelling, which would have the same effect as the previous notice but would eliminate the risk of arguing the change of use. The notice has been reissued and is currently at appeal with a hearing listed for June.

3.23 In terms of lessons learnt, it is clear that, where appropriate, legal advice is sought before taking action and that the investigations are thorough, acknowledging though that sometimes evidence doesn’t present itself until after action may have been taken. Nonetheless, the enforcement process will be reviewed and lessons learnt from the outcome of this award of costs.

3.24 Full details of the Enforcement Appeal and appeal decision can be found here: [http://snc.planning-register.co.uk/plandisp.aspx?recno=94859](http://snc.planning-register.co.uk/plandisp.aspx?recno=94859)

4.0 Conclusion and Reasons for Recommendations

4.1 There has been a mixed bag of results from the planning appeal decisions this month. One dismissed justifying our position in policy terms on new employment in an undesirable open countryside location and another allowed due to the Inspector relying on an older evidence base of need for Gypsy and traveller sites. The award of costs was expected and was seen as the only feasible option to reduce costs overall, but we need to learn lessons from what occurred so as to avoid such a scenario in the future.
5.0 Consultation
5.1 N/A

6.0 Alternative Options and Reasons for Rejection
6.1 N/A

7.0 Implications

Financial and Resource Implications

7.1 There are no additional costs associated with the report. Costs awarded are part of the appeal process and this is managed within existing budgets.

Comments checked by: Cecilie Booth, Interim Assistant Director of Finance and Procurement, 0300 0030106

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Legal Implications

7.2 There are no legal implications arising for the Council from noting this report. However, it is important that members take account of any lessons learned as, in certain circumstances, previous appeal decisions can be a material planning consideration for future planning applications.

Comments checked by: Nigel Bell, Solicitor, 01327 322125
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8.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

Corporate priorities of protecting and growing the District.

Lead Councillor

Councillor Roger Clarke (Portfolio holder for Planning and Environment)
## Background Papers

Appeal decisions as noted.

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