

Review of Recent Appeal Decisions

Report by Head of Planning and Historic Environment Manager

Summary:	The Planning Inspectorate has recently allowed three planning appeals, where the issue was around design so it is appropriate to review the LPAs approach to these matters.
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Recommendation:	Members' views are requested.
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1.0 Introduction

- 1.1 In early 2017 the Broads Authority received the decisions on three planning appeals where the substantive issue under consideration had been design and/or materials; in each case the appeal was allowed. Members have requested a detailed report on the decisions, and the background to the LPA decision, so that they can consider the approach to take to these matters in future. This is timely considering the on-going review of the Local Plan.
- 1.2 Prior to setting out the specific decisions, it is useful to note some background relating to planning appeals.

2.0 Background

- 2.1 When a planning application is refused the applicant has the right to appeal against the decision of the Local Planning Authority (LPA) to the Planning Inspectorate (PINS). On receipt of the appeal PINS will appoint a Planning Inspector who will consider the submissions of both parties and make a site visit before coming to his/her decision on the proposal. He/she will either dismiss the appeal (ie find for the LPA) or allow it (ie find for the appellant). There are a number of different appeal procedures, but the purpose of the appeal provision and overall outcome are the same, so the process is unimportant for the purposes of this report.
- 2.2 Members will recall that Government recently announced its intention to commence the monitoring of appeal decisions, using an LPA's success rate at appeal as a proxy for quality of decisions. Monitoring is to commence in 2018 (with the first monitoring period covering April 2015 to March 2017) and any LPA with an 'appeal allowed' rate of over 10% will be considered to be failing. Further details are set out in the report to Planning Committee on 6 January 2017.
- 2.3 The appeal success rate is a useful proxy to judge quality of decision-making, but, for LPAs, it is also a mechanism to understand how its policies are interpreted by PINS – if an LPA is winning all its appeals then it may be

setting the policy threshold too low, and vice versa. The decisions on the appeals under review here are an example of this process in action.

3.0 The subject appeals

- 3.1 The details of the three appeals which are the subject of this review are as set out below. A summary of the decisions of the Planning Inspectors and a commentary on the three decisions are set out at section 4.

APP/E9505/W/16/3158503: 50 Riverside Estate, Brundall NR13 5PU

- 3.2 This appeal related to the construction of a replacement chalet without compliance with the planning conditions, resulting in a building where the size, height, fenestration pattern and some of the materials were not as approved. The variations were considered to be acceptable, with the exception of the material as the change from the approved timber to uPVC windows and doors were considered to result in detriment to the character and appearance of the area.

APP/E9505/D/16/3163616: 70 Riverside Estate, Brundall NR13 5PU

- 3.3 This appeal related to the cladding of a riverside chalet in a uPVC material. This work was undertaken without planning permission and a retrospective application to retain it was refused under delegated powers. The uPVC replacement materials was not considered by the LPA to be a high quality material or appropriate to its context or was it considered to be a sustainable material. Overall it was considered that the material would result in detriment to the character and appearance of the area.

APP/E9505/C/16/3154806: Hall Common Farm, Ludham NR29 5NS

- 3.4 This appeal related to an Enforcement Notice served further to the installation of a metal roller shutter door installed on a boatshed instead of the timber one which had been approved. It was considered by the LPA that this had a detrimental impact on the character and appearance of the area, including the Ludham Conservation Area and the listed farmhouse in the ownership of the appellant.

4.0 The decisions on the subject appeals

- 4.1 Each of the appeals involved design grounds, so it is useful to reproduce adopted policy DP4 (Design) here:

DP4 Design

All development will be expected to be of a high design quality. Development should integrate effectively with its surroundings, reinforce local distinctiveness and landscape character and preserve or enhance cultural heritage. Innovative designs will be encouraged where appropriate.

Proposals will be assessed to ensure they effectively address the following matters:

- a) **Siting and layout:** The siting and layout of a development must reflect the characteristics of the site in terms of its appearance and function.
- b) **Relationship to surroundings and to other development:** Development proposals must complement the character of the local area and reinforce the distinctiveness of the wider Broads setting. In particular, development should respond to surrounding buildings and the distinctive features or qualities that contribute to the landscape, streetscape and waterscape quality of the local area. Design should also promote permeability and accessibility by making places connect with each other and ensure ease of movement between homes, jobs and services.
- c) **Mix of uses:** To create vitality and interest, proposals should incorporate a mix of uses where possible and appropriate.
- d) **Density, scale, form and massing:** The density, scale, form, massing and height of a development must be appropriate to the local context of the site and to the surrounding landscape/streetscape/waterscape character.
- e) **Appropriate facilities:** Development should incorporate appropriate waste management and storage facilities, provision for the storage of bicycles, connection to virtual communication networks and, if feasible, off-site provision for a bus shelter and/or a bus service serving the development.
- f) **Detailed design and materials:** The detailing and materials of a building must be of high quality and appropriate to its context. New development should employ sustainable materials, building techniques and technology where appropriate.
- g) **Crime prevention:** The design and layout of development should be safe and secure, with natural surveillance. Measures to reduce the risk of crime and anti-social behaviour must however not be at the expense of overall design quality.
- h) **Adaptability:** Developments should be capable of adapting to changing circumstances, in terms of occupiers, use and climate change (including change in water level). In particular, dwelling houses should be able to adapt to changing family circumstances or ageing of the occupier and commercial premises should be able to respond to changes in industry or the economic base.
- i) **Flood Risk and Resilience:** Development should be designed to reduce flood risk but still be of a scale and design appropriate to its Broads setting. Traditional or innovative approaches may be employed to reduce the risks and effects of flooding.
- j) **Biodiversity:** The design and layout of development should aim to maintain, and enhance, restore or add to biodiversity.

4.2 The full decisions on the appeals are set out at Appendices 1, 2 and 3 respectively, but are summarised as set out below.

APP/E9505/W/16/3158503: 50 Riverside Estate, Brundall NR13 5PU

4.3 The appeal was allowed by the Inspector in a decision letter dated 13 January 2017. In coming to this decision he noted that "... there were numerous other chalets along the eastern bank which also had uPVC window and door frames ..." (para 6) and that "...The overriding character of this area is chalets which have uPVC window and door frames" (para 7). On this basis he concluded that the use of uPVC on the subject property would not give rise to any material harm to the overall character and appearance of the area.

4.4 His attention was drawn by the LPA to adopted policy DP4 of the Development Management Policies DPD (2011), which requires development

to achieve a high standard of design. He noted that the subject property had used a wood effect finish to the windows plus a wooden trim and considered that this represented a higher standard of appearance than other properties with uPVC in the area and considered the policy objectives to be met.

APP/E9505/D/16/3163616: 70 Riverside Estate, Brundall NR13 5PU

- 4.5 The appeal was allowed by the Inspector in a decision letter dated 14 February 2017. In coming to this decision he noted that the style of chalets in the area was varied and there was also a "... mixed approach to the fenestration detailing, roof materials and exterior appearance of the properties with some having timber boarding, some plastic cladding, cement fibre boards (at no 71) and some painted render". He commented that "... from what I saw, I am not convinced that from either the road or river frontage, it would be possible to differentiate the difference between timber exterior cladding and the PVC cladding used ... in my view the chalet at the appeal site has the appearance of well maintained timber cladding in size, depth of planks and the manner by which it has been attached to the property ..." (para 7).
- 4.6 In its refusal of the application, the LPA referred to the uPVC materials used as not being high quality, locally sourced or sustainable (as required by policy DP4), noting that no information had been provided by the applicant to support their case that the material would offer sustainability benefits over timber. Information on the performance of the cladding material was then provided at the appeal stage, leading the Inspector to conclude that the material was a sustainable product.
- 4.7 Having concluded, therefore, that the material was visually comparable to timber boarding in the area and was intrinsically acceptable under policy DP4 in terms of its composition, the appeal was allowed.

APP/E9505/C/16/3154806: Hall Common Farm, Ludham NR29 5NS

- 4.8 The appeal was allowed by the Inspector in a decision letter dated 6 January 2017. In coming to this decision he noted that the boathouse is a large structure with a simple, modern feel, and that it is difficult to obtain a view of the roller shutter door except from a path on the appellant's land, or from the water. He notes that from close inspection it is clear that the shutter door is made of metal "... but from further away, this distinction becomes harder to see. In my view, from only a few metres away, it would be difficult to tell whether the shutter was wooden or metal" (para 7). He did not agree that there was a visual relationship between the boathouse and the listed farmhouse which it serves, and indeed considered the relationship between the farmhouse and the river (on which the boathouse sits) to be "tenuous at best".
- 4.9 In the decision he makes some useful comments about roller shutter doors, noting that they have a different visual impact to side hung doors, and notes "... it seems to me that once one has accepted that roller shutter doors are acceptable, and according to the appellant, this is typical of new boathouses

around the Broads, as long as subdued colours are used, it does not matter whether they are wooden or metal" (para 7).

- 4.10 He concluded therefore that the metal shutter doors were intrinsically acceptable, that the absence of any public viewpoints reinforced this and the appeal was allowed.

5.0 Commentary

- 5.1 Whilst obvious, it is worth stating that officers were disappointed with the outcomes of the above appeals. Refusals of planning permission are unusual at the Broads Authority as free pre-application discussions weed out a lot of unpromising schemes, and officers work proactively with applicants to make sure schemes which are submitted meet the high standards required by planning policy. Officers considered that the above schemes did not meet the policy threshold.
- 5.2. The consistent factor in the three appeals was the matter of materials and the impact of these on the character and appearance of the area. In the two cases at Brundall, officers have taken the view that uPVC, whether for windows and doors or cladding, is unacceptable due to its intrinsic qualities and non-traditional appearance; officers have been mindful of the aspiration to drive up design standards and achieve visual betterment over time. PINS, however, have taken the view that uPVC is part of a modern palette of materials and its further use is not inappropriate in an area where there is already a wide mix of materials. The decision at 70 Riverside Estate makes it clear that not all uPVC is equal, and, further, that better quality uPVC can offer enhancement. This is a conclusion that built heritage professionals may find hard to accept.
- 5.3 The decisions of the Inspectors in these two cases do not necessarily mean that uPVC (and other modern materials) are always acceptable, but do make it clear that a much more thorough analysis must be made of the surrounding area – if there is already a preponderance of uPVC (and other modern materials) it is likely to be harder to resist further useage.
- 5.4 It is worth noting that the use of uPVC (and other non-traditional materials) does vary significantly across the Broads. It is ubiquitous on stretches of the riverside chalets at Potter Heigham and Repps, used a lot in Brundall (as noted by the Inspectors) and Hoveton, but not so common in Wroxham and Horning, particularly on the larger properties. There is little use of uPVC in Beccles and Bungay, where it is noted that Article 4 Directions are in place.
- 5.5 With regard to the metal roller shutter door, the view of PINS appears to be around the principle itself and the issue is about whether a roller shutter door is intrinsically acceptable rather than the material. This clarification is useful, especially as officers have sought to allow roller shutter doors where pressed by applicants, subject to mitigation using materials or lattice doors forward of the shutter (as here). The decision prompts a different test.

6.0 Financial implications

6.1 No direct implications.

7.0 Conclusion and recommendation

7.1 Officers have been disappointed with recent appeal decisions, and the interpretation of policies on design needs to be carefully considered.

7.2 Members views on this are requested.

Background papers: Appendices as listed

Appendix 1: Decision APP/E9505/W/16/3158503: 50 Riverside Estate, Brundall
NR13 5PU

Appendix 2: Decision APP/E9505/D/16/3163616: 70 Riverside Estate, Brundall
NR13 5PU

Appendix 3: Decision APP/E9505/C/16/3154806: Hall Common Farm, Ludham
NR29 5NS

Appendix 4: [Report to 6 January 2017](#)

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