

**Report to:** **Planning Committee**

**Date:** 4<sup>th</sup> August 2021

**Public Document:** Yes

**Exemption:** None

**Review date for release** None



**Subject:** **Planning Appeals Status Report**

**Purpose of report:** The report is provided as an update on the current situation regarding planning appeal decisions and gives an overview of the results of planning appeals for the year from 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021.

**Recommendation:** **That Members note the report**

**Reason for recommendation:** To ensure that Members are appraised of the Council's current performance in respect of planning appeal decisions.

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**Financial implications:** No additional financial implications other than those stated within the costs section within the body of the report.

**Legal implications:** There are no legal implications other than as set out within the report.

**Equalities impact:** Low Impact

**Risk** Low Risk

**Links to background information:** <https://www.gov.uk/government/statistics/planning-inspectorate-statistics>

## **1.0 Background**

- 1.1 The performance indicator and figures assessed below includes only those appeals against the Council's decision to refuse planning permission. It does not include planning appeals against conditions or non-determinations. The calculation also excludes all other types of appeal e.g. advertisement appeals, enforcement appeals, lawful development certificate appeals, appeals in respect of prior approval applications and works to protected trees. A partially allowed appeal or a split decision is counted as an appeal allowed.
- 1.2 The calculation includes those decisions where the date of decision falls within the year in question, regardless of when the appeal was lodged.
- 1.3 The Council has received 44 appeal decisions from 1 April 2020 to 31 March 2021 which are subject to the performance indicator. This is not the total number of appeal decisions received, which includes all other types of appeal as stated above.

**National appeal statistics** (Figures taken from the latest Planning Inspectorate Statistical Report updated 20 May 2021)

### **Planning appeals including Householder Appeals (HAS)**

<b>Year</b>	<b>Decided</b>	<b>Allowed</b>	<b>% Allowed</b>
2017 - 2018	15455	5201	33.7
2018 - 2019	14748	4736	32.1
2019 - 2020	17770	4815	27.1

### **East Devon appeal statistics**

#### **Planning appeals including householder appeals (HAS)**

<b>Year</b>	<b>Decided</b>	<b>Allowed</b>	<b>% Allowed</b>
2017 - 2018	42	15	35.7
2018 - 2019	54	15	27.8
2019 - 2020	52	13	25.0
2020 - 2021	44	14	31.8

## **2.0 Analysis**

- 2.1 The majority of the appeals were dealt with by means of written representations, with 43 having been determined on that basis. An Informal Hearing was held for 1 of the appeals. Included within the written representation appeals were 8 appeals which followed the householder appeal process (*appeals in respect of householder applications do not always follow this procedure; for example where there is a linked Listed Building Consent appeal*).
- 2.2 From the 44 decisions received 14 of the appeals were allowed which equates to 68.2% of appeals against the Council's decision to refuse planning permission being dismissed.
- 2.3 This figure is less than that for 2019 - 2020 and has fallen below the national average as published by the Planning Inspectorate in their statistics. The success rate has also fallen below the Council's performance indicator of 70% for dismissed appeals.
- 2.4 The figures need to be studied in more detail to establish whether there has been any significant change in the decision making process or if there is any particular trend which can be attributed to those decisions of the Council which were overturned.
- 2.5 Of the appeals which were allowed, 5 resulted from applications decided by the Planning Committee, 4 of which were refused contrary to officer recommendation. The other 9 appeals which were allowed resulted from delegated decisions.

2.6 Of the 30 appeals which were dismissed, 28 were the result of delegated decisions and 2 of the applications was decided by the Committee, following officer recommendations to refuse.

2.7 Appeal decisions by procedure type –

	Dismissed	Allowed	%Dismissed
Written Representation	29	14	67.4
Hearing	1	0	100.0

2.8 Appeal decisions by application type -

	Dismissed	Allowed	%Dismissed
Q13 Minor dwellings	19	5	79.0
Q21 Householder	4	4	50.0
Q18 All other minor developments	5	4	55.5
Q20 Change of use	1	1	50.0
Q12 All other small major developments	1	0	100.0

2.9 The largest sample of 24 decisions in respect of minor dwellings, produced a high success rate of 79% of appeals dismissed.

2.10 The next largest sample for all other minor developments produced a lower success rate of 55% dismissed from 9 decisions.

2.11 The success rate of householder appeals is low with 50% dismissed from 8 decisions.

2.12 The Council has performed well for appeals in respect of minor dwellings, however, there are no other particular trends which can be established from the decisions based on the application type and some of the samples are too small to represent a true indicator. Although there appears to be a continued difficulty in upholding refusal of planning permissions for house extensions unless the impacts are very significant/detrimental and 4 Committee overturns resulting in upheld appeals is high compared to historic numbers.

2.13 Appeals allowed -

*14 Decisions, including:-*

- 9 Delegated decisions
- 4 Committee decisions contrary to officer recommendation
- 14 Written representations
- 4 Householder applications
- 3 Single new residential dwellings
- 1 Change of use of residential dwelling and agricultural land to an educational facility to operate as an independent special school.

2.14 Appeals Dismissed -

*30 Decisions, including:-*

- 28 Delegated decisions
- 2 Committee decisions
- 29 Written representations
- 19 Minor dwellings

- 1 Informal hearing
- 4 Householder appeals

### **3.0 Costs Applications**

- 3.1 There can be financial implications in relation to cases where an application for costs is made.
- 3.2 Applications for an award of costs can be made by either party in respect of all appeals. An award of costs will only succeed in the event that the Inspector determining the appeal had considered that a party had acted unreasonably.
- 3.3 If a planning application is refused, the reasons given have to be both justified and defensible. It is most likely that an application for an award of costs against the Council would be successful, in cases where an appeal is lodged and the reasons for refusal cannot be substantiated.
- 3.4 The Inspector determining an appeal can award costs against either party, with or without an application for costs having been made, if it is considered that unreasonable behaviour has occurred.
- 3.5 There has been 6 applications for full awards of appeal costs against the Council and all 6 of these applications were refused.

### **4.0 Summary of other appeal decisions**

- 4.1 The following appeal decisions are not included in those appeals subject of the performance indicator.
- 4.2 From five appeals in respect of enforcement notices four were dismissed and the enforcement notices upheld.
- 4.3 From four appeals against the refusal to issue certificates of lawful development three were dismissed and one allowed.
- 4.4 Two appeals in respect of protected trees were dismissed.
- 4.5 One appeal against the refusal of Listed Building Consent was dismissed and three allowed.
- 4.6 One appeal against the refusal of advertisement consent dismissed.
- 4.7 Three appeals against non-determination of planning applications within the statutory time period were dismissed.
- 4.8 From five appeals against the Council's decision to grant prior approval for permitted development three were dismissed and two were allowed.

### **5.0 Conclusions**

- 5.1 The Council success rate is just below the current National average and just below the Council's own target figure of 70% appeals dismissed, although 1 decision the other way and the target would have been met.
- 5.2 When a decision is made to refuse an application, the reasons have to be well substantiated, robustly supported by adopted policies and in accordance with Government advice. It is clearly evident that in cases where the above advice is not adhered to, an appeal is most likely to be allowed.
- 5.3 There does not appear to be any other particular trend or reason to explain the reason for the drop in performance, although the continued difficulty in defending appeals against house extensions and the higher than usual number of applications allowed following refusal at Committee help to explain the figures a little.
- 5.4 Appeal decisions are constantly being analysed to ensure that any changes in accordance with National Planning Policy are implemented and that decisions on planning applications are made in accordance with current Government Advice.