

Report to: Planning Committee



Date of Meeting: 30 September 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

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## Planning Appeals Status Report

### Report summary:

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 2021 to 31<sup>st</sup> March 2022. It seeks to provide some analysis of the appeal decisions received over that period and picks up on any trends and learning points from those decisions that can help the Council to improve in terms of its decision making and record on defending its decisions at appeal.

### Is the proposed decision in accordance with:

Budget Yes  No

Policy Framework Yes  No

### Recommendation:

That Members note the report and the Council's planning appeals performance during the 2021 – 2022 monitoring period.

### 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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Portfolio(s) (check which apply):

- Climate Action and Emergencies
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Culture, Tourism, Leisure and Sport
- Democracy and Transparency
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities

**Equalities impact** Low Impact

**Climate change** Low Impact

**Risk:** Low Risk;

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

**Link to [Council Plan](#):**

Priorities (check which apply)

- Outstanding Place and Environment
  - Outstanding Homes and Communities
  - Outstanding Economic Growth, Productivity, and Prosperity
  - Outstanding Council and Council Services
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## Report in full

### 1.0 Background

- 1.1 This report is the latest in a series of annual reports on the Council's performance on planning appeals. It measures performance using the Planning Inspectorates statistics and performance indicator. The performance indicator 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 43 appeal decisions from 1 April 2021 to 31 March 2022 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.
- 1.4 For context it is worth noting the national picture for appeals which is illustrated by the table below. It can be seen that the number of appeals in the 2021 – 2022 period was up slightly on the previous year with 13,867 determined compared with 13,268 in 2020 – 2021. The figures remain well below the 2019 – 2020 total of 17,770. It should also be noted that the number of appeals allowed nationally has risen to 29.1% in 2021 – 2022 compared with around 27% in the two preceding years.

**National appeal statistics** (Figures taken from the latest Planning Inspectorate Statistical Report updated 21 July 2022)

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

Year	Decided	Allowed	% Allowed
2019 - 2020	17770	4815	27.1
2020 - 2021	13268	3776	27.2
2021 - 2022	13867	4040	29.1

## 2.0 Analysis

2.1 The appeals performance of East Devon District Council for the last year and the 3 preceding years can be summarised by the following table:

### East Devon appeal statistics

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

Year	Decided	Allowed	% Allowed
2018 - 2019	54	15	27.8
2019 - 2020	52	13	25.0
2020 - 2021	44	14	31.8
2021 - 2022	43	18	41.9

The majority of the appeals were dealt with by means of written representations, with 42 having been determined on that basis. A 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*). This is a streamlined process whereby the inspector utilise the report previously produced by the local authority as part of its own decision process rather than requiring further statements to be produced.

2.2 From the 43 decisions received 18 of the appeals were allowed which equates to 58.1% of appeals going against the Council's decision to refuse planning permission being dismissed.

2.3 This figure is less than that for 2020 - 2021 and is below the national average as published by the Planning Inspectorate in their statistics (70.1%). The success rate is also below the Council's imposed 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 18 appeals which were allowed, 5 resulted from applications decided by the Planning Committee, 4 of which were refused contrary to officer recommendation. The other 13 appeals which were allowed resulted from delegated decisions. Of those delegated decisions, 2 recommendations to refuse were agreed at the Chair's delegation.

2.6 All of the 25 appeals which were dismissed resulted from delegated decisions.

2.7 The following tables provide some further analysis of the appeal decisions by procedure and by application type:

Appeal Procedure	Dismissed	Allowed	% Dismissed
Written Representations	25	17	59.5
Hearing	0	1	0

<b>Application Type</b>	<b>Dismissed</b>	<b>Allowed</b>	<b>% Dismissed</b>
Minor dwellings	12	4	75
Householder	9	4	69.2
All other minor developments	3	5	37.5
Change of use	1	2	33.3
Minor general industrial	0	2	0
Small major dwellings	0	1	0

- 2.9 The largest number of appeal decisions (16) were in respect of minor dwellings. This type of application produced a relatively high success rate of 75% of appeals dismissed. This suggests that the Council's target of 70% was met in terms of this application type indeed 75% is considered to be a good success rate and suggests that our decision making on this type of development is in tune with the Inspectorate.
- 2.10 The next largest type of appeal is for householder appeals which produced a success rate of 69.2% dismissed from 11 decisions. This is just below the Council's target figure, however, is an improvement over recent previous yearly results for this type of appeal and 1 more dismissed appeal and the target would have been reached. In recent years the inspectorate have taken a notably more relaxed approach to householder development apparently being less concerned about design and amenity issues particularly with this type of development. Officers have highlighted this in previous annual appeal reports and have sought to amend officer's consideration of such applications to reflect the views of the inspectorate. Although the performance has not met the Council's target it is considered encouraging that performance on this type of appeal has improved. The below table shows the significant improvement on this type of appeal over the last 4 years.

### **Householder Appeal decisions**

<b>Year</b>	<b>Dismissed</b>	<b>Allowed</b>	<b>% Allowed</b>
2018 - 2019	4	7	36.4
2019 - 2020	4	7	36.4
2020 - 2021	4	4	50.0
2021 - 2022	9	4	69.2

- 2.11 The performance for appeals in respect of all other minor developments is low with a success rate of 37.5% dismissed from 8 decisions. On analysis of those decisions, there does not appear to be any particular reason or trend to account for this although going forward a careful eye needs to be kept on the refusal of these categories of applications to ensure improved performance in the future. The allowed minor development appeals are listed below but cover a wide range of planning issues and hence there are no clear trends to learn from.

### **All Other Minor Development Appeals Allowed**

**20/2461/FUL** *The Dairy Barn, Combehayes Farm, Honiton – General purpose agricultural building.*

**20/0003/FUL** *Land northwest of Littleton Villas, Manor Crescent, Honiton – Timber shed.*

**20/2789/FUL** *Water Tower at Mount Pleasant, Exmouth Road, Aylesbeare - New storage building and demolition of existing water tower.*

**20/2710/FUL** *2 Brooklyn, Stowford, Sidmouth - Change of use of land and construction of Hardstanding to allow the siting of two shepherds huts for holiday accommodation.*

**20/1799/FUL** *105 Victoria Road, Exmouth - Proposed new 1 bed annexe with under-croft for 2no. vehicle parking.*

- 2.12 There was only 1 appeal in relation to small major dwellings which was dealt with by means of a Hearing. The appeal related to a site at Redgate & land at Tesco, Salterton Road Exmouth. The application was considered by the Planning Committee with an Officer recommendation to approve, subject to conditions. The Committee decided to refuse the application for the following reason –

*The proposed development results in an unjustified loss of designated employment land without adequate mitigation. As such, the proposal would undermine employment land provision in the area contrary to Strategy 22 - Development in Exmouth and Strategy 32 - Resisting Loss of Employment, retail and Community Sites and Buildings of the Adopted East Devon Local Plan 2013-2031, and Policies EE2 and EE3 and Action EEA1 of the Exmouth Neighbourhood Plan.*

- 2.13 The Inspector considered that the weight of evidence pointed clearly towards the conclusion that the proposal would not harm business and employment opportunities in the area. The scheme would therefore accord with the provisions of Strategy 32 of the EDLP and there was no conflict with Strategy 22 when the two policies are read together within the development plan as a whole.
- 2.14 The Inspector acknowledged that Policy EE2 is supportive of new employment uses and, given the scheme would provide employment floorspace, he considered there would be no conflict in this regard. Policy EE3 refers specifically to the change of use from an employment use to residential, leading to a reduction of employment. Action EEA1 is not a policy itself but seeks to endorse the approach to the reuse of allocated employment land reflected within the EDLP.
- 2.15 The Inspector concluded that the site would be suitable for the proposal having regard to the development plan's approach to the delivery of employment provision. The scheme would not conflict with Strategy 22 and would accord with the objectives of Strategy 32 of the EDLP. It would also accord with Policy EE2 and there would be no conflict with Policy EE3 of the ENP.
- 2.16 The Council has performed reasonably well for appeals in respect of minor dwellings and there has been a marginal improvement in the success rate for appeals in respect of householder developments. There are no other particular trends which can be established from the decisions based on the application type to account for the allowed appeals and some of the samples are too small to represent a true indicator.

### **3.0 Costs Applications**

- 3.1 There can be financial implications in relation to cases where an application for costs is made.

- 3.2 An application 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 2 applications for full awards of appeal costs against the Council and both applications were refused.
- 3.6 A partial award of costs was awarded against the Council in respect of an appeal against a listed building enforcement notice at Court Place Farm, Wilmington, relating to the unauthorised installation of windows and doors.
- 3.7 The Inspector considered that the Council's pursuance of replacement windows that met a heritage specification, was unreasonable as this exceeded the legal requirement to put the building back to the state it was in before the works were carried out and this has led to some additional expense by the appellants.
- 3.8 The Inspector found that unreasonable behaviour resulting in unnecessary or wasted expense had been demonstrated in respect of the requirements of the notice and that a partial award of costs was justified. The costs were limited to those costs incurred in appealing against those requirements. These costs have not yet been submitted to the Council for payment.

#### **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 eight appeals in respect of enforcement notices three were dismissed and five were allowed.
- 4.3 Two appeals against the refusal to issue certificates of lawful development were dismissed.
- 4.4 One appeal in respect of a protected trees was dismissed.
- 4.5 Eight appeals against the refusal of Listed Building Consent were all dismissed.
- 4.6 One appeal against the refusal of advertisement consent dismissed. This was a Committee overturn where officers had recommended approval but the Committee refused permission.
- 4.7 Two appeals against non-determination of planning applications within the statutory time period were dismissed.
- 4.8 Four appeals against the Council's decision to grant prior approval for permitted development were all dismissed.

## **5.0 Conclusions**

- 5.1 The Council's success rate last year was lower than the National average and lower than the Council's own target figure of 70% appeals dismissed.
- 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 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 drop in performance, although it has mainly been in relation to the more minor applications. The lack of a specific trend to explain the downturn is supported by the fact that the performance so far this year in relation to appeals far exceeds the 70% target being 86.6% from 15 decisions.
- 5.4 In cases where the Council is minded to refuse an application, similar proposals which have been the subject of recent appeals are constantly being analysed to ensure consistency in the decision making process.
- 5.5 Appeal decisions are monitored 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.
- 5.6 Measures are in place to monitor performance throughout the year with Planning Committee receiving a monthly update report including a summary of any appeals determined that month as well as those received. This enables the committee to quickly understand new decisions and learn from them, similarly all appeal decisions are circulated around officers. The appeals performance is also one of the key performance indicators that is reported to Members. Regular training is provided to Members of Planning Committee to ensure that their knowledge remains up to date, however it is acknowledged that further training would always be beneficial and should be provided when officer's capacity allows.

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### **Financial implications:**

To be completed by Finance.

### **Legal implications:**

Planning Committee receive regular updates on appeal outcomes and this report provides Strategic Planning Committee an annual analysis of appeal determinations. There are no legal implications other than as set out in the report.