

Report to: Planning Committee



Date of Meeting 13<sup>th</sup> June 2023

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 2022 to 31<sup>st</sup> March 2023. 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 2022 – 2023 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

[FINAL Planning Inspectorate Statistical Release April 2023 pdf.pdf \(publishing.service.gov.uk\)](#)

### 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 47 appeal decisions from 1 April 2022 to 31 March 2023 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

### Section 78 planning appeals including householder appeals (HAS)

(Figures taken from previous and the latest Planning Inspectorate Statistical Reports - latest release 27 April 2023).

Year	Decided	Allowed	% Allowed
2020-2021	13268	3776	27.2
2021-2022	13867	4040	29.1
2022-2023*	9191	2644	28.8

*\*Please note that at the time of writing this report, the figures for 2022-2023 had not been finalised and do not include householder appeal decisions.*

## East Devon appeal statistics

### Section 78 planning appeals including householder appeals (HAS)

Year	Decided	Allowed	% Allowed
2019 - 2020	52	13	25.0
2020 - 2021	44	14	31.8
2021 - 2022	43	18	41.9
2022 - 2023	47	11	23.4

## 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. A Hearing was held for 4 of the appeals. Included within the written representation appeals were 10 appeals which followed the householder appeal service process (HAS). 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 47 decisions received 11 of the appeals were allowed which equates to 23.4% of appeals against the Council's decision to refuse planning permission being dismissed.
- 2.3 This figure is higher than that for 2021 - 2022 and exceeds the national average as published by the Planning Inspectorate in their statistics. The success rate is also higher than 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 11 appeals which were allowed, 4 resulted from applications decided by the Planning Committee, 2 of which were refused contrary to officer recommendation. The other 7 appeals which were allowed resulted from delegated decisions. Of those delegated decisions, 2 recommendations to refuse were agreed at the Chair's delegation meeting and there were no appeals resulting from any decision overturns at this meeting.
- 2.6 Of the 36 appeals which were dismissed, 4 resulted from applications decided by the Planning Committee and 32 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	32	11	74.4
Hearing	4	0	100.0

<b>Application Type</b>	<b>Dismissed</b>	<b>Allowed</b>	<b>% Dismissed</b>
Minor dwellings	16	4	80.0
Householder	10	2	83.3
All other minor developments	7	3	70.0
Change of use	3	2	60.0

- 2.8 The largest sample of 20 decisions in respect of minor dwellings, produced a high success rate of 80% of appeals dismissed.
- 2.9 The next largest sample for householder appeals produced a higher success rate of 83.3% dismissed from 12 decisions. This is a further improvement on the success rate of the preceding year for this type of appeal. Although the Planning Inspectorate has not yet published the latest statistics for householder appeals, it is expected that the Council would have exceeded the national average for dismissed appeals.
- 2.10 The performance for appeals in respect of all other minor developments is also good, with a success rate of 70.0% dismissed from 10 decisions.
- 2.11 The performance figure in respect of change of use appeals is lower at 60.0%, however, this is a smaller sample of only 5 decisions. On analysis of those decisions, there does not appear to be any particular reason or trend to account for a lower success rate for this type of application.
- 2.12 The Council has performed well for appeals in respect of minor dwellings, householder developments and all other minor developments and all of these figures represent an improvement on the results for the preceding year.
- 2.13 There are no particular trends which can be established from the decisions based on the application type to account for those appeals which were allowed.

#### 2.14 Appeals allowed -

##### *11 Decisions, including:-*

- 7 Delegated decisions
- 2 Committee decisions contrary to officer recommendation
- 2 Householder applications
- 6 Conversion of existing buildings to dwellings

#### 2.15 Appeals Dismissed -

##### *36 Decisions, including:-*

- 21 Delegated decisions
- 4 Committee decisions
- 6 Decided at Chair's delegation
- 15 Minor dwellings
- 10 Householder applications
- 4 Hearings

### **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 no applications or awards of costs made on any of the appeals decided from 1 April 2022 to 31 March 2023.

### **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 Two appeals in respect of enforcement notices were both dismissed.
- 4.3 Two appeals against the refusal of Listed Building Consent were both dismissed.
- 4.4 One appeal in respect of a protected tree was allowed.
- 4.6 One appeal against the refusal of advertisement consent dismissed.
- 4.7 Two appeals against non-determination of planning applications within the statutory time period were dismissed.
- 4.8 One appeal against the Council's decision to grant prior approval for permitted development was allowed.
- 4.9 The total number of appeals decided, including those subject of the performance indicator, amounts to 56. Of those decisions, 43 were dismissed and 13 allowed, giving an overall success rate of 76.8%

### **5.0 Conclusions**

- 5.1 The Council success rate is higher than the current National average and higher than the Council's own target figure of 70% appeals dismissed. This represents a considerable improvement over the results for the preceding year and a strong indicator of consistency in the decision making process.
- 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 On analysis of the decisions, there does not appear to be any particular trend or reason to support those appeals which were allowed. 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.
- 5.4 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.
- 5.5 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 officers' capacity allows.

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### **Financial implications:**

There are no financial implications other than as set out in the report.

### **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.