

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

**Date:** 10<sup>th</sup> June 2019

**Public Document:** Yes

**Exemption:** None

**Review date for release** None

**Agenda item** 8



**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 2018 to 31<sup>st</sup> March 2019.

**Recommendation:** **That Members note:**

- 1. That the Council's success rate on planning appeals over the last year has improved from 64.3% in the 2017 – 18 Monitoring year to 72.2% over the last year.**
- 2. The trends in appeal decisions identified in the report particularly the substantial harm that needs to be identified to successfully defend the refusal of household extensions.**

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

**Officer:** Chris Rose – Development Manager – Planning Tel; 01395 517419 email [CHRose@eastdevon.gov.uk](mailto:CHRose@eastdevon.gov.uk)

**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 noted in 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

This report details the performance of the Development Management Team with regard to planning appeals for the period of the 1<sup>st</sup> April 2018 to the 31<sup>st</sup> March 2019.

- 1.2 For the purposes of this report, and in accordance with Central Government's system of monitoring and reporting on appeal performance, the figures/indicator include only those appeals against the Council's decision to refuse planning permission. It does not include planning appeals against conditions or non-determination. 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. This is in accordance with Central Government's system of monitoring performance of appeals.
- 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 received 54 appeal decisions from 1 April 2018 to 31 March 2019 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 13 February 2019)

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

Year	Decided	Allowed	% Allowed
2015 - 2016	14489	4927	34.0
2016 - 2017	16444	5758	35.0
2017 - 2018	15267	5159	33.8

**East Devon appeal statistics**

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

Year	Decided	Allowed	% Allowed
2015 - 2016	55	12	21.8
2016 - 2017	64	22	34.4
2017 - 2018	42	15	35.7
2018 - 2019	54	15	27.8

**2.0 Analysis**

- 2.1 The majority of the appeals were dealt with by means of written representations, with 48 having been determined on that basis. Informal Hearings were held for 5 of the appeals and 1 appeal dealt with by means of an Inquiry. Included within the written representation appeals were 7 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 54 decisions received, 15 of the appeals were allowed which equates to 72.2% of appeals against the Council's decision to refuse planning permission being dismissed.
- 2.3 This figure is an improvement on that for 2017–2018 and is higher than the national average as published by the Planning Inspectorate in their statistics of 67%. The success rate also exceeds the Council's imposed performance indicator of 70% for dismissed appeals.

#### Planning issues/policies and trends

- 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 planning issue(s) and interpretation of policy which can be attributed to those decisions of the Council which were overturned and can be learnt from.
- 2.5 The appeals which were allowed resulted from 12 applications with delegated decisions and 3 applications decided by the Development Management Committee. Of those 3 applications determined at Committee, 1 was refused contrary to officer recommendation.
- 2.6 There have been 5 appeals related to dwellings in the countryside. One of the allowed appeals (17/0614/VAR), followed the Council's decision to refuse an application for the variation of a condition on a previous planning permission to enable the unrestricted residential occupation of an existing annexe. During the course of the appeal, revisions were made to the NPPF which was published in July 2018. Paragraph 79 of the updated Framework states that isolated homes in the countryside should be avoided unless, amongst other things, the development would involve the subdivision of an existing residential dwelling. The Planning Inspectorate sought the opinion of the LPA on this revision and the Council had to concede that the proposal now accorded with Government Policy introduced since the appeal was dismissed. Other than recognising that changes to Government Policy during an appeal can impact upon its outcome, there is no further learning from this case.
- 2.7 Another of the allowed appeals (17.2506.VAR) was in respect of the variation of a condition to change a holiday let use to unrestricted residential occupation in the vicinity of the village of Farway. In this case, the Inspector deciding the appeal acknowledged that there are limited facilities and services in the immediate locality although the closest settlement of Church Green, containing Farway Primary School, was less than a mile away from the site. The Inspector considered that the site was in an appropriate location for permanent residential occupation and, as the building was already in a residential use and would not result in new building in the countryside, the proposal accorded with the general thrust of paragraphs 78 and 79 of the Framework.
- 2.8 In deciding a similar proposal at appeal (17/2677/VAR), just outside of the village of Northleigh and 1km to the south east of the site referred to above, the same Inspector dismissed the appeal on the basis that the site was in an unsustainable location served by very few services and facilities. Two further similar appeals in respect of sites at Otterton (17/2976/FUL) and Membury (17/1385/VAR), which were decided by different Inspectors, were both dismissed on the basis of the unsustainable location of the sites.
- 2.9 It is difficult to identify any trends to these appeals. The Council correctly arguing that 3 of the locations were unsustainable but losing the other. These appeals back up the correct application of planning policies to the particular circumstances and location of each application.
- 2.10 One of the Informal Hearing appeals upheld (16/2848/MFUL) related to the loss of a site in Exmouth from community/employment use to residential. The Inspector upheld the appeal and granted planning permission on the basis that the site was no longer valuable to

community and employment needs as these services had been re-provided elsewhere and the site had been vacant for 5 years. Whilst this is only one appeal decision, it demonstrates the weight that the Inspectorate give to the provision of housing on undesignated employment sites and may result in it being difficult for the Council to resist the loss of similar non-designated employment sites to residential use where the employment has been re-provided elsewhere and the site has been vacant for a number of years. One of the Informal Hearings where the appeal was dismissed (17/1539/MFUL) for residential use of a designated employment site demonstrates that it is easier to defend appeals for residential use on employment sites that are designated within the Local Plan.

2.11 Considering the remainder of the allowed appeals, there does not appear to be any specific planning consideration/issue or policy that can be attributed to the Council's decisions being overturned.

### Appeal types and trends

2.12 Of the 39 appeals which were dismissed, 37 were the result of delegated decisions and 2 of the applications were decided by the Committee, following officer recommendations to refuse.

2.13 Appeal decisions by procedure type –

	Dismissed	Allowed	%Dismissed
Written Representation	36	12	75.0
Hearing	2	3	40.0
Inquiry	1	0	100.0

2.14 Appeal decisions by application type -

	Dismissed	Allowed	%Dismissed
Q13 Minor dwellings	25	4	86.2
Q21 Householder	4	7	36.4
Q18 All other minor developments	2	1	66.6
Q20 Change of use	4	1	80.0
Q07 Small major dwellings	3	1	75.0
Q12 All other small major developments	1	1	50.0

2.15 The largest sample of 29 decisions in respect of minor dwellings, produced a high success rate of 86.2% of appeals dismissed.

2.16 The next largest sample of 11 householder appeals reflects a poorer success rate of 36.4% appeals dismissed, however, 4 of the allowed householder appeals did not follow the Householder Appeals Service (HAS) procedure. The smaller sample of 7 appeals which did follow the HAS procedure produced a higher success rate of 57.2% appeals dismissed.

2.17 Looking at the statistics from the Planning Inspectorate over the last 3 years, the number of appeals allowed which were dealt with under the HAS procedure alone were higher than the overall national average and varied between 38 to 40% (60 to 62% dismissed).

2.18 In analysing HAS appeal decisions, it is increasingly evident that Inspectors deciding these appeals have to consider that the proposal would result in having a substantially harmful/adverse impact on the amenity of neighbours or the character and appearance of the area for a refusal of planning permission to be substantiated and an appeal to be dismissed.

Going forward Officers and Members need to be mindful that to justify refusal of a householder application, the harm needs to be very significant with the Inspectorate likely to grant planning permission where there is some harm but it is not severe.

2.19 Although the Council has performed well in respect of appeals for minor dwellings, there are no other particular trends which can be established from the decisions based on the application type and most of the samples are too small to represent a true indicator.

#### Appeals allowed and dismissed by type

2.20 Appeals allowed -

*15 Decisions, including:-*

- 12 Delegated decisions
- 1 Committee decision contrary to officer recommendation
- 12 Written representations
- 3 Informal hearing
- 7 Householder applications
- 1 Small major dwellings (10 units)
- 2 Single residential dwellings
- 1 Split decision
- 1 Variation of condition to change holiday let to unrestricted residential occupation

2.20 Appeals Dismissed -

*39 Decisions, including:-*

- 37 Delegated decisions
- 2 Committee decisions
- 36 Written representations
- 25 Minor dwellings
- 2 Informal hearings
- 1 Inquiry
- 4 Householder applications
- 2 Small Major dwellings
- 3 Variation of condition to change holiday let to unrestricted residential occupation

2.21 There are no other particular trends that can be identified from these figures.

### **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 3 applications for a full award of appeal costs against the Council which were all refused.
- 3.6 The Council made 1 application for a full award of costs against an appellant which was refused.

#### **4.0 Conclusions**

- 4.1 The Council has achieved an appeal success rate which is higher than the National average, higher than the Council set performance target and an improvement on the preceding year.
- 4.2 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.
- 4.3 One of the appeals allowed was a direct result of a change in Government Policy following the Council's decision to refuse the application (see para. 2.6 above). There has not been any other significant change in Policy over the last twelve months which can be attributed to the Council's success rate over that period.
- 4.4 It is clear from the appeal decisions that there has to be a significant level of harm from a house extension for the Planning Inspectorate to uphold a refusal of planning permission and this needs to be recognised by Planning Officers and Members when making recommendations and determining Householder planning applications.
- 4.4 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.