

Report to: **Planning Committee**

Date: 29th July 2020

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 1st April 2019 to 31st March 2020.

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: Planning appeals can prove expensive to the Council both internally, in terms of staff resources both within the Planning Service and other sections such as Legal, as well as externally for example if specialist consultant assistance external legal advice is required.

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 government statistics include 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 52 appeal decisions from 1 April 2019 to 31 March 2020 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 and totals 77 appeals.

1.4 **National appeal statistics** (Figures taken from the latest Planning Inspectorate Statistical Report updated 7 July 2020)

Planning appeals including Householder Appeals (HAS)

| Year | Decided | Allowed | % Allowed |
|-------------|---------|---------|-----------|
| 2016 - 2017 | 16493 | 5779 | 35.0 |
| 2017 - 2018 | 15453 | 5209 | 33.7 |
| 2018 - 2019 | 14710 | 4733 | 32.2 |

1.5 The Planning Inspectorate's figures for 2019-2020 have not yet been finalised.

1.6 **East Devon appeal statistics**

Planning appeals including householder appeals (HAS)

| Year | Decided | Allowed | % Allowed |
|-------------|---------|---------|-----------|
| 2016 - 2017 | 64 | 22 | 34.4 |
| 2017 - 2018 | 42 | 15 | 35.7 |
| 2018 - 2019 | 54 | 15 | 27.8 |
| 2019 - 2020 | 52 | 13 | 25.0 |

2.0 Analysis

2.1 The majority of the appeals were dealt with by means of written representations, with 50 having been determined on that basis. An Informal Hearing was held for 1 of the appeals and 1 appeal was dealt with by means of an Inquiry. Included within the written representation appeals were 6 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 52 decisions received 13 of the appeals were allowed which equates to 25.0% of appeals against the Council's decision to refuse planning permission being dismissed.

2.3 This figure is an improvement on that for 2018–2019 and is higher than the national average as published by the Planning Inspectorate in their statistics (32.2%). The success rate also exceeds 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 The appeals which were allowed resulted from 11 applications with delegated decisions and 2 applications decided by the Development Management Committee.

2.6 Of the 2 applications decided by the Committee, 1 of those was refused contrary to the Officer recommendation.

2.7 None of the appeals allowed were the result of any change in policy during the appeal process.

2.8 Appeal decisions by procedure type –

| | Dismissed | Allowed | %Dismissed |
|------------------------|-----------|---------|------------|
| Written Representation | 38 | 12 | 76.0 |
| Hearing | 1 | 0 | 100.0 |
| Inquiry | 0 | 1 | 0.00 |

2.9 Appeal decisions by application type -

| | Dismissed | Allowed | %Dismissed |
|--|-----------|---------|------------|
| Q13 Minor dwellings | 28 | 5 | 84.8 |
| Q18 All other minor developments | 6 | 3 | 66.6 |
| Q21 Householder | 3 | 3 | 50.0 |
| Q20 Change of use | 1 | 0 | 100.0 |
| Q12 All other small major developments | 1 | 0 | 100.0 |
| Q07 Small major dwellings | 0 | 1 | 0.00 |
| Q02 Large major Light industry | 0 | 1 | 0.00 |

2.10 The largest sample of 33 decisions in respect of minor dwellings, produced a high success rate of 84.8% of appeals dismissed.

2.11 The next largest sample of 9 decisions, for all other minor developments, produced a success rate of 66.6% which is close to the overall national average.

2.12 The sample of 6 householder appeals reflects a lower success rate of 50.0% appeals dismissed.

2.13 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 with 39% of appeals being allowed (61% dismissed).

2.14 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 significant 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.

2.15 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.

2.16 Appeals allowed -

15 Decisions, including:-

- 11 Delegated decisions
- 14 Written representations
- 1 Public Inquiry
- 3 Householder applications
- 1 Small major dwellings (10 units)
- 2 Single residential dwellings
- 1 Committee decision contrary to officer recommendation

2.17 Appeals Dismissed –

39 Decisions, including:-

- 36 Delegated decisions
- 3 Committee decisions
- 38 Written representations
- 28 Minor dwellings
- 1 Informal hearing
- 3 Householder applications

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 4 applications for full awards of appeal costs and 2 applications for partial awards of costs against the Council. 5 applications were refused. The Inspectorate granted 1 award for costs against the Council and this was in relation to a development of 2

dwellings at King Alfred Way in Newton Poppleford. This award of costs was in the region of £5,000 and this application was refused contrary to officer recommendation.

3.6 The Council made 1 application for a full award of costs against an appellant which was 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, however, these decisions do give an indication of the Council's overall performance with appeals.

- From seven appeals in respect of enforcement notices six were dismissed and the enforcement notices upheld.
- Two appeals against the refusal to issue certificates of lawful development were both dismissed.
- Four appeals in respect of protected trees were all dismissed.
- From four appeals against the Council's decision to grant prior approval for permitted development three were dismissed and one allowed.
- One appeal against the refusal of advertisement consent dismissed.
- From two appeals against the refusal of Listed Building Consent, one was dismissed and one allowed.
- From three appeals against non-determination of planning applications within the statutory time period one was dismissed and two were allowed.
- Two appeals to remove or vary conditions following the Council's decision to grant planning permission were both allowed.

5.0 Conclusions

5.1 Given all of the above, there does not appear to be any specific type of development or any particular trend that can be attributed to those Council decisions being overturned at appeal.

5.2 The Council has achieved an appeal success rate which is higher than the National average and an improvement on the preceding year.

5.3 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.

5.4 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.

