

REPORT TO THE PLANNING COMMITTEE 24TH JUNE 2014

ANNUAL REPORT ON PLANNING AND RELATED APPEALS APRIL 2013 – MARCH 2014

Introduction

1. Appeal decisions are reported regularly to the Planning Committee, as are decisions on the award of costs in appeal proceedings. In addition, an annual report on planning and related appeals is produced for consideration by Members, intended to identify general issues relating to the Local Planning Authority's appeal performance, and to encourage an approach that reflects upon and learns from such appeals.

Appeal Performance

2. Appeals can be made both against the refusal of permission, but also against conditions attached to permissions. There are many cases where following a refusal of an application, discussions are held with an applicant and as a result the applicant decides either to no longer pursue the proposal or to submit revised proposals. In this way difficulties can be more effectively, quickly and cheaply resolved. Your officers would always seek to encourage such discussions. As advised in the National Planning Practice Guidance (2014), appeals should only be made when all else has failed. Recent changes in the appeal system have resulted in the process becoming more frontloaded with the applicant being required to submit at the time of lodging of the appeal their full statement of case and other material.
3. An applicant has currently in most cases up to 6 months to lodge an appeal (from receipt of the decision notice), and given the time some appeals take to be determined, there is often a significant period of time between the LPA's original decision and the appeal decision. For householder applications, the time limit to appeal is 12 weeks and the time period for submitting an appeal where the same or substantially the same development is subject to an Enforcement Notice is just 28 days. Another recent change has been the introduction of an expedited procedure for what are termed 'minor commercial' (advertisement and shop front) appeals.
4. Appeals can also be made within a specified time against Enforcement Notices on various specific grounds. If an appeal is lodged the Notice does not come into effect until the appeal has been determined. If no appeal is lodged the Notice comes into effect.
5. During the 12-month period from April 2013 to March 2014, 23 appeals against decisions by the Borough Council as Local Planning Authority were determined. A list of the appeal decisions is attached as Appendix 1. This compares with 13 for the previous year 2012/13. By far the majority of these appeals were against decisions to refuse permission rather than against conditions subject to which permissions had been granted.
6. Although the Council monitors its performance in appeals, there is neither a national target nor a 'local' indicator for the percentage of appeals which have been allowed. However as the Committee has previously advised has introduced (in June 2013) a performance measure that is based on the extent to which decisions on applications for Major development are overturned on appeal (as an indicator of the quality of decisions made by Local Planning Authorities). This is one of the two criteria upon which the Government is basing designation of under-performing Local Planning Authorities, the other measure being based on the speed with which Major applications are dealt with.
7. The **appeal measure** being used is the average percentage of appeal decisions on applications for major development that have been overturned on appeal, once nine

months has elapsed following the end of the assessment period. The **assessment period** for this measure is the 2 year period up to and including the most recent quarter for which data of planning decisions is available at the time of designation, taking into account the nine month period referred to above. The **threshold** for designation is 20% of more of an authority's decisions on applications for major development made during the assessment period being overturned at appeal. No national figures have yet been released to enable the authority to judge where it sits in relation to this 20% figure but your officer is very confident that the authority performance over the last two years has been significantly below the appeal designation threshold. For the two year period ending on the 30th June 2013 your officer has calculated that the Council's performance with respect to this measure was 2.8% with only one appeal (that relating to Midland House) concerning Major development being allowed compared to some 35 decisions on applications for Major Development in that two year period. There are 2 appeals concerning Major development now in the pipeline Gateway Avenue and Hawthorns Keele, and a third (against the Council's decision with respect to development of Watermills Road) now expected to be lodged by October 2014.

8. In the period April 2013 to March 2014, of the 23 appeals that were determined, 65% were dismissed and 35% were allowed. If an appeal is allowed it is in effect "lost" by the Council. If an appeal is allowed, that is a judgement, normally by the Inspector appointed by the Secretary of State to determine the appeal, that the Council's case has been found wanting.
9. Over the most recent 12-month period, the Council has performed better than in recent years. For example in the previous year (2012-2013), although the number of appeal decisions was particularly low, 69% of appeals were allowed, and in the 12 months prior to that (2011-2012), 40% of appeals were allowed.
10. Table 1 below, looks at the different development types. All planning and related applications, and appeals, are categorised by development type. For dwellings, a Major development is where the number of dwellings to be constructed is 10 or more. Where the number of dwellings to be constructed is not known, any residential development with a site area of more than 0.5 hectares is categorised as a Major development. For all other uses a Major development is one where the floorspace to be built is 1000 square metres or more, or where the site area is 1 hectare or more. Applications for Minor development are those which are not for Major development although within the "Other" category are domestic extensions, changes of use, advertisements, listed building consent applications and similar. In addition, there are those appeals that relate to Enforcement Notices. These are not categorised by development type.

Table 1

Development Types	Number Allowed	% Allowed	Number Dismissed	% Dismissed
"Major" Appeals	1	100	0	0
"Minor" Appeals	4	44	5	56
"Other" Appeals	3	23	10	77
"Enforcement" Appeals	0	-	0	-
Total appeals	8	35	15	65

11. Table 1a identifies performance specifically for householder appeals and appeals relating to Minor dwellings proposals – these two groups combined making up 78% of the total number of appeals.

Table 1a

Development Types	Number Allowed	% Allowed	Number Dismissed	% Dismissed
Householder	3	27	8	73

Minor Dwellings	3	43	4	57
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12. The Council is performing better in some areas than in others. In particular, performance in relation to domestic extension appeals is very good with only 27% of appeals in this category being allowed. The majority of applications for domestic extensions reflected in the above Table were determined under delegated powers by the Senior Planning Officers, acting under the general guidance of the Development Management Team Manager. These figures are a positive indication that when applications are refused under this arrangement such refusals are generally being supported on appeal, and that the arrangement is in these terms functioning well.
13. Performance in relation to appeals concerning "Minor developments" (which include appeals relating to "Minor dwellings") is not quite as good, with 43% being allowed. Those appeals that have been allowed vary greatly in their nature and the reasons why they were allowed are very specific inevitably reflecting the circumstances of each individual case. In this sense it is therefore difficult to draw out general conclusions.
14. Table 2 below, indicates the percentage of appeals allowed and dismissed according to whether the application was determined under delegated powers or by the Planning Committee.

Table 2

Decision Type	Number allowed	% Allowed	Number dismissed	% Dismissed
Delegated	5	33	10	67
Committee	3	37	5	63
Total	8	35	15	65

15. During the period April 2013 to March 2014 there has been little difference in the success rate in respect of appeals on applications determined under delegated powers and those determined by Committee.
16. With respect to Committee decisions, Table 3 below provides information on the officer recommendation in these cases.

Table 3

Decision Type	Number allowed	% Allowed	Number dismissed	% Dismissed
Committee decisions contrary to Officer Recommendation	1	25	3	75
Committee decisions in line with Officer recommendation	2	50	2	50
Total	3	37	5	63

16. These eight decisions were;
- Land rear of 11A - 19 Moorland Rd, Mow Cop - recommended for refusal, refused and appeal allowed.
 - Midland House, London Road, Chesterton - recommended for refusal, refused and appeal allowed.
 - Barn at rear of Sandfield House, Bar Hill, Madeley - recommended for refusal, refused and appeal dismissed.

- Land at Netherset Hey Lane, Madeley – application to remove conditions recommended for refusal, refused and appeal dismissed.
- 21, Rathbone Ave, May Bank - recommended for approval, refused and appeal dismissed.
- 31, Kinnersley Ave, Kidsgrove - recommended for approval, refused and appeal dismissed.
- Exchange House, Liverpool Rd, Cross Heath – recommended for approval, refused and appeal dismissed.
- Alderhay Farm, 58 Harriseahead Lane, Harriseahead – recommended for approval, refused and appeal allowed.

The numbers in each category are so few it would be inappropriate to draw any wider conclusions.

Awards of Costs

17. Of particular importance in terms of the Local Planning Authority learning lessons from appeal performance, are those appeals that have resulted in an award of costs against the Council. In planning appeals the parties normally meet their own expenses and costs are only awarded when what is termed “unreasonable” behaviour is held to have occurred and the affected party has incurred additional costs in the appeal proceedings. The availability of costs awards is intended to bring a greater sense of discipline to all parties involved. During the period from April 2013 to March 2014, there has been just one claim for costs made against the Borough Council that has been decided and that claim was successful. This costs decision has already been reported to the Planning Committee (Exchange House).

Conclusions

18. The number of appeals determined in the period April 2013 to March 2014 is relatively low and such low numbers make it difficult and indeed inappropriate to draw any conclusions. Notwithstanding this it remains your Officer’s view that there are a number of steps which could be taken to further improve upon the existing situation and these are detailed below. The Committee has previously passed a number of resolutions when considering similar reports in previous years.

Recommendations: -

1. **That internal management procedures within the Service including the assessment of case officers’ recommendations by more senior officers continue to be applied;**
2. **That your Officer report to the Chair and Vice Chairman in six months time on appeal performance in the first half of the 2014/15, and on any further steps that have been taken in the light of that performance;**
3. **That the Committee reaffirms its previous resolution that Members draw to Case Officers’ attention any concerns that they have with an application coming to the Committee for determination as soon as possible having received notice of the application in the weekly list, so that potential solutions to the concerns are sought with the applicant in line with the requirements of the National Planning Policy Framework;**
4. **That the Committee reaffirms its previous resolution that full advantage be taken of the use of conditions in planning permissions to make developments acceptable;**
5. **That the Committee reaffirms its previous resolutions that Members proposing to move refusal of a proposal contrary to recommendation be urged to contact**

the Head of Planning Services no less than 24 hours before the Committee, with details of the reasons they are minded to give for such a refusal;

- 6. That the Committee reaffirms its previous resolution that when a proposal to refuse to grant planning permission is made at the Committee contrary to the officer's recommendation, advice be sought as to the most appropriate way to meet the requirement to work in a proactive and positive manner with applicants;**
- 7. That the Committee reaffirms its previous resolutions that the mover and seconder of a resolution of refusal contrary to officer recommendation be identified by the Chair and recorded and in the event of an appeal being lodged there be an expectation that those members will make themselves available as witnesses on behalf of the Council in the appeal proceedings should either the Head of Planning Service or the Head of Central Services deem that appropriate; and**
- 8. That the Committee reaffirm its previous resolutions that a proactive approach be taken by officers to appeal handling with early holding of case conferences where appropriate, the strength of the case being continually reassessed in the light of any new evidence received, and that in the case of matters being determined by means of public inquiries the Head of Central Services or his representative takes charge of the matter.**