

REPORT TO THE PLANNING COMMITTEE 26TH MAY 2015

ANNUAL REPORT ON PLANNING AND RELATED APPEALS

1ST APRIL 2014 – 31ST MARCH 2015

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 (LPA'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.
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 (particularly as there is currently a significant backlog at the Planning Inspectorate), 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.
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 2014 to March 2015, 19 appeals against decisions by the Borough Council as the LPA were determined. A list of the appeal decisions is attached as Appendix 1. This compares with 23 for the previous year 2013/14. Of the 19 appeals one concerned an Enforcement Notice and one a decision on an application for a certificate of lawfulness
6. The Government has recently published data on the performance of local planning authorities against published criteria for assessing under-performance under Section 62B of the Town and Country Planning Act 1990. Performance in relation to Major appeals 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. The threshold for designation is currently 20% or more of an authority's decisions on applications for Major development made during the assessment period being overturned at appeal.

The measure used in each case for assessing the quality of decisions is the percentage of decisions on applications of that type that have been overturned at appeal once nine months have elapsed following the end of the assessment period. The nine months lag is used to enable the majority of decisions on planning applications made during the 24

month period to be followed through to subsequent appeals that may be lodged and for the outcome of those appeals to be known.

7. In relation to Major planning applications, the Borough is ranked 222nd out of 342 authorities with 3% of decisions overturned at appeal (with a low ranking representing “good” performance). Clearly this is significantly below the 20% designation threshold however it is important to note that the figures predate two appeals concerning Major development that have since been allowed (Gateway Avenue and Watermills Road) and a decision on a third is expected in July this year (The Hawthorns, Keele). The next accounting period will include these decisions and potentially the St. Quentin Major decision against which an appeal has now been lodged. The number of Major applications determined per annum by this authority is low (although above the threshold of 10, below which LPAs cannot be considered for designation) and therefore just one or two appeal decisions can make a significant difference in the figures. Table 1 below shows the performance of all the Staffordshire districts and Stoke-on-Trent.

Table 1

Planning Authority	Ranking	% major decisions overturned at appeal
Cannock Chase	15 th	0
Stoke-on-Trent	74 th	0
Stafford	151 st	2
Newcastle-under-Lyme	222 nd	3
South Staffordshire	223 rd	3
East Staffordshire	234 th	3
Staffordshire Moorlands	332 nd	13
Lichfield	335 th	13

8. In relation to minor and other developments, the Borough is ranked slightly lower at 285th with 2% of decisions overturned at appeal. Table 2 below shows how this compares to the other Staffordshire districts and Stoke-on-Trent.

Table 2

Planning Authority	Ranking	% minor and other decisions overturned at appeal
Stoke-on-Trent	57 th	1
Cannock Chase	94 th	1
East Staffordshire	106 th	1
Lichfield	136 th	1
South Staffordshire	271 st	1
Newcastle-under-Lyme	275 th	2
Stafford	285 th	2
Staffordshire Moorlands	301 st	2

9. In 2014/15, of the 19 appeals that were determined, 47% were dismissed and 53% 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.
10. The Council has not performed as well over the most recent 12-month period as in the previous year (2013/14) when only 35% of appeals were allowed. In the 12 months prior to that however (2012/13) 69% of appeals were allowed. Performance has varied quite considerably therefore but given the relatively low number of appeal decisions received each year, just one or two decisions can make a significant difference in the figures.

11. Given that the number of decisions received in the last year has been so low, the cumulative figure for the last 3 years has been assessed. During the 3 year period of April 2012 to March 2015, a total of 55 appeal decisions have been received. Of those 55 decisions 49% were allowed. This figure is high (the reported national average being 36%) and therefore it is important to try and reflect upon and learn from the appeal decisions that have been received.
12. Table 3 below, looks at the different development types of the appeals received in 2014/15. 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 3

Development Types	Number Allowed	% Allowed	Number Dismissed	% Dismissed
"Major" Appeals	2	100	0	0
"Minor" Appeals	6	46	7	54
"Other" Appeals	1	33	2	67
"Enforcement" Appeals	1	100	0	0
Total appeals	10	53	9	47

13. Unlike in previous years, where the number of householder appeals have been relatively high, there has been just one such appeal during the last 12 months and that was dismissed. A significant proportion of the appeals determined (53%) relate to Minor dwellings proposals and of those 10 appeals, 50% were allowed. The 5 Minor dwellings appeals that have been allowed are as follows:
- Land between 82 & 88 Harriseahead Lane, Harriseahead
 - Grange Farm, School Lane, Onneley
 - Moss House Farm, Audley
 - Land adj. 48, High Street, The Rookery
 - Land off Slacken Lane, Kidsgrove
14. In the cases of Harriseahead Lane and High Street, The Rookery, both of which are in the Green Belt, the Inspectors concluded that the development proposed was appropriate as in both cases it involved limited infilling in villages (a form of appropriate development that was in effect created by the NPPF). Reflecting upon these decisions, in determining future infill housing applications beyond village envelopes, the key consideration needs to be the context of the site itself with less focus being placed on whether the site is located within the village envelope as defined within the development plan. In relation to both Grange Farm and Moss House Farm, although the Inspector agreed with your officers that neither site is in a sustainable location, weight was given to the fact that in each case the scheme would lead to some enhancement to the immediate setting of the building in the terms of paragraph 55 of the Framework.
15. Table 4 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 4

Decision Type	Number allowed	% Allowed	Number dismissed	% Dismissed
Delegated	6	46	7	54
Committee	4	67	2	33
Total	10	53	9	47

16. During the period April 2014 to March 2015 a greater proportion of applications determined by Committee have been allowed (67%) than those determined under delegated powers (46%) but the numbers are so low that it is not possible to draw any conclusions.

17. With respect to Committee decisions, Table 5 below provides information on the officer recommendation in these cases.

Table 5

Decision Type	Number allowed	% Allowed	Number dismissed	% Dismissed
Committee decisions contrary to Officer Recommendation	1	50	1	50
Committee decisions in line with Officer recommendation	3	50	1	50
Total	4	67	2	33

18. These six decisions were;

- Maerfield Gate Cottage, Maer – recommended for refusal, refused and appeal allowed
- Land of Slacken Lane, Kidsgrove – recommended for refusal, refused and appeal allowed
- Gateway Avenue, Baldwin’s Gate – recommended for approval, refused and appeal allowed
- Land off Watermills Road, Chesterton – recommended for refusal, refused and appeal allowed
- Farcroft, Manor Road, Baldwin’s Gate – recommended for refusal, refused and appeal dismissed
- Land behind 5, Pinewood Drive, Ashley Heath – recommended for approval, refused and appeal dismissed

As above, the numbers are so few that it would be inappropriate to draw any wider conclusions.

Awards of Costs

19. 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. Table 6 below indicates those appeals decided between April 2014 and March 2015, where costs claims have been made against the Borough Council.

App No.	Address	Appeal Decision	Costs decision
14/00011/FUL	Maerfield Gate Cottage, Maer	Appeal Allowed	Refused
14/00002/ENFNOT	XJK Jaguar Limited	Appeal Allowed	Refused
13/00266/FUL	Land off Slacken Lane, Kidsgrove	Appeal Allowed	Refused
13/00426/OUT	Gateway Avenue, Baldwin's Gate	Appeal Allowed	Partial award of costs allowed
14/00240/ELD	Lymes Farm House, Butterton	Appeal dismissed	Refused

20. Although there have been 5 claims for costs made against the Council, only one, Gateway Avenue, Baldwin's Gate, was successful. The sum involved has not yet been resolved but undoubtedly it will be considerable. It is especially important that lessons are learnt from the above award of costs against the Council. This costs decision has already been reported to the Planning Committee.
21. The fact that in the four other cases costs awards were applied for but not awarded against the Council indicates that even in cases where the Council's case was found wanting (in one case the substantive appeal was dismissed), the Inspector did not consider that the Council had demonstrated unreasonable behaviour resulting in unnecessary or wasted expense.
22. One claim for costs was made by the Council against the appellant in the Lymes Farm House, Butterton appeal. That claim was successful and costs were awarded.

Conclusions

23. The number of appeals determined in the period April 2014 to March 2015 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 2015/16, and on any further steps that have been taken in the light of that performance;**
- 3. That the Committee reaffirms its previous resolution that its Members of the Committee 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 of the Committee proposing to move refusal of a proposal contrary to recommendation be urged to contact the Head of Planning 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 or the Council 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 Business Improvement, Central Services & Partnerships or his representative takes charge of the matter.