

## **REPORT TO THE PLANNING COMMITTEE 21<sup>st</sup> JUNE 2016**

### **ANNUAL REPORT ON PLANNING AND RELATED APPEALS**

**1<sup>st</sup> APRIL 2015 – 31<sup>st</sup> MARCH 2016**

#### **Introduction**

1. Appeal decisions are reported upon receipt 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. Well-considered decisions on planning applications are a key part of delivering an effective planning service. People should have confidence in the quality of the development decisions being made by the Authority – that all relevant considerations are being taken into account, and that the weight being given to different considerations is reasonable in the context of national and local policies. 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 2015 to March 2016, 20 appeals against decisions by the Borough Council as the LPA were determined. During this period 2 appeals were withdrawn. A list of the appeal decisions is attached as Appendix 1. 19 were decided in the previous year 2014/15.
6. The Government publishes 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 currently 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 where 20% or more of an authority's decisions on applications for Major development made during the assessment period are overturned at appeal.

7. As was reported to the Planning Committee at its meeting on the 29<sup>th</sup> March the Government has recently consulted both on a revised threshold for assessing the quality of performance on applications for major development and on a new threshold for the quality of decisions on non-major development (that is applications for minor developments, for changes of use (where the site area less than 1 ha) and for householder developments). As announced by the Chancellor in his Autumn 2015 Statement they are proposing that the threshold for designation on the basis of the quality of decisions will be reduced down from 20% to 10% of decisions for major development overturned at appeal. The threshold for designation in relation to non-major development is proposed to be where authorities have had more than 10-20% of their decisions on applications for non-major development overturned at appeal. When the government will make their final decisions on these thresholds is unknown but it will be enacted through the secondary legislation that will follow the Housing and Planning Act which recently gained Royal Assent. The indications are that the earliest that the first designations on the basis of the revised and new thresholds would be in the final quarter of 2016.
8. 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. Whether or not the Council will be designated in the future thus depends upon decisions that are now being made.
9. The latest information available at a national level relates to decisions made by the Borough Council in the 24 months ending in December 2014, so it reflects the quality of decisions that were made during that particular period (i.e. some considerable time ago). However as a means of comparing Councils' quality of decision making the information is of interest. In relation to Major planning applications, the Borough was ranked 317<sup>th</sup> out of 337 authorities with 7.3% of decisions overturned at appeal (with a low ranking representing "good" performance). On the face of it such a position should be of concern. Whilst this performance was significantly below the current 20% designation threshold however it is much closer to the proposed revised threshold of 10% that the government is almost certainly going to bring in. The number of Major applications determined per annum by this authority is low and therefore just one or two appeal decisions can make a very significant difference to the figures. That fact however would not protect the Council from designation. Table 1 below shows the performance of all the Staffordshire districts and Stoke-on-Trent.

**Table 1**

<b>Planning Authority</b>	<b>Ranking</b>	<b>% Major decisions overturned at appeal</b>
Cannock Chase	21 <sup>st</sup>	0
Stoke-on-Trent	79 <sup>th</sup>	0
Stafford	95 <sup>th</sup>	0.7
South Staffordshire	161 <sup>st</sup>	1.7
East Staffordshire	245 <sup>th</sup>	3.8
Lichfield	316 <sup>th</sup>	7.3
Newcastle-under-Lyme	317 <sup>th</sup>	7.3
Staffordshire Moorlands	319 <sup>th</sup>	7.5

10. In relation to 'Non Major decisions', the Borough was ranked somewhat better at 237<sup>th</sup> with 1.3% of decisions overturned at appeal. Table 2 below shows how this compares to the other Staffordshire districts and Stoke-on-Trent.

**Table 2**

<b>Planning Authority</b>	<b>Ranking</b>	<b>% Non-Major decisions overturned at appeal</b>
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Stoke-on-Trent	12 <sup>th</sup>	0.3
Cannock Chase	22 <sup>nd</sup>	0.4
Lichfield	78 <sup>th</sup>	0.6
East Staffordshire	136 <sup>th</sup>	0.8
South Staffordshire	194 <sup>th</sup>	1.1
Stafford	205 <sup>th</sup>	1.1
Newcastle-under-Lyme	237 <sup>th</sup>	1.3
Staffordshire Moorlands	296 <sup>th</sup>	1.8

11. Turning now to the appeal decisions received this year, in 2015/16, of the 20 appeals that were determined, 75% were dismissed and 25% 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. Losing only 25% of appeals would be considered to be ‘good performance’ (the latest national figure for January to March 2016 is 31%), and such performance if it were to be maintained would improve over time the Council’s position in the above national rankings.
12. The Council has performed better over the most recent 12-month period than in previous years, and there has been a marked improvement from last year (2014/15) when 53% of appeals were allowed. In the 12 months prior to that (2013/14) 35% of appeals were allowed and in 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.
13. 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 2013 to March 2016, a total of 62 appeal decisions have been received. Of those 62 decisions 37% were allowed – a figure which is above the national one of 31% referred to above.
14. Table 3 below, looks at the different development types of the appeals decided in 2015/16. 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.

**Table 3**

Development Types	Number Allowed	% Allowed	Number Dismissed	% Dismissed
“Major” Appeals	1	50%	1	50%
“Minor” Appeals	4	27%	11	73%
“Other” Appeals	0	0%	3	100%
<b>Total appeals</b>	<b>5</b>	<b>25%</b>	<b>15</b>	<b>75%</b>

15. In recent years there has been a decrease in the number of householder appeals and an increase in the number of appeals against Minor dwelling proposals. Last year (2014/15) 53% of the appeals determined related to Minor dwellings proposals and this year the proportion is even greater with 65% of the appeals determined relating to Minor dwellings proposals. Of those 13 appeals, 4 were allowed, and they are as follows:

- Rowney Farm, Market Drayton Road, Loggerheads
- Land adj. Old Farm, Main Road, Wrinehill

- Former garage site, Queensway, Newcastle
- Centurion House, West Street, Newcastle

16. In the case of Rowney Farm which concerned a conversion (not the more recently reported decision on 9 dwellings), the Inspector acknowledged that the occupiers of the proposed dwelling would be reliant on travel by private car to access local services but attached weight to the fact that the property was already occupied as an annex to the main farmhouse and concluded that the development would not result in a material difference to the number of vehicle movements. In allowing both the Queensway and Centurion House appeals, the Inspector concluded that contrary to the view of the Council, the proposals would not be harmful to the character and appearance of the surrounding area. Given the varied nature of these appeals, it is not considered that there are any particular lessons to be learnt.

17. In the case of Main Road, Wrinehill, which is in the Green Belt, the Inspector concluded that the development proposed was appropriate as it involved limited infilling in villages (a form of appropriate development that was in effect created by the NPPF). 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.

18. 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**

<b>Decision Type</b>	<b>Number allowed</b>	<b>% Allowed</b>	<b>Number dismissed</b>	<b>% Dismissed</b>
Delegated	3	21%	11	79%
Committee	2	33%	4	67%
<b>Total</b>	<b>5</b>	<b>25%</b>	<b>15</b>	<b>75%</b>

19. During the period April 2015 to March 2016 a greater proportion of applications determined by Committee have been allowed on appeal (33%) than those determined under delegated powers (21%) but both are low and given that the numbers are so limited it is not possible to draw any conclusions. There is probably no statistically significant difference in the performance.

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

**Table 5**

<b>Decision Type</b>	<b>Number allowed</b>	<b>% Allowed</b>	<b>Number dismissed</b>	<b>% Dismissed</b>
Committee decisions contrary to Officer Recommendation	0	0	2	100
Committee decisions in line with Officer recommendation	2	50	2	50
<b>Total</b>	<b>2</b>	<b>33</b>	<b>4</b>	<b>67</b>

21. These six decisions were;

- Planning application and application for Conservation Area Consent at The Hawthorns and Keele Campus, Keele – both recommended for approval, refused and the subsequent appeals dismissed

- Land adjacent to Slaters, Stone Road, Hill Chorlton – recommended for refusal, refused and appeal dismissed
- Former garage site, Queensway, Newcastle – recommended for refusal, refused and appeal allowed
- St Quentin Residential Home, Sandy Lane, Newcastle – recommended for refusal, refused and appeal allowed
- Land adjacent Cotswold, Newcastle Road, Loggerheads – recommended for refusal, refused and appeal dismissed

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

22. More generally insofar as the Planning Committee is concerned it needs to be recognised that, although less significant developments can end up being determined by the Planning Committee (for example as a result of call-ins), the decisions of the Planning Committee will tend to be both about the more significant developments (to the Borough), and those which are more likely to be determined by hearing or public inquiry with the additional associated costs of such procedures. That said most of the above appeals did not involve the holding of a public local inquiry. The employment of appropriate legal representation and witnesses to defend the Council's position can involve both considerable cost and also substantive time by the officers involved in such inquiries. Costs are also incurred in appeals determined by hearing and written representations procedures. It is currently expected that at least two appeals in 2016/17 will be the subject of Public Local Inquiries – those against the decisions with respect to Hamptons and Tadgedale Quarry.
23. Members' attention is drawn to the detailed proposals which the Government has consulted upon (in February this year), as part of a package of changes, to reduce new in-year allocation payments of New Homes Bonus to individual authorities where residential development is allowed on appeal. To give members some idea of the importance of New Homes Bonus to the Council the Bonus this year represents (at £2.161m) about one quarter of the sum provided by non-specific central government grants and retained business rates. The government's response to the results of the consultation is currently awaited but is expected soon. The Borough Council made representations in response to this consultation.

### **Awards of Costs**

24. 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 2015 and March 2016, where costs claims have been made against the Borough Council.

**Table 6**

<b>App No.</b>	<b>Address</b>	<b>Appeal Decision</b>	<b>Costs decision</b>
15/00308/FUL	Former Garage site, Queensway, Newcastle	Appeal Allowed	Refused
15/00579/FUL	Dales Green Farm, 14, Dales Green Road, Mow Cop	Appeal Dismissed	Refused

25. There have been only 2 claims for costs made against the Council, and neither was successful. This indicates that even in the case where the Council's case was found

wanting (15/00308/FUL), the Inspector did not consider that the Council had demonstrated unreasonable behaviour resulting in unnecessary or wasted expense.

26. No claim for costs was made by the Council against an appellant between April 2015 and March 2016.

### **Conclusions**

27. The number of appeals determined in the period April 2015 to March 2016 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, as previously resolved, Members of the Committee, and their substitutes, 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;**
- 3. That, as previously resolved, full advantage be taken of the use of conditions in planning permissions to make developments acceptable;**
- 4. That, as previously resolved, Members of the Committee, and their substitutes, who are disposed 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;**
- 5. That, as previously resolved, 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;**
- 6. That, as previously resolved, the mover and seconder of a resolution of refusal contrary to officer recommendation be identified by the Chair and recorded in the Minutes 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 Head of Business Improvement, Central Services and Partnerships or their representatives deem that appropriate; and**
- 7. That, as previously resolved 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.**