

## **REPORT TO THE PLANNING COMMITTEE 15<sup>TH</sup> AUGUST 2017**

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

**1<sup>st</sup> APRIL 2016 – 31<sup>st</sup> MARCH 2017**

#### **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 is considered by the Government to be one measure of the quality of the decisions of a local planning authority.

#### **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 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.
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 2016 to March 2017, 24 appeals against decisions by the Borough Council as the LPA were determined. A list of the appeal decisions is attached as Appendix 1. 20 were decided in the previous year 2015/16.
6. The Government has a system by which it designates underperforming authorities. The measure used for assessing the quality of decisions is the percentage of decisions on applications that have been overturned at appeal, once nine months have elapsed following the end of the assessment period. The threshold for designation for both "major" and "non-major" development, above which a local planning authority is eligible for designation as an underperforming authority, is 10 per cent of an authority's total number of decisions on applications made during the assessment period being overturned at appeal. The latest information available at a national level relates to decisions made by the Borough Council in the 24 months ending in December 2014 which was reported to Members in the Annual Appeals Report for 1 April 2015 to 31<sup>st</sup> March 2016, that came before the Planning Committee at its meeting on the 21<sup>st</sup> June 2016.

7. No more up-to-date information is currently available. Local authorities' performance on the quality of their decisions will not be assessed in 2017 but DCLG currently intends to release new data on 10<sup>th</sup> August 2017, which it is hoped to advise the Committee of. The next round of designation decisions will be made in the first Quarter of 2018, will be based upon the 10% threshold (with respect to the appeal measure), and will take into account those applications which were decided by LPAs in the two year assessment period that ended in March 2017. Decisions by the LPA being made now will not therefore be taken into account until the designations are decided in 2019 and 2020.
8. Turning now to the appeal decisions received this year, in 2016/17, of the 24 appeals that were determined, 67% were dismissed and 33% were allowed. If an appeal is allowed it is in effect "lost" by the Council, although an appeal dismissal can sometimes be on a "technicality". 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. The latest national figure for appeals allowed in January to March 2017 is 33%.
9. The Council performed better last year (2015/16) when only 25% of appeals were allowed, but there has been a sustained improvement from the 3 years prior to that with 53% of appeals allowed in 2014/15, 35% of appeals allowed in 2013/14 and 69% allowed in 2012/13. 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.
10. 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 2014 to March 2017, a total of 63 appeal decisions have been received. Of those 63 decisions 37% were allowed – a figure which is above the national one of 33% referred to above.
11. Table 1 below, looks at the different development types of the appeals decided in 2016/17. 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 1**

<b>Development Types</b>	<b>Number Allowed</b>	<b>% Allowed</b>	<b>Number Dismissed</b>	<b>% Dismissed</b>
"Major" Appeals	2	67%	1	33%
"Minor" Appeals	5	29%	12	71%
"Other" Appeals	1	33%	3	67%
<b>Total appeals</b>	<b>8</b>	<b>33%</b>	<b>16</b>	<b>67%</b>

12. 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 (2015/16) 65% of the appeals determined related to Minor dwellings proposals and this year 67% of the appeals determined related to Minor dwellings proposals. This is not surprising given the uncertainty created by the 5 year housing land supply position and the fact that the development plan cannot accordingly be relied upon at present to provide clear direction.

13. Whilst it can be difficult to learn any particular lessons given the varied nature of appeals, there have been a number of appeal decisions during the last 12 months that have considered the sustainability or otherwise of sites in the Rural Areas of the Borough for residential development. It is considered appropriate therefore to reflect upon the picture that has begun to emerge from appeal decisions where the location of sites weighs significantly for or against the proposed development. Table 2 below sets out those appeal decisions and a plan will be displayed at the meeting showing the locations involved.

**Table 2**

<b>Application Ref. no.</b>	<b>Proposed development &amp; Site location</b>	<b>Appeal decision</b>	<b>Did location weigh in favour or against the proposal?</b>
15/00821/OUT	9 dwellings at Rowney Farm, Loggerheads	Dismissed	Against
15/00540/OUT	Single dwelling on land rear of the Steps, Doctor's Bank, Ashley	Allowed	In favour (within the Ashley village envelope)
15/00934/OUT	Two dwellings at Charnsford House, Charnsford Lane, Ashley	Dismissed	Against
16/00140/FUL	Single dwelling on land off Eldertree Lane, Ashley	Dismissed.	Against
16/00129/FUL	Dwelling at The Lodge, Station Road, Onneley	Dismissed	Against
16/00312/FUL	Dwelling on land adjacent 133, Smithy Lane, Knighton	Allowed	In favour (logical infill within built form of Knighton)
16/00343/OUT	Dwellings at Highdown, Eldertree Lane, Ashley	Dismissed	Against
16/00460/OUT	Two dwellings at former warehouse and land opposite Maerfield Gate Farm, Stone Road, Blackbrook	Dismissed	Against
16/00644/FUL	Dwelling on land adj. 186, Lovers Lane, Hook Gate	Dismissed	Against
15/00015/OUT	Up to 128 dwellings at Tadgedale Quarry, Mucklestone Road, Loggerheads	Allowed	In favour (accessible to range of services)

14. In dismissing 7 out of the 10 cases listed above and supporting the LPAs judgement as to the sustainability of the sites, it was considered that their isolated location where future occupants of the dwellings would be likely to be reliant on the private car in order to access everyday goods and services, weighed significantly against the proposals. It was concluded that the adverse impacts significantly and demonstrably outweighed the benefits, including the contribution made to housing supply. Members should note that the LPA's judgement on these matters has in the main been supported when tested at appeal.
15. In relation to the appeals at Doctor's Bank, Ashley and Smithy Lane, Knighton, weight was given to the location of the sites within the existing built form and within the Village Envelope in the case of Ashley. In these cases, although the moderately negative impact of the likely use of the private motor car was acknowledged, it was considered that when assessing the economic, social and environmental dimensions as set out in the National Planning Policy Framework, the proposals represented sustainable development. In the case of Tadgedale Quarry, the Inspector considered that whilst there would be heavy reliance by future occupants on car use for daily commuting trips, the site would be

sufficiently accessible to a range of services and that overall, the adverse effects of granting permission would not significantly and demonstrably outweigh the benefits.

16. Table 3 below, indicates the percentage of appeals allowed and dismissed according to whether the application was determined by your officers under delegated powers or by the Planning Committee.

**Table 3**

Decision Type	Number allowed	% Allowed	Number dismissed	% Dismissed
Delegated	5	25%	15	75%
Committee	3	75%	1	25%

17. During the period April 2016 to March 2017 a greater proportion of applications determined by Committee have been allowed on appeal (75%) than those determined by officers under delegated powers (25%). However it is recognised that given the very limited numbers of applications determined by Committee which have then gone to appeal, it is not possible to draw any firm conclusions.

18. With respect to Committee decisions, Table 4 below provides information on the officer recommendation in these cases.

**Table 4**

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	2	100	0	0

18. These four decisions were;

- Red Gates, Haddon Lane, Chapel Chorlton – recommended for refusal, refused and appeal allowed
- Hamptons Metal Merchants and land adjoining, Keele Rd, Newcastle – recommended for refusal, refused and appeal allowed
- Site of Jubilee Baths, Nelson Place, Newcastle – recommended for approval, refused and appeal dismissed but only on the grounds that no S106 Agreement was in place to secure measures to control on-street parking, the appellant having failed to submit their S106 agreement to the Planning Inspectorate in time (an example of an appeal being dismissed on a “technicality” rather than on the substantive grounds referred to by the Planning Authority).
- Tagedale Quarry, Mucklestone Road, Loggerheads – recommended for approval, refused and appeal allowed

As above, the numbers are so few that it would be inappropriate to draw any wider conclusions, other than to note the high proportion of appeals against such decisions which were allowed, regardless of the recommendation

19. Given that the numbers are so low, the cumulative figures for the last 3 years have been assessed. Table 5 below shows the figures for the 3 year period of April 2014 to March 2017.

**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	2	33.3	4	66.6
Committee decisions in line with Officer recommendation	7	70	3	30

20. The numbers involved are relatively low even for a 3 year period, but the above Table shows that for decisions by the Committee made in line with Officer recommendation, the Council was not particularly successful at appeal, whilst where the decisions were contrary to recommendation a higher proportion of the appeal were dismissed. .
21. However 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. In the last 12 month period, 2 out of the 4 appeals against decisions of the Planning Committee involved the holding of a public local inquiry. The employment of appropriate legal representation and witnesses to defend the Council's position involved both considerable cost and also substantive time by the officers involved in such inquiries. Both of those appeals were allowed.

#### **Awards of Costs**

22. 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 the one appeal decided between April 2016 and March 2017, where a costs claims was made against the Borough Council, whilst Table 7 shows where a costs claim was made by the Borough Council.

**Table 6**

<b>App No.</b>	<b>Address</b>	<b>Appeal Decision</b>	<b>Costs application against the LPA</b>
15/00015/OUT	Tadgedale Quarry, Mucklestone Road, Loggerheads	Appeal Allowed	Refused

**Table 7**

<b>App No.</b>	<b>Address</b>	<b>Appeal Decision</b>	<b>Costs application against the appellant</b>
16/00629/FUL	Old Telephone Exchange, Blore Road, Hales	Appeal Dismissed	Refused

#### **Conclusions**

23. The number of appeals determined in the period April 2016 to March 2017 is relatively low. The key conclusions of this report are:-

- That it is the Council's performance now that will have a bearing on whether we are designated by the government as an underperforming authority in the future
- The Council's decisions are generally being supported by the Planning inspectorate, but we have lost some major appeals
- Although our judgements about what is or what is not a sustainable location for residential development are being challenged increasingly they are generally being supported
- Decisions made by the Committee are much more likely to be overturned on appeal than those decided by officers
- That said judged by appeal performance the Committee when they have gone against officer recommendation have not always been found to be wrong to have done so – each case needs to be considered individually
- In no cases in 2016/17 were costs awarded against the Council and the Council found to have behaved unreasonably

It remains your Officer's view that there are a number of steps which should 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 the above report be noted
2. That internal management procedures within the Service including the assessment of case officers' recommendations by more senior officers continue to be applied;
3. 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;
4. That, as previously resolved, full advantage be taken of the use of conditions in planning permissions to make developments acceptable;
5. 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;
6. 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;
7. 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
8. 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 solicitor dealing with the Inquiry takes charge of the matter.