

REPORT TO THE PLANNING COMMITTEE 14TH AUGUST 2018

ANNUAL REPORT ON PLANNING AND RELATED APPEALS

1ST APRIL 2017 – 31ST MARCH 2018

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 the 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 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 1st April 2017 to 31st March 2018, 12 appeals against decisions by the Borough Council as the LPA were determined. A list of the appeal decisions is attached as Appendix 1. 24 were decided in the previous year 2016/17.
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.
7. Technical concerns relating to some aspects of the appeals data used led to the suspension in 2015 of the publication of quarterly tables showing Local Authorities' performance on the quality of their decisions. Publication of the tables resumed in August

2017 when they were released as Experimental Statistics to enable local authorities to validate the information held. The latest information available at a national level relates to decisions made by the Borough Council in the 24 months ending in March 2017. In terms of decisions on Major applications some 3.3% of all of its Major decisions made between these dates were subsequently overturned on appeal (any authority having more than 10% overturned being at risk of designation). In terms of decisions on non-majors some 1.0% of all of its Non-Minor decisions were subsequently overturned at appeal (again any authority having more than 10% overturned being at risk of designation).

8. In terms of national ranking out of the 335 Local Planning Authorities, Newcastle is in 230th position in terms of the quality of its Major decisions and 189th position in terms of the quality of its non-major decisions.
9. Turning now to the appeal decisions received this year, in 2017/18, of the 12 appeals that were determined, 58% were dismissed and 42% 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.
10. The Council performed better in the previous two years with 33% of appeals allowed in 2016/17 and only 25% allowed in 2015/16 but given the relatively low number of appeal decisions received each year, and in particular in the last 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 2015 to March 2018, a total of 56 appeal decisions have been received. Of those 56 decisions 32% were allowed.
12. Table 1 below, looks at the different development types of the appeals decided in 2017/18. 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

Development Types	Number Allowed	% Allowed	Number Dismissed	% Dismissed
"Major" Appeals	1	100%	0	0%
"Minor" Appeals	3	37%	5	63%
"Other" Appeals	1	33%	2	67%
Total appeals	5	42%	7	58%

13. 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 (2016/17) 67% of the appeals determined related to Minor dwellings proposals and this year the figure is again 67%. This is not surprising given the uncertainty created by the 5 year housing land supply position and the fact that the development plan has not been able to be relied upon to provide clear direction.
14. Given the particularly low number of appeals during the last 12 months and given the varied nature of those appeals, it is difficult to learn any particular lessons. During

2016/17 there were a number of appeal decisions that considered the sustainability or otherwise of sites in the Rural Areas of the Borough for residential development. The Annual Appeals Report for that year reflected on the picture that had begun to emerge from appeal decisions where the location of sites weighs significantly for or against the proposed development and it was reported that in the majority of cases the LPA's judgement as to the sustainability of the sites had been supported when tested at appeal.

15. During the last year there have been fewer appeal decisions that considered the sustainability or otherwise of sites in the Rural Areas, which is a reflection of the much lower number of appeals generally, but of the 3 such decisions received, all were dismissed, the Inspector agreeing with the Council's conclusion that the sites were not in a suitable location for housing. Two of those sites were in Ashley (16/01033/OUT and 17/00010/FUL, both on Pinewood Road) and one was in Rookery, Kidsgrove (16/00738/OUT). The LPA's judgement on this issue continues to be supported when tested at appeal.
16. Table 2 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. Appeal Ref. 16/00395/PLD (an appeal concerning a certificate of lawfulness) is not included in the figures as it was an appeal against the Council's failure to determine the application, for that certificate, within the statutory time period of 8 weeks.

Table 2

Decision Type	Number allowed	% Allowed	Number dismissed	% Dismissed
Delegated	0	0%	6	100%
Committee	4	80%	1	20%

17. During the period 1st April 2017 to 31st March 2018 a greater proportion of appeals relating to applications determined by Committee have been allowed on (80%) than those relating to applications determined by officers under delegated powers (0%)..
18. With respect to the 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	4	100	0	0
Committee decisions in line with Officer recommendation	0	0	1	100

18. These five decisions were;

- Smithy Cottages, Bar Hill, Madeley – recommended for approval, refused and appeal allowed,
- Offley Arms Hotel, Poolside, Madeley – recommended for approval, refused and appeal allowed
- 5 Boggs Cottages, Keele Rd, Keele – recommended for refusal, refused and appeal dismissed
- 8, Barford Rd, Newcastle – recommended for approval, refused and appeal allowed
- Former Metropolis Nightclub, The Midway, Newcastle – 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.

19. Given that the numbers are so low, the cumulative figures for the last 3 years have been assessed. Table 4 below shows the figures for the 3 year period of April 2015 to March 2018.

Table 4

Decision Type	Number allowed	% Allowed	Number dismissed	% Dismissed
Committee decisions contrary to Officer Recommendation	5	83	1	17
Committee decisions in line with Officer recommendation	4	57	3	43

20. The numbers involved are low even for a 3 year period, but the above Table shows that for decisions by the Committee made contrary to a recommendation of approval, the Council has not been particularly successful at appeal. For decisions made in line with Officer recommendation, a similar proportion of appeals have been allowed and dismissed.

Awards of Costs

21. 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 5 below indicates the applications for costs decided between April 2017 and March 2018, and where applicable the appellants costs that were paid by the Borough Council.

Table 5

App No.	Address	Appeal Decision	Costs application against the LPA	Costs subsequently paid
16/00594/FUL	Offley Arms Hotel, Poolside, Madeley	Allowed	Allowed	£2325
16/01008/FUL	3, Dales Green Road, Rookery, Kidsgrove	Dismissed	Refused	-
17/00483/FUL	8, Barford Road, Newcastle	Allowed	Partial award Allowed	£5250
17/00174/FUL	Former Metropolis Nightclub, The Midway, Newcastle	Allowed	Refused	-

22. In the two costs decisions where the Council was found to have behaved unreasonably (and a costs award against the Council was allowed either in part or in full), the Inspectors found that there was a lack of evidence and objective analysis to support the decisions of the LPA to refuse the applications contrary to the advice of officers.

Conclusions

23. The number of appeals determined in the period April 2017 to March 2018 is particularly 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 focus needs to be both on Major and Non-Major developments
- The Council's judgements about what is or what is not a sustainable location for residential development continue to be supported
- Decisions made by the Committee are much more likely to be overturned on appeal than those decided by officers
- In all cases where the Committee have gone against an officer recommendation of refusal and there has been an appeal against that refusal, the decisions have been overturned on appeal
- In two of those cases, the Council was found to have behaved unreasonably due to a lack of evidence and objective analysis to support the decisions

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 upon the LPA 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 Councils' solicitor or their representatives deem that appropriate; and**

8. 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.