

## **REPORT TO THE PLANNING COMMITTEE 16<sup>th</sup> JULY 2019**

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

**1<sup>st</sup> APRIL 2018 – 31<sup>st</sup> MARCH 2019**

#### **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. As reported elsewhere the Planning Inspectorate are experiencing significant difficulties in progressing appeals in a timely manner and this is a further factor leading to a significant period of time between the LPA's original decision and the appeal decision.
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 1<sup>st</sup> April 2018 to 31<sup>st</sup> March 2019, 18 appeals against decisions by the Borough Council as the LPA were determined. A list of the appeal decisions is attached as Appendix 1. 12 were decided in the previous year 2017/18. None of the appeal decisions received during 2018/19 were as a result of the service of an Enforcement Notice.
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. Publication of quarterly tables resumed in August 2017, when they were released as Experimental Statistics to enable local authorities to validate the information held. This followed the resolution of technical concerns relating to some aspects of the appeals data used that led to the tables being suspended in 2015. The latest versions of the tables, published on 28 February 2019 – and covering local planning authority decisions between January 2016 and December 2017 – continue to be Experimental Statistics, to enable local authorities to continue to validate the information held.
8. The latest information available at a national level relates to decisions made by the Borough Council in the 24 months ending in December 2017. In terms of decisions on Major applications some 3.0% 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 0.5% of all of its Non-Major decisions were subsequently overturned at appeal (again any authority having more than 10% overturned being at risk of designation). Non-Major decisions are those that relate to applications for minor developments, changes of use where the site area is less than one hectare and householder developments.
9. In terms of national ranking out of the 339 District Planning Authorities, Newcastle is in 227<sup>th</sup> position in terms of the quality of its Major decisions and 62<sup>nd</sup> position in terms of the quality of its non-major decisions.
10. Turning now to the appeal decisions received this year, in 2018/19, of the 18 appeals that were determined, 61% were dismissed and 39% 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.
11. The Council’s performance has varied in recent years with 42% of appeals allowed in 2017/18 and 33% allowed in 2016/17 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.
12. Given that the number of decisions received each year is relatively low (although up from 2017/18), the cumulative figure for the last 3 years has been assessed. During the 3 year period of April 2016 to March 2019, a total of 54 appeal decisions have been received. Of those 54 decisions 37% were allowed.
13. Table 1 below, looks at the different development types of the appeals decided in 2018/19. 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	0	0%	3	100%
“Minor” Appeals	7	64%	4	36%

"Other" Appeals	0	0%	4	100%
<b>Total appeals</b>	<b>7</b>	<b>39%</b>	<b>11</b>	<b>61%</b>

14. In recent years there has been a decrease in the number of householder appeals and this remains the case this year with just 22% of the appeals determined relating to householder developments. There has also been a marked increase in the number of appeals against "Minor" dwelling proposals over the last few years. Last year (2017/18) 67% of the appeals determined related to Minor dwellings proposals and this year, the figure is 44%. Whilst this is a decrease on last year, 8 out of the 18 appeals determined related to minor dwellings proposals which remains a significant proportion.
15. Given the relatively 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 the last couple of years there have been a number of appeal decisions that have considered the sustainability or otherwise of sites in the Rural Areas of the Borough for residential development. During the last year there have been 5 more such appeal decisions. In dismissing 2 out of the 5 appeals (17/00159/OUT, Barthomley Road, Audley and 17/00605/FUL, Woodrow Way, Ashley), and supporting the LPA's judgement as to the sustainability of the sites, it was considered that the location of the sites some considerable distance away from shops, services and facilities, would place reliance on the use of a motor vehicle, contrary to the NPPF. In the case of Gravel Bank (17/00787/OUT) the Inspector considered that the site was in a sustainable location but concluded that the harm to the landscape would be sufficiently serious to carry very substantial weight against the proposal and the appeal was dismissed.
16. However in allowing appeals for residential development at a site in Butterton (18/00082/FUL) involving a conversion and at The Waggon and Horses on Nantwich Road, Audley (18/00121/OUT), the Inspector disagreed with the LPA's judgement on whether the location of the sites were suitable for housing. In relation to both schemes, although it was accepted that the developments would conflict to some extent with one of the Framework's core principles, which is to actively manage growth by making the fullest possible use of public transport, walking and cycling, and focussing significant development in locations which are or can be made sustainable, reference was made to Paragraph 84 of the Framework which recognises that rural sites may have to be found beyond existing settlements and in locations not well-served by public transport.
17. Two of the appeal decisions received in the last year relate to the issue of a financial contribution towards Public Open Space for developments of less than 10 dwellings - the Monument House, Madeley Heath case (Ref. 17/00483/FUL) and the Wade Court, Kidsgrove case (Ref. 18/00393/FUL). In both cases the Inspector considered that the contribution was a tariff style contribution and was not compliant with CIL Regulations. Both appeals were allowed without a planning obligation. At Planning Committee on 26th February 2019 Members resolved, amongst other things, to cease to apply the policy of seeking public open space contributions in such cases. An application for an award of costs was made in the Monument House case by the appellant which will be considered in more detail below.
18. 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.

**Table 2**

<b>Decision Type</b>	<b>Number allowed</b>	<b>% Allowed</b>	<b>Number dismissed</b>	<b>% Dismissed</b>
Delegated	6	43%	8	57%
Committee	1	25%	3	75%

19. During the period 1<sup>st</sup> April 2018 to 31<sup>st</sup> March 2019 a greater proportion of appeals relating to applications determined by officers under delegated powers have been allowed (43%) than those relating to applications determined by Committee (25%), however the numbers are so few that it would be inappropriate to draw any wider conclusions.

20. With respect to the Committee decisions, Table 3 below provides information on the officer recommendation in these cases.

**Table 3**

<b>Decision Type</b>	<b>Number allowed</b>	<b>% Allowed</b>	<b>Number dismissed</b>	<b>% Dismissed</b>
Committee decisions contrary to Officer Recommendation	1	50	1	50
Committee decisions in line with Officer recommendation	0	0	2	100

18. These four decisions were;

- McDonalds Restaurant, Dimsdale Parade West, Newcastle – recommended for approval, refused and appeal allowed
- Land off Woodrow Way, Ashley – recommended for refusal, refused and appeal dismissed
- Gravel Bank, Mucklestone Road, Loggerheads – recommended for refusal, refused and appeal dismissed
- Land adjacent to Rowley House, Moss lane, Madeley – recommended for approval, refused and appeal dismissed

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

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 2016 to March 2019.

**Table 4**

<b>Decision Type</b>	<b>Number allowed</b>	<b>% Allowed</b>	<b>Number dismissed</b>	<b>% Dismissed</b>
Committee decisions contrary to Officer Recommendation	6	75	2	25
Committee decisions in line with Officer recommendation	2	40	3	60

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.

### **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 unnecessary or wasted expense 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 2018 and March 2019, and where applicable the appellant's costs that were paid by the Borough Council.

**Table 5**

<b>App No.</b>	<b>Address</b>	<b>Appeal Decision</b>	<b>Costs application against the LPA</b>	<b>Costs subsequently paid</b>
17/00838/FUL	Monument House, Crewe Road, Madeley Heath	Allowed	Refused	-
17/01004/REM	Land adjacent to Rowley House, Moss lane, Madeley	Dismissed	Refused	-

21. Although in one of the above cases, the Council's case was found to be wanting and the appeal was allowed, it is to be noted that the Council's behaviour had not resulted in unnecessary or wasted expense being incurred at the appeal stage.

### **Conclusions**

23. The number of appeals determined in the period April 2018 to March 2019 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 focus needs to both on Major and Non-Major developments
- There have been conflicting conclusions about what is or what is not a sustainable location for residential development and the Council's judgements have not been supported in all cases
- In both of the cases relating to the issue of a financial contribution towards Public Open Space for developments of less than 10 dwellings, the Inspector considered that the contribution was not compliant with national policy and guidance and on that basis, the Council has ceased to apply the policy of seeking public open space contributions in such cases
- In both of the cases where a claim for costs was made against the Council, Inspectors did not consider the criteria for an award of costs were met.

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 Council's 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, and that a similar approach be taken by the Committee.**