



REPORT of CHIEF EXECUTIVE

**to
PLANNING AND LICENSING COMMITTEE
25 APRIL 2017**

UPDATE ON APPEAL DECISIONS (JULY – DECEMBER 2017)

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to inform the Committee of planning appeal performance on appeal decisions from July 2016 to December 2016.

2. RECOMMENDATION

That the contents of this report be noted particularly in respect of the changes to Governments' threshold on performance from major planning appeals being lowered from 20% to 10% and the introduction a threshold on performance for other planning application appeals.

3. SUMMARY OF KEY ISSUES

- 3.1 This report is for Members' information only but particular attention is drawn to the Council's current performance of all appeals.
- 3.2 This report provides information by the relevant committee or officer delegated decision, overall performance and performance measured against the Department of Communities and Local Government (DCLG) performance figure for major application appeals.
- 3.3 Appeal results by application decision type: Quarter 2 2016 /17 and Quarter 3 2016 / 17 are as follows:

| Application decision type | Allowed by the Planning Inspectorate (PINS) (i.e. the applicant was successful) | Dismissed by PINS (i.e. the Council was successful) |
|---|--|--|
| 1. Appeals against Officer Delegated decisions | 14 | 22 |
| 2a. Appeals against Central Area Planning Committee decisions as per report recommendation | 1 | 0 |

| Application decision type | Allowed by the Planning Inspectorate (PINS) (i.e. the applicant was successful) | Dismissed by PINS (i.e. the Council was successful) |
|---|--|--|
| 2b. Appeals against Central Area Planning Committee decisions where decision made contrary to the report recommendation i.e. member overturn | 0 | 0 |
| 3a. Appeals against South Eastern Area Planning Committee decisions as per report recommendation | 3 | 4 |
| 3b. Appeals against South Eastern Area Planning Committee decisions where decision made contrary to the report recommendation i.e. member overturn | 4 | 0 |
| 4a. Appeals against North Western Area Planning Committee decisions as per report recommendation | 0 | 7 |
| 4b. Appeals against North Western Area Planning Committee decisions where decision made contrary to the report recommendation i.e. member overturn | 4 | 1 |
| 5. Appeals against non-determination i.e. where the Council did not make a decision within the statutory time period and the applicant exercised the right of appeal | 2 | 0 |
| 6. Appeals against Full Council decisions as per report recommendation | 1 | 1 |
| 7. Appeals against Full Council decisions where decision made contrary to the report recommendation i.e. member overturn | 1 | 0 |
| Numbers Total | 30 | 35 |
| Decisions as a % | 46.15 | 53.85 |

3.4 Appeal by type of appeal

| 1. Appeal type (Planning applications) | |
|---|-----------|
| Householder appeals | 3 |
| Written Representation | 50 |
| Hearing | 10 |
| Public Inquiry | 2 |
| Total appeals | 65 |
| | |

| 2. Appeal type (Appeals against Enforcement Notices) | |
|--|----------|
| Written Representation | 1 |
| Hearing | 1 |
| Public Inquiry | 0 |
| Appeals withdrawn | 1 |
| Total enforcement appeals | 3 |

3.5 Costs awarded against the Council in July – December 2016

| Site address | Partial or full award allowed of costs | Delegated/Committee decision in accordance with recommendation / Committee decision overturn |
|--|---|---|
| Land north of Cobbins Chase | Partial award of costs | Delegated |
| Land Opposite Linden Lea, Stoney Hills | Partial award of costs | Committee decision overturn |
| Land Opposite Monksfield, Stoney Hills | Partial award of costs | Committee decision overturn |
| Land Opposite Linden Lea, Stoney Hills | Partial award of costs | Committee decision overturn |
| Barn Hayes, 29 Beacon Hill, Wickham Bishops | Partial award of costs | Committee decision overturn |
| Fields at Theedhams Farm, Southminster | Partial award of costs | Committee decision overturn |
| Land north of 29 Green Trees Avenue/Victoria Rd, Cold Norton | Partial award of costs | Committee decision in accordance with recommendation |
| Land South of Allotments, Maldon Road, Goldhanger | Partial award of costs | Delegated |
| Grove Farm, Stoney Hills, | Partial award of costs | Non-determination |
| Gardeners Farm, Maldon Road, Goldhanger | Partial award of costs | Enforcement Notice |
| Land north of Beckingham Road, Tolleshunt D'Arcy | Partial award of costs | Delegated |
| The Memorial Hall, High Street, Southminster | Full award of costs | Committee decision overturn |
| Rose Stables Land South Of Captains Wood Road, Great Totham | Full award of costs | Committee decision overturn |
| Land North West of Stitches Farm, Lower Chase, Althorne | Full award of costs | Committee decision overturn |

3.6 Costs paid out by the Council in July – December 2016

| Site address | Date of award of cost | Figure paid out | Delegated / Committee decision in accordance with recommendation/ Committee decision overturn recommendation |
|--|-----------------------|-----------------|--|
| Land at Junction of Captains Wood Road and Maypole Road Great Totham | 28/5/2015 | £600 | Administrative error |
| Site East of Red Lyons Lodge Burnham Road, Latchingdon | 27/05/2016 | £600 | Committee decision in accordance with recommendation |

- 3.7 There are 39 appeals decisions outstanding for the Council where a decision is awaited by the Planning Inspectorate and the number of appeals remains an all-time high, having doubled since 2013. We are still experiencing, a number of appeals being upgraded from a written representation to informal hearings and from informal hearings to public inquiries, mainly due to the Planning Inspectors examining the Council's five year land supply position.
- 3.8 The Council's performance for the success rate (appeals dismissed i.e. the Council was successful in defending the appeal) is now 53%. This has reduced from 60% for the previous six month period.
- 3.9 Members will also be aware that since 2012 Councils that do not reach specific performance targets on major applications and major appeals may be considered as a 'designated authority' by the Secretary of State. In terms of major planning appeals this is measured over a two year period and the target threshold was 20%. However, in the Spending Review and Autumn Statement 2015 Government announced the strengthening of the performance regime for major appeals, by lowering the threshold for the quality of decisions to 10% of all major decisions overturned on appeal.
- 3.10 The new criteria for designating local planning authorities for poor performance in determining planning applications came into force on the 19 January 2017.
- 3.11 The Council's performance against the government target is 6.56%. However, there are five major appeals still in progress so worst case scenario performance would be 10.66% if all these were allowed by the Planning Inspectorate.
- 3.12 There are currently 37 outstanding appeals where decisions are yet to be made by the Planning Inspectorate. These are as follows:

| Appeal Type | Number |
|--------------------------------|-------------------------------|
| Public Inquiry | 3 (2 for Enforcement) |
| Hearing | 3 |
| Written Representation | 28 (6 for Enforcement) |
| Householder Appeal Process | 2 |
| Tree Preservation Order Appeal | 1 |
| TOTAL | 37 (8 for Enforcement) |

- 3.13 In 2013 the Council received 75 appeals and this rose slightly in 2014 to 80 appeals. Whilst in 2015 the number of appeals received increased dramatically to 133 appeals. For the first six month of 2016 the Council has received 69 appeals. The volume of appeals, alongside the high number of hearing and public inquiries, is putting additional strain on the limited resources within the Planning Service
- 3.14 It should also be noted that the Council is experiencing a high number of appeals against enforcement notices. A number of the appeals are being dealt with through the public inquiry process which is putting an additional strain on existing resources.

4. CONCLUSION

- 4.1 Whilst performance in appeals between July 2016 and December 2016 fell, it is still significantly superior than the historical performance of the Council although there are still a number of outstanding appeals.
- 4.2 The change in the DCLG threshold for major appeal performance from 20% to 10% of appeals allowed has significant implications for the Council.
- 4.3 Resourcing appeals will continue to be an issue if the level of the appeals received remain high and/or and nature of appeal type changes, including an expected increase in enforcement appeals and public inquiries.

5. IMPACT ON CORPORATE GOALS

- 5.1 Having an effective and planning service contributes to two Corporate Goals i.e. 'Protecting and shaping the district' and, 'Delivering good quality, cost effective and valued services'.

6. IMPLICATIONS

- (i) **Impacts on Customers** – The Councils' resources are being used effectively within the democratic process.
- (ii) **Impact on Equalities** – None.
- (iii) **Impact on Risk** – In the context of the increasing tendency to challenge Council decisions, it is necessary to maintain flexibility in how the authority responds to planning appeals. The Council is committed to embedding sound operational, financial and legislative internal controls and to ensuring that good corporate governance arrangements are in place to assist the Council with meeting its aims and objectives. In the light of the change in government's threshold on performance for major planning appeals from 20% allowed to 10% this presents an increased risk to the Council and will be reflected as part corporate risk management particularly as the likelihood of exceeding the 10% is high.
- (iv) **Impact on Resources (financial)** – Decisions with regard to potential awards of costs can incur the Council in extra expenditure and need to be considered

carefully. This has been covered in previous reports to Members. The resourcing levels required to manage appeals requires further review.

- (v) **Impact on Resources (human)** – The number of appeals have doubled in the past two years and the resourcing appeals at this level will need reviewing. Temporary arrangements have been made to deal with the increase in appeals but very recently the number of hearings and public inquiries has increased which has required additional external support being provided. Public Inquiries also require the assistance of barristers which add to the cost of defending appeals. This matter will need monitoring and reviewing. Much will also depend on a final decision from the DCLG on the Councils Local Development Plan.

- (vi) **Impact on the Environment** – None.

Background Papers: None.

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