

Scrutiny Meeting	
Meeting Date	23 March 2022
Report Title	Planning Appeal Performance and Costs
Cabinet Member	Cllr Mike Baldock, Cabinet Member for Planning
SMT Lead	James Freeman
Head of Service	James Freeman
Lead Officer	James Freeman
Key Decision	No
Classification	Open
Recommendations	To note the performance statistics and costs implications in relation to planning appeals.

1 Purpose of Report and Executive Summary

- 1.1 This report presents performance statistics relating to planning appeal decisions and the costs incurred.
- 2.1 The Planning Service does not undertake planning officer time records for individual jobs including time devoted to handling planning appeals. In these circumstances, it has not been possible to identify the full costs of handling planning appeals. Additionally, whilst it may be possible to identify the external costs of employing legal counsel and other specialist consultants to support the Council's position regarding a planning appeal, it has not been possible to identify such costs within the time frame and resources available.
- 2.2 The report does however, include a list of planning appeals where the Council has been the subject of costs against the Council where it has been deemed by a Planning Inspector that the Council has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

2 Background

- 2.3 Following discussions at the last Scrutiny Committee, a request was made to present the Council's performance statistics with regard to planning appeals, including planning enforcement appeals.

3 Proposals

- 3.1 The Scrutiny Committee are asked to note the performance statistics and costs relating to planning appeals as attached in Appendices.
- 3.2 It should be noted that the Government includes a performance indicator of 10% of major applications allowed at appeal as a proportion of the total number of major applications received above which the Local Planning Authority over a rolling two year period could be considered for special measures where planning powers could potentially be taken away. The Committee will be pleased to hear we are currently operating at a level of circa 2%, significantly below the threshold.

4 Appendices

4.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Appeal and Overturn decisions 2014 to date
- Appendix II: Total appeal performance separating 'Overturns'
- Appendix III: Appeal performance: 'overturns' / in line with officer recommendations / delegated by year
- Appendix IV: Appeal performance benchmarking by Kent / Family LPA
- Appendix V: Award of Costs at Appeal

Note: Use Roman numerals for appendices.

5 Background Papers

None

APPENDIX I

Appeal and Overturn decisions 2014 to date.xls

	Planning											Enforcement				
	Total planning appeals	Dismissed / Withdrawn	Dismissed			Split	Allowed	Allowed			% of appeals allowed	Costs Awarded	Total appeals	Dismissed/ Withdrawn	Split	Allowed
			Delegated Refused / Not detrmnd	Commte Refused	Commte Overturn			Delegated Refused / Not detrmnd	Commte Refused	Commte Overturn						
2011	31	18				0	13				41.9%		7	4	0	3
2012	26	20				0	6				23.1%		13	10	0	3
2013	23	13				0	10				43.5%		0	0	0	0
2014	29	15				0	14				48.3%		4	3	0	1
2014/15	32	20	13/1	5	1	0	12	10	0	2	37.5%	3	8	6/1	0	1
2015/16	51	24	19/2	3	0	1	26	16/2	0	8	51.0%	4	8	6	0	2
2016/17	58	35	26/4	3	2	1	22	6/1	0	15	37.9%	2	11	5	1	5
2017/18	60	39	32/1	5	1	2	19	10	5	4	31.7%	0	3	2	0	1
2018/19	44	29	26/0	2	1	2	13	8	2	3	29.5%	0	9	8	0	1
2019/20	57	35	29/2	4	0	0	22	16	0	6	38.6%	1	6	6	0	0
2020/21	48	34	28/3	2	0	0	14	11/2	1	0	29.2%	3	1	1	0	0
2021/22 yr	37	21	17	4		1	13	13	0	0	35.1%	1	2	2	0	0
Total	387	237	190/13	28	5	7	141	90/5	8	38	36.4%	14	48	35/1	1	10
		61.2%	85.7%	11.8%	2.1%	1.8%	36.4%	67.4%	5.7%	27.0%		9.9%		75.0%	2.1%	20.8%

Total Committee Decisions	Total Delegated Decisions	Appeals allowed	Effective Decisions
122	738	12	98.6%
126	1225	26	98.1%
132	1273	22	98.4%
92	1430	19	98.8%
85	1315	13	99.1%
88	1280	22	98.4%
79	1168	14	98.9%
68	1198	13	99.0%
792	9627	141	98.6%

Appendix II - Total Appeal performance with 'overturns' seperated

Planning & Enforcement Total				
	Total appeals	Dismissed/ Withdrawn	Split	Allowed
2011	38	22	0	16
2012	39	30	0	9
2013	23	13	0	10
2014	33	18	0	15
2014/15	40	27	0	13
2015/16	59	30	1	28
2016/17	69	40	1	28
2017/18	63	41	2	20
2018/19	53	37	2	14
2019/20	63	41	0	22
2020/21	49	35	0	14
2021/22 ytd	39	23	1	13
Total	435	274	7	152
		63%	2%	35%

Appeals against overturns					
	Total Overturns	Number Appealed	Number Allowed	% Appealing	% Allowed
2014/15	12	12	11	100%	92%
2015/16	27	10	10	37%	100%
2016/17	14	9	8	64%	89%
2017/18	7	4	2	57%	50%
2018/19	7	2	1	29%	50%
2019/20	12	6	6	50%	100%
2020/21	1	1		100%	
2021/22	3				
Total	83	44	38	53%	86%

Pending
Have until 09/06/22 to appeal

Appendix III - Appeal performance - overturns / in line with officer recommendation / delegated by year

	Dismissed	Allowed	Total Appeals	Total overturns	Total delegated refusals		
2014/15							
appeals against committee over-turn	1	2	3	12		Planning Committee overturns resulting in appeal	25.0% 3/12
instruct officer recommended refusal	3	0	3			Planning Committee overturns allowed on appeal	66.7% 2/3
appeals against delegated refusals	13	10	23		87	Planning Committee refusals in line with officers recommendations lost on appeal	0.0% 0/3
appeals against non-determination	1	0	1			Delegated refusals lost on appeal	11.5% 10/87
	20	12	32	12	87		
2015/16							
appeals against committee over-turn	0	8	8	28		Planning Committee overturns resulting in appeal	28.6%
instruct officer recommended refusal	3	0	3			Planning Committee overturns allowed on appeal	100.0%
appeals against delegated refusals	19	16	35		153	Planning Committee refusals in line with officers recommendations lost on appeal	0.0%
appeals against non-determination	2	2	4			Delegated refusals lost on appeal	10.5%
	24	26	50	28	153		
2016/17							
appeals against committee over-turn	2	13	17	17		Planning Committee overturns resulting in appeal	100.0%
instruct officer recommended refusal	3	0	3			Planning Committee overturns allowed on appeal	88.2%
appeals against delegated refusals	26	6	32		144	Planning Committee refusals in line with officers recommendations lost on appeal	0.0%
appeals against non-determination	4	1	5			Delegated refusals lost on appeal	4.2%
	35	22	57	17	144		
04/2014 - 03/2017							
appeals against committee over-turn	3	23	28	37		Planning Committee overturns resulting in appeal	49.1%
instruct officer recommended refusal	11	0	11			Planning Committee overturns allowed on appeal	89.3%
appeals against delegated refusals	38	32	90		384	Planning Committee refusals in line with officers recommendations lost on appeal	0.0%
appeals against non-determination	7	3	10			Delegated refusals lost on appeal	8.3%
	79	60	139	37	384		
2017/18							
appeals against committee over-turn	1	4	5	7		Planning Committee overturns resulting in appeal	71.4%
instruct officer recommended refusal	6	3	11			Planning Committee overturns allowed on appeal	80.0%
appeals against delegated refusals	32	10	42		188	Planning Committee refusals in line with officers recommendations lost on appeal	43.5%
appeals against non-determination	1	0	1			Delegated refusals lost on appeal	3.3%
	40	19	59	7	188		
2018/19							
appeals against committee over-turn	1	3	4	7		Planning Committee overturns resulting in appeal	57.1%
instruct officer recommended refusal	2	3	5			Planning Committee overturns allowed on appeal	75.0%
appeals against delegated refusals	28	10	38		168	Planning Committee refusals in line with officers recommendations lost on appeal	60.0%
appeals against non-determination	0	0	0			Delegated refusals lost on appeal	6.0%
	31	16	47	7	168		
2019/20							
appeals against committee over-turn	0	6	6	12		Planning Committee overturns resulting in appeal	50.0%
instruct officer recommended refusal	3	0	3			Planning Committee overturns allowed on appeal	100.0%
appeals against delegated refusals	30	13	43		196	Planning Committee refusals in line with officers recommendations lost on appeal	0.0%
appeals against non-determination	2	0	2			Delegated refusals lost on appeal	7.7%
	37	21	58	12	196	Also one allowed appeal against conditions (Delegated approval)	
2020/21							
appeals against committee over-turn	1		2	2		Planning Committee overturns resulting in appeal	100.0%
instruct officer recommended refusal	4	0	4			Planning Committee overturns allowed on appeal	0.0%
appeals against delegated refusals	28	11	39		173	Planning Committee refusals in line with officers recommendations lost on appeal	0.0%
appeals against non-determination	1	1	2			Delegated refusals lost on appeal	6.4%
	34	12	47	2	173	Two appeals withdrawn (NonDet), 1 outcome pending	
2021/22							
appeals against committee over-turn						Planning Committee overturns resulting in appeal	#DIV/0!
instruct officer recommended refusal						Planning Committee overturns allowed on appeal	#DIV/0!
appeals against delegated refusals						Planning Committee refusals in line with officers recommendations lost on appeal	#DIV/0!
appeals against non-determination						Delegated refusals lost on appeal	#DIV/0!
	0	0	0	0	0		

APPLICATION REF	APPEAL REF	SITE ADDRESS	DESCRIPTION OF PROPOSAL	AMOUNT AWARDED	NOTES
SW/12/1483	APP/V2255/A/13/2206002	Land Adjoining Community Hall, Shellness Road/Wing Road, Leysdown, Sheerness, Kent, ME12 4RH	Residential development of 4 no. x 2 bedroom and 1 no. x 3 bedroom single storey dwellings together with all associated driveway parking.	£7,880.10	No technical evidence presented to support refusal reason on noise disturbance - against officer recommendation
SW/12/1523	APP/V2255/A/13/2202894	Building 1 Standard Quay Abbey Road Faversham	Single storey rear extension & internal alterations to grade II listed warehouse building with change of use to restaurant & art gallery/function room	£14,359.54	Whilst the appeal was dismissed on conservation heritage grounds costs were awarded against the Council for not support a further reason for refusal regarding impact on the viability and vibrancy of Faversham Town Centre
SW/13/0978	APP/V2255/A/13/2210856	Herefield House, Hogbens Hill, Selling	Erection of retaining wall, construction of steps and footpath (retrospective), erection of estate fence within residential curtilage and construction of pond within agricultural curtilage.	unknown	
SW/13/0980	APP/V2255/A/13/2210860	Herefield House, Hogbens Hill, Selling	Terracing of part of agricultural field.	unknown	Limited costs incurred by the Council through not investigating existing use before serving an enforcement notice
ENF/13/0033	APP/V2255/C/13/2205032	Herefield House, Hogbens Hill, Selling	Without planning permission and on the approximate areas highlighted in blue on the plan, the material change of use of the Land from agricultural land to land use as domestic vegetable plots associated with the residential use of Herefield House, with associated and facilitating terracing, including the excavation of parts of the Land to create a pond, the extent of which, in the opinion of the Council amounts to operational development requiring planning permission	unknown	The Council had acted unreasonably by refusing permission and consent based upon an assumption that a garage may be sought in the future elsewhere on the site which would harm the character and appearance of the locality and the setting of the listed building.
14/501292/FULL	APP/V2255/W/13/30002827	2 Gosmere Farm Barns Newhouse Lane Sheldonwich	Convert part of the existing garage into a shower/utility room, as part of this proposal we propose to shorten an existing door to fit in with the new floor level.	£675.00	
14/505985/FULL	APP/V2255/W/13/3133538	Howt Green Farm, Sheppey Way, Bobbing	Proposed change of use of land for the creation of hardstanding to site 16 mobile homes for 52 weeks of the year for occupation by seasonal agricultural workers along with associated engineering works.	£16,000.00	Council decided not to contest the appeal and incurred preliminary costs from the appellant.
15/500819/FULL	APP/V2255/W/13/3139546	Land Adj Driftwood Imperial Drive Warden	2 No. semi-detached 2-bedroom houses together with stepped terrace to provide 3 No. 3-bedroom houses together with associated parking spaces	£3,283.38	
16/504494/FULL	APP/V2255/W/16/3164817	Owens Court Farm Selling	Erection of a cold store	£2,182.80	insufficient evidence submitted to support refusal reason on the lack of need for the facility and its impact upon residents in AONB - despite the views expressed by the Council's specialist advisor
18/503135/OUT	APP/V2255/W/19/3238171	Land west of Barton Hill Drive Minster	Outline application for the development of up to 700 dwellings and all necessary supporting infrastructure including land for provision of a convenience store / community facility, internal access roads, footpaths, cycleways and parking, open space, play areas and landscaping, drainage, utilities and service infrastructure works. (All detailed Matters Reserved for subsequent approval except for access to Lower Road and to Barton Hill Drive).	£135,000.00	costs incurred on failure to substantiate a highways reason for refusal and the expenses the appellant was required to enter into to providing viability evidence regarding affordable housing.
19/500029/FULL	APP/V2255/W/20/3247555	132 High St Newington	Erection of a 4 bedroom detached dwelling and associated carport/garage.	£240.00	the Council inadvertently sent out incorrect wording of refusal reason in the decision notice leading to the appellant wasting expenses
19/503810/OUT	W/4001086	Land On The South East Side Of Bartlett's Close Halfway	Outline application for the erection of 17 dwellings with new access road, associated parking and landscaping. (Access being sought.	£900.00	Costs incurred for the Council presenting a case that there was a need for the access road to be adopted despite advice suggesting there was no such need.
19/504417/FULL	APP/V2255/W/20/3253053	Bleck Cottages Mutton Lane Ospringe	Erection of 2no. dwellings as replacement of former dwellings, with associated car port	£3,924.00	Arguments presented at the appeal were not pertinent to the reasons for refusal.
20/501607/LAWPRO	APP/V2255/X/20/3254350	Noreview Warden Road Eastchurch	Lawful Development Certificate for the proposed siting of a third caravan for the use ancillary to the main dwellinghouse.	£6,000.00	whilst the appeal was withdrawn, inspector accepted the Council had acted unreasonably in not granting the certificate and the appellant incurred wasted costs in having to appeal
17/505711/HYBRID	APP/V22555/W/19/3233606	Land at Wisers Lane		£60,000*	The Secretary of State formally determined that the award of costs be limited to the unnecessary or wasted expense incurred in respect of the Council's failure to substantiate its reasons for refusal relating to ecology, the effect of the link road on character and appearance, and harm to heritage assets.