

<b>PLANNING AND ENVIRONMENTAL PROTECTION COMMITTEE</b>	<b>AGENDA ITEM 5</b>
<b>27 SEPTEMBER 2016</b>	<b>PUBLIC REPORT</b>

Cabinet Members responsible:	Councillor Hiller, Cabinet Member for Growth, Planning, Housing and Economic Development	
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**PLANNING APPEAL PERFORMANCE JANUARY – SEPTEMBER 2016**

RECOMMENDATIONS	
<b>FROM :</b> Director of Growth and Regeneration	<b>Deadline date :</b> September 2016
That Committee notes past performance and outcomes.	

**1. PURPOSE AND REASON FOR REPORT**

- 1.1 It is useful for Committee to look at the Planning Service’s appeals performance and identify if there are any lessons to be learnt from the decisions made. This will help inform future decisions and potentially reduce costs. This report is presented under the terms of the Council’s constitution Part 3, delegations section 2 para 2.6.1.4. This represents the first report for some years, which hereafter shall be produced quarterly.
- 1.2 This report covers the period from 1 January 2016 to 31 August 2016 and a list of all appeal decisions received can be found at Appendix 1.
- 1.3 For the purposes of ‘lesson learning’, each report will cover a selected number of cases in detail whereby the Local Planning Authority (LPA) has lost its case. Attention will be paid to the difference in assessment of the selected schemes between the LPA and Planning Inspector.

**2. TIMESCALE.**

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If Yes, date for relevant Cabinet Meeting	<b>N/A</b>
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**3. BACKGROUND**

3.1 Appeal Performance

- 3.1.1 In the calendar year to date, a total of 17 appeal decisions have been received. This number is considerably lower than the corresponding period in 2015, whereby 32 appeal decisions were received. All of the appeals except one, related to the refusal of planning permission or a Certificate of Lawful Development. One appeal challenged the imposition of a condition applied to a planning permission.
- 3.1.2 Of the 17 decisions received, 11 were dismissed by the Planning Inspector appointed by the Secretary of State for Communities and Local Government (65%) and 6 were allowed (35%). This represents a similar level of performance when compared to the corresponding period in 2015, whereby 20 were dismissed (63%) and 11 allowed (34%). The similarity in

data suggests that the quality of decision-making has remained consistent over the past 2 years.

- 3.1.3 The only government assessment of appeals performance relates to planning applications which fall within the 'major' threshold. Of the appeal decisions received, none fall within this category and as such, there is no implications in terms of managing performance of the Local Planning Authority.
- 3.1.4 Of the planning application decisions appealed, 14 resulted from Officer delegated decisions, and 3 from decisions made by the Planning and Environmental Protection Committee. This split is broadly in line with the proportion of overall planning application decisions which are referred for determination by Members.
- 3.1.5 With regards to the decisions made by Officers, 10 of the appeals were dismissed (71%) and 4 were allowed (29%). One of these allowed appeals is to be considered in more detail below.
- 3.1.6 Turning to the decisions made by Members, 1 of the appeals was dismissed (33%) whilst 2 were allowed (67%). Both of the allowed appeals resulted from Committee decisions contrary to Officer recommendation. One of these decisions, which was subject to an award of costs, is to be considered in more detail below.

### 3.2 Case Study 1 – 15/01289/HHFUL

- 3.2.1 In October 2015, planning permission (under delegated authority) was granted for the installation of a timber garden shed at No.3 The Nook, Helpston. As the development had already taken place, the application was retrospective. A copy of the Officer's Delegated Report is attached at Appendix 2 which details the justification for the granting of planning permission.
- 3.2.2 The appeal related to the imposition of condition C1, which required that the top-most 1 metre of the rear (northern) elevation of the shed be painted in dark green within 3 months of the date of the decision notice.
- 3.2.3 This condition was imposed because, in the opinion of the Officer, the painting of the shed would reduce its visual impact to passers-by along the Glinton Road and the character and appearance of the Glinton Conservation Area. It should be noted that the City Council's Conservation Officer did not request that the condition be imposed, and was instead content that the existing materials were appropriate so as to preserve the character of the Conservation Area.
- 3.2.4 The condition was appealed and, in March 2016, the Inspector allowed the appeal and deleted condition C1 from the planning permission. In coming to this decision (which is attached at Appendix 3), the Inspector concluded that the shed is not particularly prominent feature from the available viewpoints along adjacent roads and that it is not uncommon for sheds (and other outbuildings) to be seen within the context of rear gardens, whether located in a Conservation Area or not. It was considered that the constructed shed was a neutral feature within the Conservation Area and that there was no necessity for it to be partially painted dark green. As such, without the condition the proposal preserved the character and appearance of the Conservation Area and was in line with national and local planning policies.
- 3.2.5 This appeal decision highlights the importance of ensuring that the expert advice of professional consultees is followed, and that any conditions imposed upon a planning permission meet the six key tests set out in paragraph 206 of the National Planning Policy Framework (2012). Planning conditions should only be imposed where they are:
  - 1. necessary to make the development acceptable (i.e. without the condition the development would be refused);

2. relevant to planning (i.e. they cannot control matters that are subject to specific control elsewhere in planning legislation);
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects (i.e. they must be justifiable and proportionate) .

### 3.3 Case Study 2 – 15/01129/FUL

- 3.3.1 At the Planning and Environmental Protection Committee meeting of 13 October 2015, Members refused planning permission for the erection of a House in Multiple Occupation providing 6 bedsitting rooms with shared kitchen and dining facilities at Cranford Drive Boiler House, Hartwell Court, Westwood. The reason for refusal stated:

*The proposed development, by virtue of the intensity of the use of the site in terms of occupation, would result in an unacceptable vulnerability to and fear of crime, and level of general disturbance to the detriment of the amenities of neighbouring occupants. The proposal is therefore contrary to Policy CS16 of the Peterborough Core Strategy DPD (2011).*

- 3.3.2 It should be noted that this refusal was contrary to the recommendation from Officers and a copy of the Committee Report can be found at Appendix 4.

- 3.3.3 The decision was appealed and in June 2016, the Inspector allowed the appeal and granted planning permission for the development. In coming to this decision (which is attached at Appendix 5), the Inspector paid significant regard to the ‘fall-back position’ which included the granting of planning permission in 2011 for the construction of 2no. 3 bed semi-detached residential dwellings. It was commented that this could allow for residential occupancy with a minimum rate of six persons and as such, it would seem likely that the proposed HMO would not result in any significant increase in intensity of use.

- 3.3.4 With regards to fear of crime, it was noted that there is no firm evidence that increased crime and anti-social behaviour resulted from HMOs and that this was not an inevitable consequence of multiple occupation. Furthermore, it was noted that the Police Architectural Liaison Officer had not objected to the proposal. Accordingly, it was concluded that the proposal would not result in an increase of criminal activity or anti-social behaviour.

- 3.3.5 It should also be noted that the appeal was subject to an award of costs against the Council. In reaching this conclusion, the Inspector concluded that the expressed fear of crime was a vague and generalised assertion, unsupported by objective analysis and not supported evidentially. Accordingly, it was found that the Council had acted unreasonably.

- 3.3.6 This appeal decision highlights: the need to ensure that reasons for refusal are clearly defined, specific and unambiguous; and that where Officer recommendation is overturned, reasons for refusal are substantiated through objective analysis and supported evidentially.

## 4. **IMPLICATIONS**

- 4.1 **Legal Implications** – There are no legal implications relating to this report on performance, although the planning/appeal processes themselves must have due regard to legal considerations and requirements.

- 4.2 **Financial Implications** – This report itself does not have any financial implications

- 4.3 **Human Rights Act** – This report itself has no human rights implications but the planning/appeals processes have due regard to human rights issues.

- 4.4 **Human Resources** – This report itself has no human resources implications.

- 4.5 **ICT** – This report itself has no ICT implications.
- 4.6 **Property** – This report itself has no Property implications.
- 4.7 **Contract Services** – This report itself has no Contract Services implications.
- 4.8 **Equality & Diversity** – This report itself has no Equality and Diversity Implications, although the planning/appeals processes have due regard to such considerations.