

PLANNING AND ENVIRONMENTAL PROTECTION COMMITTEE	AGENDA ITEM 6
28 November 2017	PUBLIC REPORT

Cabinet Members responsible:	Councillor Hiller - Cabinet Member for Growth, Planning, Housing and Economic Development	
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PLANNING APPEALS REPORT ON PERFORMANCE 1st MARCH 2017 TO 31 OCTOBER 2017

R E C O M M E N D A T I O N S	
FROM : Director of Growth and Regeneration	Deadline date : November 2017
That Committee notes past performance and outcomes.	

1. PURPOSE AND REASON FOR REPORT

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 report covers the period from 1 March 2017 to 31 October 2017 and a list of all appeal decisions received can be found at Appendix 1. The previous report on appeals was presented to Committee on 14 March 2017.

For the purposes of 'lesson learning', these update reports will normally cover a selected number of cases in detail whereby the Local Planning Authority (LPA) has lost its case. This report highlights below, some of the issues identified in the cases at Appendix 1.

2. TIMESCALE.

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	n/a
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3. MAIN BODY OF REPORT

3.1 Appeal Performance

In the period of 1 March 2017 to 31 October 2017, a total of 13 appeal decisions have been received. This is a lower number than previous periods particularly taking account that this reporting period covers 8 months. All of the appeals related to the refusal of planning permission, except for one which relates to an appeal against the imposition of a condition (first appeal on the list at Appendix 1). However, note that case 16/02168/WCPP concerns a planning condition.

Of the 13 decisions received, 9 cases were dismissed and 4 cases were allowed by the Planning Inspector appointed by the Secretary of State for Communities and Local Government. This equates to 69% of cases being dismissed and 31% being allowed. None of the decisions were subject to an award of costs either for, or against, the Council. This represents a decline of performance when compared to the previous quarter of 2016/17 when 100% of appeals were dismissed. In the quarter previous to this in 2016

86% were dismissed and 14% allowed. The figures for the period being reported here compare to previous performance where it was usual for approximately two thirds of appeals to be dismissed and one third allowed. Overall, the quality of decision making appears to be stable.

Of the planning application decisions appealed during this quarter, all resulted from Officer delegated decisions except for the outline application for residential development on the edge of Barnack (ref. 15/01840/OUT). This application was recommended for refusal by officers and refused at Committee. Members will be aware of the issues of this appeal. It is not a “typical” appeal for Peterborough but is an example of speculative residential development being allowed in many local authority areas where a robust 5 year housing supply cannot be demonstrated at the time of the appeal. The Council now has a 5 year supply of housing land.

There were no costs applications by appellants or the Council on any of the appeal decisions.

3.2 Update on enforcement of retrospective development where appeal was dismissed

16/01201/FUL – Use of land for traveller site at Nine Bridges, Glinton. An enforcement notice is in place on the site. The case is currently subject to further advice including legal advice.

16/02391/ADV – Advertisements at Hodney Road, Eye. The three adverts have been removed but the posts are still in situ. A letter has been sent to the agent requesting that the posts be removed.

17/00412/FUL – Two shipping containers at electricity substation, near 129 Hodney Road – Notice has been issued. A site visit is planned to check if the containers have been removed.

17/00359/FUL – Detached single storey garage for housing taxis at 62-64 Westgate. Notice issued.

3.3 Lessons to learn

Conditions

The first appeal on the list at Appendix 1 relates to an appeal against the imposition of a condition. Planning permission was granted for a satellite taxi office on the second floor of premises at 3 Fitzwilliam Street. The ground floor (in the appellant’s ownership) is an existing takeaway. The location plan showed the property edged in red. A condition was imposed on the planning permission which required no private hire or taxi vehicles to visit *the site*. The applicant appealed against the imposition of the condition because he wanted the condition removed all together. The Inspector agreed with the reasons the Council imposed the condition which was essentially to prevent inconvenience to nearby businesses and issues of highway safety due to additional taxi/private hire vehicles turning up at this taxi office. However, the Inspector allowed the appeal because the condition imposed was found to be unnecessary and unreasonable. The condition would have prevented taxis from dropping people off at the takeaway on the ground floor whereas the condition should have only related to the development proposed i.e. the taxi office. The Inspector therefore allowed the appeal and reworded the condition to read “development” rather than “site.” This appeal is an example of the care needed when drafting conditions. In accordance with the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG), conditions should only be imposed where they are:-

1. necessary
2. relevant to planning and;
3. to the development permitted;
4. enforceable

5. precise and;
6. reasonable in all other respects.

The test of “necessity” is raised in the appeal case 16/02168/WCPP. The appellant successfully argued that a condition imposed on a planning permission for industrial development that required a footpath link to a bus stop was not *necessary*. The Inspector found that whilst the footpath might be “desirable” it was not necessary to meet planning policy requirements because there was an alternative bus stop with a footpath link to the site.

Evidence as opposed to speculative opinion

Whilst planning decisions in general are based on the opinion of the planning officer (and occasionally Members), these opinions should be based on evidence. In the majority of the appeal decisions subject of this report, Inspectors refer to evidence or lack of, as the basis for their decisions. The appeal decisions show that the LPA has done particularly well in defending issues of design and character and appearance, using policies CS16 and PP2. Even such seemingly subjective matters require an analysis of the local physical evidence of the area of concern, upon which to base the recommendation. Evidence comes all the more into question when dealing with technical based issues such as highway matters and calculating 5 year land supply - two relevant issues drawn from some of the appeal decisions in Appendix 1. Generally, the more that reasons for refusal are based in evidence (to back up the reasons) the greater the chance of success at appeal.

3.4 Annual (financial year) performance

The Government has announced that it will be looking at the quality of Local Authority decision making for major applications and non-major applications. As such, as of April 2018, the Council will be monitored on all appeals performance. The measure to be applied relates to the percentage of appeals lost (allowed against the Authority’s decision) as a percentage of the total number of decisions made and the Government has set the target at no more than 10%.

During the financial year 1 April 2016 to 31 March 2017, 1070 decisions for major, minor and other planning applications were issued. During the same period 3 appeals were allowed which equates to 0.28% of the total decisions. Therefore, this is well within the government target of 10%.

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.

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

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

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

ICT – This report itself has no ICT implications.

Property – This report itself has no Property implications.

Contract Services – This report itself has no Contract Services implications.

Equality & Diversity – This report itself has no Equality and Diversity Implications, although the planning/appeals processes have due regard to such considerations.

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