

Corporate and Governance Standards Committee Report

Ward(s) affected: All Wards

Report of Director of Service Delivery

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Planning appeals monitoring report

Executive Summary

The purpose of this report is to provide a factual overview of Planning Committee decisions and appeals data for two calendar years, 2019 and 2020 to date. The data focuses, as requested, by the chairman of this committee on Planning Committee member overturns, which overturns ended up at appeal and whether any costs were sought and awarded. The report also looks at general appeals data for each year and the number and type of appeals received each year. The report also identifies costs both for and against the Council and, where the costs have been settled it identifies the 'costs' involved. These may well be from different years as sometimes the agreement on the final costs settlement can take a long time to resolve and can often involve a costs draughtsman should the expectations of both parties be far apart. The report also highlights the high success rate the Development Management team has had at appeal in both 2019 and 2020.

Recommendation to Committee

That the Committee notes the contents of the report

Reason for Recommendation:

To enable the Committee to monitor the Councils performance on planning appeals

Is the report (or part of it) exempt from publication? No

1 Purpose of Report

- 1.1 The purpose of this note is to advise of planning appeals data and associated costs over two calendar years (2019 and 2020 to date) as requested by the Chairman, Councillor Nigel Manning who has asked for this data to be put before the Committee and periodically thereafter.

Introduction

- 1.2 The report author and Chairman of the Planning Committee and the Lead Legal Specialist were asked to attend a Group Leaders meeting on 15 July 2020 to discuss various aspects around an earlier Planning Committee meeting. Arising from that discussion, the Chairman of the Corporate Governance and Standards Committee (Cllr Manning), suggested, (and James Whiteman agreed) that the Corporate Governance and Standards Committee should receive (in Councillor Manning's words):

"a quarterly report on Planning appeals relating to officer recommended refusals and committee overturn refusals including the costs awarded against GBC and the hidden/not reported officer and external advisor costs, perhaps with say the last 12/18 months figures for comparison purposes. This would highlight what bad decisions have cost the Council, the need for additional training with specific case studies, and perhaps (in the fullness of time) a test that those wishing to sit on the Planning committee need to take before being allowed".

2 Strategic Priorities

- 2.1 All the strategies priorities have some relevance to this topic; however, the most relevant relates to value for residents in decision making as matters that subsequently end up at appeal can attract costs either for or against the Council. Further there is always a cost identified with defending a refusal of planning permission that ends up at appeal. This can be countered by the fact that we sometimes utilise the services of a 'costs draughtsman', should the costs be substantial, and agreement is unlikely to be reached. This initiative often provides better value for money and a better outcome for the Council.

3 Background

- 3.1 To provide a comparison it is considered best to look in some detail at two calendar years, 2019 and 2020.

2019

- 3.2 There were 13 Planning Committee meetings in 2019, which processed and decided on 73 planning applications of varying complexity. Of these 73 applications, 15 officer recommendations were overturned by the Planning Committee. These were mostly from approval to refusal but also vice versa. A more detailed look at the overturned applications is set out in the table below:

Application number	Site address	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/No
18/P/1595	Land East of St Johns Close	Approve	Refused	Appeal allowed	Yes	No
18/P/01982	Yaldens Cottage, Tongham	Approve	Refused	No appeal		

Application number	Site address	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/No
18/P/1642	Land at Tilthams Garage	Approve	Refused	No appeal		
18/P/2387	Boxgrove, 144 London Rd	Approve	Refused	Appeal allowed	No	
19/P/00178	Burchatts Farm	Approve	Refused	Appeal allowed	Yes	No
19/P/00179	Burchatts Farm	Approve	Refused	Appeal allowed	Yes	No
18/P/2011	Land North of Harewood Rd	Approve	Refused	Appeal dismissed	Yes	No
18/P/01950	Land East of White Lane	Approve	Refused	Appeal allowed	No	
19/P/00362	Holy Trinity Church	Refuse	Approved	No appeal		
18/P/02240	Land rear of Christmas Hill, Shalford	Approve	Refused	Appeal dismissed	No	
19/P/0566	Sherwood, East Horsley	Approve	Refused	Appeal dismissed	No	
19/P/1039	14A Tangier Road, Guildford	Approve	Refused	Appeal allowed	No	
19/P/01234	Land South of Champney	Approve	Refused	Appeal allowed	No	
19/P/1429	Whistlers Farm, Guildford	Refuse	Approved	No appeal		
19/P/1796	17 Romans Close, Guildford	Approve	Refused	Appeal lodged; no decision		

Observations on Planning Committee data for 2019

- 3.3 There is no overall theme or picture when breaking down the member overturn cases. The range of application type and reasons for refusal are broad; going from a household extension to housing mix to general housing to enclosure of public open space for a residential curtilage.
- 3.4 The number of appeals allowed (in respect of these member overturns) is high and close to 50%, and when you remove member overturns that have not gone to appeal, the percentage figure is higher still. It is noticeable from this data that no 'award of costs' was agreed in respect of these specific overturned cases where costs were sought.

General appeals performance and costs awards in respect of decisions received in 2019

These are as follows:

- Number of appeal decisions: 116
- Number of appeals dismissed: 80
- Number of appeals allowed: 27
- Number of appeals withdrawn: 5
- No further action: 2
- Mixed appeal decisions: 2
- The percentage of appeals dismissed: 72%

Observations on general appeal data for 2019

- 3.5 Officers' appeal success for 2019 was strong and significantly better than our performance in 2018 where our overall performance was at a 50% success rate. The change in our fortune in 2019 was down to targeted scrutiny of all refusals and really questioning whether some recommendations for refusal could ultimately be sustained at appeal. This was reflected in the overall appeal decisions coming through, and with a dismissal rate at 72% it is evident that the Development Management officers were striking a better balance between approvals and refusals.
- 3.6 A further consideration was the adoption of the Local Plan. Having a five-year housing supply now in place, which helped in overall decision making.
- 3.7 The main method of appeal submission received remained written representations, with a handful of Hearings and fewer still Public Inquiries. In 2019 we received 123 appeals, 119 of which were written representations, three hearings and one public inquiry.

Costs 2019

- 3.8 Turning to costs we had awards against us and for us. These are the ones recorded in 2019. It is worth noting that the actual cost claims may have been received in a different calendar year as these matters can sometimes take a significant time to resolve and agree.

Against the Council

- Plot 23 RSCH Hearing - Full award of costs against the Council; settled and agreed at £54,000
- The Bungalow, Send Hill - Partial award against the Council – Not agreed. Potentially headed for detailed assessment due to lack of agreement on quantum to be paid.

For the Council

- Land at Ash Manor – Late withdrawal of Public Inquiry – Partial award of costs - settled at £17, 636

- Lynwood Nurseries, Westwood Lane, Normandy – Full award of costs, not yet settled or monies received. The legal services team registered the debt with the Council's debtors' team in December, the final amount being £4,555.50
- 257 Guildford Road – Full award of costs – settled at £600

Observations on costs

3.9 It is worth noting that there were additional costs associated with the plot 23 RSCH Hearing in that we employed a barrister to support our case as the appellants used a barrister. We also received detailed highways modelling advice from an external transport consultant. As there are so few Hearings and Public Inquiries; the cost to the Council attributed to 'written representations' appeals comes down in the main to officer time and administrative time. It is only when appeals are subject to a Hearing or Public Inquiry that the costs associated with these types of appeals can become prohibitive and expensive.

3.10 It is also worth further noting that in 2019, the Council spent a significant amount of monies on defending their delegated refusal of an application for student housing and associated uses on land at 1-5 The Quadrant and the Casino night club in Guildford. This was a public Inquiry with multiple witnesses and barristers and ended when the appellants decided to withdraw the appeal part way through the Inquiry. We lodged a costs claim for a full award of costs against the appellants, but the Planning Inspector declined the request. We sought barrister advice at the time whether this costs decision letter should be challenged. The advice received was not to pursue the matter further.

2020

3.11 There have been 11 Planning Committee meetings so far in 2020 as well as two cancelled meetings at the start of the Covid 19 pandemic.

3.12 To date and including the 7 October meeting, Planning Committee determined 46 planning applications of varying complexity. Of these 46 cases, 10 were overturned by the Committee. These were mostly from approval to refusal but also vice versa. A more detailed look at the overturned applications shows the following.

Application number	Site address	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/No
19/P/00721	Land off Send Hill, Send	Approve	Refuse	Appeal lodged	Too early	
19/P/01980	Land of Westwood Lane, Normandy	Approve	Refuse	No appeal yet		
20/P/0446	Meadow Cottage,	Refuse	Approve	No appeal		

Application number	Site address	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/No
	Horsley					
19/P/2102	Manor Farm, Tongham (reserved matters)	Approve	Refuse	Appeal lodged	Appellants advise they will seek costs	
19/P/1003	Land at Heath Drive, Send	Approve	Refused if they could have	Appeal against non-determination	Too early	Unknown
20/P/01011	Land at Heath Drive, Send	Approve	Refused	No appeal lodged yet	Too early	
20/P/00511	1 Ash Lodge Close, Ash	Approve	Refused	No appeal lodged yet	Too early	
20/P/0534	Weekwood Copse	Approve	Refused	No appeal lodged yet	Too early	
20/P/01166	The Lodge, Barn End, West Horsley	Approve	Refused	No appeal lodged yet	Too early	
20/P/01216	Land off Field Way, Send	Approve	Refused	No appeal lodged yet	Too early	

Observations on Planning Committee data for 2020

- 3.13 There are fewer overturns so far in 2020, but then we had to cancel two committee meetings and rely on virtual meetings. Less business throughput has been achieved when compared to our normal (non pandemic) committee process. Out of the ten overturns listed, the one that stands out is the reserved matters refusal at Manor Farm Tongham. As officers, we need to ensure that the reasons for refusal are defended robustly, as the appellants will almost certainly engage the use of a barrister and have made it clear to the Council that they will be seeking full costs against the Council once more having successfully won a substantial award of costs at appeal at the outline stage. Our team will consist of a barrister, planning consultant and a separate expert witness on sustainability. Should we lose the appeal and suffer an award of costs against us, the costs to the Council overall could be quite significant. The actual figure cannot be quantified at this stage, as witnesses have yet to be appointed and contracts agreed.
- 3.14 It is considered that the data contained in the 2020 table is very current and up to date and therefore the outcomes of nearly all the cases is not known. It is

suggested that the matter is reviewed further in, say, 12 months' time when the outcomes and any awards of costs should be known. The member overturn decisions have not had an impact on appeal decisions identified to date for 2020, as it is simply too soon

Appeals performance and costs awards in respect of decisions received in 2020 (data up to 29 October 2020)

These are as follows:

- Number of appeal decisions: 74
- Number of appeals dismissed: 60
- Number of appeals allowed: 11
- Number of appeals withdrawn: 1
- No further action: 0
- Mixed appeal decisions: 2
- The percentage of appeals dismissed: 81%

Observations on general appeal data for 2020

- 3.15 The appeals success rate in 2020 is probably the best the report author can recall and suggests overall that, as a department, we are targeting our refusal of applications correctly; with over 80% of cases being upheld at appeal.
- 3.16 It is worth noting that in 2020 we were unhappy with two appeal decisions that we received that were both allowed. We challenged both decisions by way of judicial review as we felt that both inspectors had erred in law. The Secretary of State conceded the first one, and the appeal was re-considered once more and was dismissed; on the second case the Secretary of State conceded again, and the appeal should be re-considered shortly. We successfully recovered our costs on the first judicial review, and we are hopeful that we will recover our full costs in respect of the second one.
- 3.17 As in 2019, the main method of appeal submission received in 2020 remain written representations. In 2020, we have received 62 appeals to date and there have been no Public Inquiries or Hearings received; although we are pretty certain that the reserved matters Manor Farm, Tongham appeal will be a hearing. In addition, the second application for student accommodation at the Quadrant in Bridge Street Guildford (that was refused recently) has been appealed and the appellants' team has requested a Public Inquiry for a second time.

Costs 2020

Against the Council

- Kings Yard, Burrows Lane, Shere - Full award of costs against the Council. Appellants are seeking £3,744. The matter has yet to be settled.
- 31 Millmead Terrace, Guildford - Full award of costs against the Council. The costs decision notice was only received on 30 September 2020 and therefore the matter will not be agreed and settled for several months yet.

- Unit 5 Guildford Business Park. Partial award of costs against the Council. The matter has yet to be settled

For the Council

- Kailyaird House, Vicarage Lane, Send - Full award of costs in favour of the Council. Decision received first week of October. The amount may take several months to settle and agree.

Observations on costs

- 3.18 The Kailyaird House appeal decision and costs decision only came through very recently and because this was a repetitive application for a similar sized new dwelling the Inspector found in the Council's favour.
- 3.19 It should be noted that these three cases are not found on the main table above. The reason being is that Kings Yard was not specifically a member overturn but had conditions re-imposed that the applicant did not find favour with and challenged by way of appeal. Millmead Terrace was a delegated refusal and was not considered by Committee. Kailyaird House was recommended for refusal by officers but was automatically heard by committee as it had a significant number of letters in support of it
- 3.20 It is probably worth pointing out that in the last two years the team leaders have encouraged officers to seek award of costs more frequently than in the past which has been a positive move for the section.

Additional training for members and substitutes sitting on the Planning Committee

- 3.21 The request for the report by Councillor Manning referred to training for Committee members around this subject area. It is worth noting that since the Group Leaders' meeting there have been two training sessions organised by our in-house legal team and provided by a QC and junior barrister from Frances Tailor Buildings. The first session was on 'probity in planning' and second and more relevant session was entitled 'decision making in planning and appeals training'. The report author attended both these sessions and although there was no question and answer session, both were well attended by Councillors and were well received.
- 3.22 We also fully expect further training ideas to come forward from the Local Government Association Peer Review exercise.

Local Government Association Peer Review of the Councils Planning Committee

- 3.23 It is worth mentioning that towards the end of 2019, the Managing Director agreed that a 'critical friend' peer review of the Council's Planning Committee should be undertaken. This was set to happen in March but was delayed by the Covid pandemic. The Peer Review took place in the first week of November and the team will report back by the first week of December with recommendations. The peer review team will look at multiple aspects around the operation of the

Committee, and will interview many individuals, councillors, officers and third parties as part of the peer review. It's not an audit but a process to learn from other authorities and to put in place good practice. The contents of this report will be shared with the review group as it will help them better understand the detailed workings of the Planning Committee, the outcomes at appeal and associated costs.

4 Consultations

4.1 This report arose from a discussion at a Group Leaders' session post Planning Committee in June/July this year. The report has been reported to Management team and their observations incorporated. It has also been shared with our portfolio holder, Councillor Caroline Reeves. The report has also been shared with our accountant and with the Head of Human Resources. The report has also been shared with the LGA Peer Review Group to assist with their Peer Review that began on 2 November.

5. Key Risks

5.1 The key risk in this area of planning work are considered as follows:

- Reputational; should we lose a significant number of appeals and have costs regularly awarded against us
- Failure to meet government targets. Falling below the government's rolling 'two year' threshold for appeal outcomes. If the Council falls below the bar there is a possibility we could be designated as a 'standards' authority. (In August 2017, the Department for Communities and Local Government published some Experimental Statistics on the Quality performance measure for major and non-major applications in preparation for the process of potential designation of Local Planning Authorities (LPAs) that are losing more than 10% of all major applications (district and county matters separately) received at appeal or 10% of all non-major applications received at appeal over a two year period). This process and data interrogation continue to happen, to date, and is an ongoing process.
- Financial; particularly in the current climate. Should we have many awards of costs against us this will clearly put undue and further financial pressure on the Council.

6. Financial Implications

6.1 The financial implications can of course be significant when it comes to planning appeals. The main costs are in defending decisions at appeal. These can become expensive if we have to put together an external team to defend the Council's decision making.

6.2 The other area to highlight is awards of costs both for and against the Council in appeal situations. These can be associated with all types of appeals and can be significant in amounts sought and settled. The most significant costs are normally attributed to either Hearings or Public Inquiries.

7. Legal Implications

- 7.1 There are no direct legal implications associated with the report. We work closely with our colleagues in the Legal Team in appeal situations and particularly in respect of instruction for barristers when undertaking Public Inquiries and sometimes Hearings. The legal team also provide instructions to costs draughtsman in the event that costs sought by appellants are seen as unreasonably high and we do not agree with the sum being sought.

8. Human Resource Implications

- 8.1 No HR implications apply for this report and no specific comments from the head of HR when assessing this report.

9. Equality and Diversity Implications

- 9.1 This duty has been considered in the context of this report and it has been concluded that there are no equality and diversity implications arising directly from this report

10. Climate Change/Sustainability Implications

- 10.1 No climate change implications directly apply to the appeals data and costs data.

11. Summary of Options

- 11.1 To note the data and observations made in this report and to advise on any actions to take forward from hereon.

12. Conclusion

- 12.1 The overall picture for appeal decisions in 2019 and 2020 is a relatively healthy one. The number of overturned items that end up at appeal and are allowed is high for 2019 and it is too early to consider the 10 overturns thus far in 2020. It is recommended that following a 12-month gap, the situation is reviewed once more to see the outcomes of appeal data both at officer delegated level and planning committee decisions to see what further patterns emerge.

13. Background Papers

None

14. Appendices

None