

Corporate Governance Standards Committee Report

Ward(s) affected: All Wards

Report of Director of Service Delivery

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Planning appeals monitoring follow up report

Executive Summary

A report entitled 'Appeals Monitoring Report' was reported to the Corporate Governance and Standards Committee on 19 November 2020. The contents and conclusions were noted. At that meeting it became evident the Chairman had expected the comparison and data to have included 2018. It was also felt the focus should be mainly on member overturns at Planning Committee, and to get a better feeling and understanding of time and monies involved in defending subsequent appeals. It was also felt by members of the Committee that the data should be looked at twice yearly, going forward, to see if any patterns are emerging in respect of member overturns, costs of overturn appeals and costs awards. In addition, the updated report seeks to identify targeted training for members of the Planning Committee and its substitutes. This report is six months after the first report to the Committee and seeks to fill the gaps from the first report.

Recommendation to Committee

That the Committee notes the contents of the revised report and data.

Reason for Recommendation:

To enable the Committee to monitor the Council's 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 report is to include 'overturn' appeals data and 'costs' data for 2018, compared with 2019, 2020 and the start of 2021 to date (4/3/2021).

- 1.2 This is the second report on appeals monitoring data following the first report that was considered by the Committee at its meeting of 19 November 2020. This report expands the search criterion further to include 2018 and also looks at any overturns and appeals between 19 November 2020 and the end of February 2021.

2 Strategic Priorities

- 2.1 All the strategic 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. This can be countered by the fact that we sometimes utilise the services of a 'costs draftsman', 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. Further there is always a cost identified with defending a refusal of planning permission that ends up at appeal. This will involve officer time, sometimes external consultant cost and instructing a barrister to support the case.

3 Background

- 3.1 To provide a comparison it is considered best to look in detail at four calendar years, 2018, 2019, 2020 and up to the end of March 2021.

Year	Number of Committee Meetings	Number of applications processed	Number of councillor overturns	Number of those overturns that ended at appeal	Overturns allowed	Overturns dismissed
2018	13	72	11	8	6	2
2019	13	73	15	11	7	3 (1 unknown)
2020	13	55	10	7	1 (so far)	2 (so far)
2021 (March)	3	14	4	Too early	Too early	Too early

- 3.2 The following tables draw out the member overturns for each year from 2018 to date and looks at those decisions in more detail.

2018 Overturns table

Application number	Site address and brief description of development	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/No
17/P/00987	Saddlers Arms, Ripley (one dwelling)	Approve	Refuse	No appeal		
17/P/2237	257 Guildford Rd (change of use from shop to flat)	Approve	Refuse	No appeal		

Application number	Site address and brief description of development	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/No
17/P/2306	12C Worplesdon Road (change of use to hot food take way)	Approve	Refuse	Appeal allowed	No	
17/P/2371	Longer End Cottage (House holder extension)	Refuse	Approved	No appeal		
17/P/2193	Unit 4 75-78 Woodbridge Rd (change of use to restaurant and take away)	Approve	Refuse	Appeal allowed	Yes	No
17/P/2194	Unit 4 75-78 Woodbridge Rd (change of use to restaurant and take away)	Approve	Refuse	Appeal allowed	Yes	No
18/P/00154	Breton House (three dwellings)	Approve	Refuse	Appeal dismissed		
18/P/00752	117 Stoke Road, Guildford (house in multiple occupation for 10 persons)	Approve	Refuse	Appeal dismissed	No	
18/P00975	14 Tunsgate (sign)	Approve	Refused	Appeal allowed	No	
18/P/1595	Land East of St Johns Close (fencing)	Approve	Refused	Appeal allowed	Yes	No
18/P/01733	179 Send Road, Send (House holder extension)	Approve	Refuse	Appeal allowed	Yes	No

Costs 2018

3.3 Its important to note that due to time lags there is little correlation between costs outcomes in any given year when compared to appeal data for a given year. These were the costs awarded both for and against the Council in 2018. It is important to stress that these cost decisions are both delegated and committee;

with most not relating to member overturns. It was considered appropriate to provide the overall picture for costs and not just related to member overturns. It is also worth remembering you can claim costs if someone involved in your planning appeal behaves unreasonably and costs you money. This includes if they:

- Fail to cooperate with you or others;
- Missed deadlines;
- Fail to turn up to a site visit, Hearing or Inquiry
- Gave information that was wrong or declared after the deadline

Against the Council

- One Finglebridge Cottage, Woking Road, Jacobs Well (Officer delegated decision) – Erection of an outbuilding – written reps - partial award of costs. Settled and agreed £1800
- Send Hill Farm, Send (Officer delegated decision) – challenging conditions imposed on outline permission – written reps - partial award of costs, settled and agreed at £2950
- Manor Farm, Tongham (Planning Committee decision) – outline application for 254 units – Public Inquiry - partial award of costs settled and agreed at £160,000. The claimants originally sought close to £300,000. We utilised a costs draftsman to assist the Council.
- Cut Mill House, Suffield Lane, Puttenham (Officer delegated decision) – Extension – written reps - full award of costs, settled and agreed at £2500

For the Council

- Woodruffe, Wyke Lane, Ash (Officer delegated decision) – 6 two beds – withdrawn – written reps - partial award of costs – appellant deceased; costs not pursued.
- Mountain Wood Farm, Green Dene, West Horsley (Officer delegated decision)– change of use from storage to mixed use building – withdrawn – written reps - partial award of costs. Not yet known.

2019 Overturns table

Application number	Site address and brief description of development	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/No
18/P/1595	Land East of St Johns Close (fencing)	Approve	Refused	Appeal allowed	Yes	No
18/P/01982	Yaldens Cottage, Tongham (1 wall mounted sign)	Approve	Refused	No appeal		

Application number	Site address and brief description of development	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/No
18/P/1642	Land at Tilthams Garage (12 houses)	Approve	Refused	No appeal		
18/P/2387	Boxgrove, 144 London Rd (6 flats)	Approve	Refused	Appeal allowed	No	
19/P/00178	Burchatts Farm (change of use to D1 use)	Approve	Refused	Appeal allowed	Yes	No
19/P/00179	Burchatts Farm (change of use to D1 use)	Approve	Refused	Appeal allowed	Yes	No
18/P/2011	Land North of Harewood Rd (5 dwellings)	Approve	Refused	Appeal dismissed	Yes	No
18/P/01950	Land East of White Lane (59 dwellings)	Approve	Refused	Appeal allowed	No	
19/P/00362	Holy Trinity Church (windows)	Refuse	Approved	No appeal		
18/P/02240	Land rear of Christmas Hill, Shalford (3 dwellings)	Approve	Refused	Appeal dismissed	No	
19/P/00566	Sherwood, East Horsley (2 dwellings)	Approve	Refused	Appeal dismissed	No	
19/P/1039	14A Tangier Road, Guildford (householder extension)	Approve	Refused	Appeal allowed	No	
19/P/01234	Land South of Champney (5 dwellings)	Approve	Refused	Appeal allowed	No	
19/P/1429	Whistlers Farm, Guildford (House holder extension)	Refuse	Approved	No appeal		

Application number	Site address and brief description of development	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/No
19/P/1796	17 Romans Close, Guildford (change of use of land to garden)	Approve	Refused	Appeal lodged; no decision		

Costs 2019

3.4 Turning to costs once more, these are the ones recorded in 2019. Once again these are costs settled and agreed in the calendar year and are a mixture of delegated and committee decisions.

Against the Council

- Plot 23 RSCH Hearing (Officer delegated decision) - Full award of costs against the Council; settled and agreed at £54,000. The claimants originally sought close to £100,000. We utilised a costs draftsman to assist the Council.
- The Bungalow, Send Hill (Officer delegated decision) - 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 (Officer delegated decision)– Late withdrawal of Public Inquiry – Partial award of costs - settled at £17, 636
- Lynwood Nurseries, Westwood Lane, Normandy (Officer delegated decision) – 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 £4555.50 (legal services advise that in their view it is unlikely the debtor will pay due to recalcitrance)
- 257 Guildford Road (Officer delegated decision) – Full award of costs – settled at £600

2020 overturns table

Application number	Site address and brief description of development	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/No
19/P/00721	Land off Send Hill, Send (8 dwellings)	Approve	Refuse	Appeal allowed	No	

Application number	Site address and brief description of development	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/No
19/P/01980	Land of Westwood Lane, Normandy (Barn and shade tunnel)	Approve	Refuse	Appeal dismissed	No	
20/P/0446	Meadow Cottage, Horsley (Householder extension)	Refuse	Approve	No appeal		
19/P/2102	Manor Farm, Tongham (254 units)	Approve	Refuse	Hearing 10 May 21	Appellants likely to seek costs	
19/P/1003	Land at Heath Drive, Send (29 units)	Approve	Refused if they could have	Appeal against non-determination	Too early	
20/P/01011	Land at Heath Drive, Send (29 units)	Approve	Refused	No appeal lodged yet	Too early	
20/P/00511	1 Ash Lodge Close, Ash (1 dwelling)	Approve	Refused	Appeal lodged	Too early	
20/P/0534	Weekwood Copse (relax conditions for dog walking activity)	Approve	Refused	No appeal		
20/P/01166	The Lodge, Barn End, West Horsley (Householder extension)	Approve	Refused	Appeal dismissed	No	
20/P/01216	Land off Field Way, Send (9 dwellings)	Approve	Refused	Appeal lodged	Too early	

Costs 2020

3.5 These are the costs awarded against and for the Council in 2020.

Against the Council

- Kings Yard, Burrows Lane, Shere (Planning Committee decision) - Full award of costs against the Council. Appellants are seeking £3,744. The matter has yet to be settled.
- 31 Millmead Terrace, Guildford (Officer delegated decision)- 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. (Planning Committee decision) Partial award of costs against the Council. The matter has yet to be settled

For the Council

Kailyaird House, Vicarage Lane, Send (Planning Committee decision) - 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

2021 overturns table

Application number	Site address and brief description of development	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/No
20/P/968	Hayloft, Waterlane Farm, Albury(change of use to classic car restoration)	Approve	Refuse	No appeal lodged yet	Too early	
19/P/1726	Church Street Effingham (17 dwellings)	Approve	Refuse	No appeal lodged yet	Too early	
20/P/1755	Merrow Centre, 41 Down Road (reduced parking)	Approve	Refuse	No appeal lodged yet	Too early	
20/P/2126	21 Oxenden Road, Tongham (House holder outbuilding)	Approve	Refuse	No appeal lodged yet	Too early	

3.6 There are no cost awards to report at the start of 2021.

Observations on appeal costs since 2018 and to date.

- 3.7 Nearly all appeals remain written representation appeals with most appeal costs met by the individual parties. However as can be seen above, some appeals do draw costs claims both from the appellants and from the Council. Many costs claims are rejected by the Planning Inspectorate and in reality, only a very few are awarded either partially or in full. It needs to be kept in mind that often there is a significant lag between a partial or full award of costs and the eventual agreed settlement. This often takes months, sometimes years. When larger sums are involved, the Council will seek assistance from a costs draftsman to seek an overall reduction in the claim. This has been used to good effect in recent years and particularly in the case of Manor Farm, Tongham and the plot 23 hospital car park appeal hearing.
- 3.8 It should be noted there are also some hidden costs associated with statutory duties involved in appeal. Statutory advertising 'costs' run into several hundreds of pounds per appeal if they are a Hearing or Public Inquiry.

Observations on appeals data since the November 2020 Corporate Governance and Standards Committee

- 3.9 Some appeals resulting from member overturns are causing significant amounts of work for officers in 2021. An example of this is application 19/P/0721 land off Send Hill in Send. Whilst we appointed an external planning consultant to defend the appeal, the consultant required a great deal of officer input both leading up to the Hearing on 22 February 2021 and on the day of the Hearing. The overall cost to the Council in defending this appeal was close to £10-15,000 (barrister and external planning consultant) plus officer time on top. It is felt the same will apply for the other two Send appeals; applications 19/P/1003 and 20/P/1216.
- 3.10 It is worth noting that since last November we have had the 'Quadrant' public Inquiry for student accommodation. It's important to stress that this case was not a member overturn and was a committee refusal. This case once again caused a significant amount of officer work and drain on officer time. Officers were supported by two external consultants and a barrister. The appellant, after two days (of the planned 9-day inquiry) was forced to withdraw his appeal. The Council's barrister has sought appeal costs for this action and wasted officer time and council expense and the outcome of this submission will be known in the next month or two. The overall costs to the Council for the barrister, officer time and specialist consultant costs must be circa £100,000.
- 3.11 The only other one to note is the Manor Farm, Tongham and the Hearing scheduled for 10 May 2021. We have a current and live planning application which remains undetermined. The appeal is likely to proceed due to timings and this has caused significant work for officers. We will need support from a barrister (Conor Fegan, a very able junior counsel appointed), as the appellants will have one present and also a sustainability consultant. The cost to defend this appeal will be just over £15-20,000, plus officer time as well.
- 3.12 Finally it is worth noting that since 1 January 2021 we have received 18 appeal decisions. 15 have been dismissed, one allowed (Land off Send Hill, Send) and 2

withdrawn. 15 of the 18 were delegated officer decisions; with three being Planning Committee decisions. These were application 19/P/1980 Land off Westwood Lane, Wanborough and application 19/P/01974 1-5 The Quadrant, Bridge Street and 20/P/01166, The Lodge, Barn End, West Horsley.

Officer time

- 3.13 One cost that should not be overlooked is officer time for defending appeals. The charging for this is very much in line with what is published on our website for Planning Performance agreement work and is also used for appeal work charging. It is as follows.

Officer time (per hour)	Fees (including VAT)
Director	£275
Development Manager	£175
Team leader	£110
Principal planner	£95
Senior planner	£85
Planning solicitor	£225
Design and Cons officer	£80
Administrative officer	£50

Additional training for members and substitutes sitting on the Planning Committee

- 3.14 The original request for this report by Councillor Manning referred to training for Committee members around this subject area. It is worth noting there have been two training sessions organised by our in-house legal team and provided by a QC and junior barrister from Frances Taylor 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. A session (once again provided by barristers) was provided on new permitted development rights, which took place on 7 April 2021.
- 3.15 A further request that was received at the Committee's meeting in November 2020 was for any training to be practical and not just theoretical and preferably collaborative between Councillors and Officers.

Local Government Association Peer Review of the Council's Planning Committee

- 3.16 At 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 2020 but was delayed until the first week of November because of the pandemic.
- 3.17 The review was held virtually and reported back in early December. The report was shared with all Councillors and made 12 recommendations. Recommendation 3 was relevant and advised:

R3. Examine ways for Planning Committee and relevant officers to discuss and learn from appeal decisions to ensure that decisions on planning applications are undertaken, on behalf of the whole Guildford borough community, in a fair, impartial and transparent way. The present system tagged onto the end of often long Planning Committees is not conducive to creating a learning atmosphere.

3.18 The Council has now appointed an independent chairperson for the Task and Finish Group and this Councillor/Officer group met (virtually) for the first time on Thursday 1 April.

4 Consultations

4.1 This report originally arose from a discussion at a Group Leaders' session post Planning Committee in June/July 2020. The report has been considered by Management team and their observations incorporated. It has also been shared with our former portfolio holder, Councillor Caroline Reeves and our new portfolio holder, Councillor Tom Hunt. Further the report has also been shared with legal services, democratic services, our accountant and with the Lead Specialist for Human Resources.

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 rolling 'two year' threshold for appeal outcomes. If we fall 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 (LPA's) 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.
- Refusal of appropriate housing development may impact on our supply; which may in turn force us back into a tilted balance test. This could lead us to being vulnerable to speculative development particularly in newly non-Green Belt areas
- 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 and is often the case when dealing with member overturns from Planning Committee.

- 6.2 The other area to highlight is award 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. As a Council we do not budget for appeals, so any defence or award of costs is an overspend.

7. Legal Implications

- 7.1 There are no direct legal implications associated with the report. We work closely with 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 draftsman in the event that costs sought by appellants are seen as unreasonably high.

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. It is worth noting there are implications to workloads for officers and delays to other work. This can become an issue at times of high workloads such as we are currently experiencing.

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 Overall the picture is consistent. Towards the end of 2020 there have been a number of overturned decisions that have ended up at appeal that have caused a significant amount of work. Some are costly due to having to instruct external consultants (because officers who have recommended a grant at Planning Committee cannot realistically or under the RTPPI Code recommend the contrary at appeal) and in some cases barristers have needed to be instructed.
- 12.2 The appeal data will be reviewed later in the autumn this year and reported once more to a future meeting of this Committee.

13. Background Papers

None

14. Appendices

None