

Corporate 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

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 that the then Chairman had expected the comparison and data to have included 2018. Members consider that data should be reviewed 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 previous report and provides an update.

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 a twice yearly report made to update and review the position regarding appeals. It is unnecessary to repeat the commentary on the earlier years in the report which have previously been considered by Members and instead should focus on the updates and any trends.
- 1.2 The report looks at a rolling two year period to ensure data presented remains relevant and that trends can be appropriately analysed. .

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 Earlier reports identified that the twice yearly updates would focus on appeal results over a rolling two year period to ensure information is concise and relevant.

Year	Number of Committee Meetings	Number of applications processed	Number of councillor overturns	Number appealed	Overturns allowed	Overturns dismissed
2018	13	72	11	8	6	2
2019	13	73	15	11	7	3 (1 unknown)
2020	13	55	10	8	3	3
2021	15	57	15	12	2 (to date)	4
2022*	7	25	4	3	0	0

* 2022 data is part year only

- 3.2 At the date of drafting the report 4 submitted appeals from this period were still pending a decision. Two further appeals had been withdrawn once a subsequent application at the same site had been approved.
- 3.3 The following tables draw out the member overturns for each year from 2019 to date and looks at those decisions in more detail. For future reports this will be linked to Government performance figures on appeals

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		
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	

Application number	Site address and brief description of development	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/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		
19/P/1796	17 Romans Close, Guildford (change of use of land to garden)	Approve	Refused	Appeal allowed		

Commentary – 11 overturn decisions were appealed, of those 8 were allowed, three were dismissed. This represents almost 73% being allowed with 27% dismissed. Of note was an application for 59 dwellings refused on housing mix grounds. The inspector disagreed that this represented a failure to comply with policy H1 of the Local Plan. Also two smaller residential schemes were allowed, the first with concerns over parking provision and effect on character not upheld, the second raised concerns over rural edge of a village, cramped appearance and housing mix. Again these matters were not upheld. Of those dismissed it is noted that in respect of 18/P/02240 the inspector upheld concerns over the impact on character, but did NOT agree with the housing mix argument put forward. In terms of 19/P/0566, the inspector did NOT agree with the substantive argument over impact on character. The appeal was dismissed on SPA grounds which essentially can be overcome by completion of a S.106 agreement.

Percentage of committee overturn appeals dismissed 27%.

2019 overall appeal decisions as a comparison (note this INCLUDES the committee overturn decisions):

Appeals determined 115
 Appeals allowed 27
 Appeals dismissed 79
 Appeals withdrawn 7
 Mixed decision 2

Percentage of total appeals dismissed 73%

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	
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	Appeal allowed	No	
19/P/1003	Land at Heath Drive, Send (29 units)	Approve	Refused if they could have	Appeal against non-determination Withdrawn		
20/P/01011	Land at Heath Drive, Send (29 units)	Approve	Refused	Appeal lodged	Dismissed	
20/P/00511	1 Ash Lodge Close, Ash (1 dwelling)	Approve	Refused	Appeal lodged	Pending	
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	

Application number	Site address and brief description of development	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/No
20/P/01216	Land off Field Way, Send (9 dwellings)	Approve	Refused	Appeal allowed	costs against the Council sought	Yes

Commentary – Overall number of planning committee decisions for 2020 is lower than other years as several planning committee meetings were cancelled due to COVID national lockdown and could not recommence until legislation allowing remote meetings had been brought in. Eight overturn decisions were appealed, currently three have been allowed, three have been dismissed, one withdrawn and one is pending a decision. Of those determined (7) 42% have been allowed, with one withdrawal, 42% have been dismissed.

Of those allowed, a reserved matters application for 254 units on grounds of effects on character and concerns over sustainable development. The inspector did not agree with these points, notably setting out that matters to do with sustainable development had been considered at the outline stage and also that the development did comply with Policy D2. The other allowed appeals related to smaller residential schemes, 20/P/01216 is of particular note as costs were awarded against the Council against failure to provide evidence to justify the decision relating to the effect on character and concerns over lack of local infrastructure.

It is also noted that 20/P/01011, Land at Heath Drive Send was not dismissed on the substantive ground which was motioned at committee. An issue regarding protected species came to light which meant the inspector was not in a position to allow the appeal.

Percentage of committee overturn appeals dismissed 42%

2020 overall appeal decisions as a comparison (note this INCLUDES the committee overturn decisions, note that the number of decisions were lower this year due to impacts of COVID):

Appeals determined	93
Appeals allowed	15
Appeals dismissed	74
Appeals withdrawn	2
Mixed decision	2

Percentage of total appeals dismissed 84%

2021 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/01726	Land at Church Street, Effingham	Approve	Refuse	Appeal dismissed	No	
20/P/00968	The Hayloft, Water Lane Farm, Water Lane	Approve	Refuse	Appeal allowed	No	
20/P/01461	Land At Ash Manor, Ash Green Road, Ash	Refuse	Approve	Dismissed	Yes	No
20/P/01755	Merrow Centre, 41 Down Road, Guildford	Approve	Refuse	Dismissed	No	
20/P/02126	21 Oxenden Road, Tongham	Approve	Refused	Allowed		
21/P/00404	Goodhart-Rendel Centre, Cranmore Lane, West Horsley	Approve	Refused – if they were able (non determination appeal)	Withdrawn		
21/P/00404	Land between Smugglers End, Smugglers Lane, The Sands	Approve	Refused	Pending		
20/P/01359	Land North of Hambledon Cottage, Ripley Lane, Ockham	Approve	Refused	No appeal as yet		
20/P/00825	Urnfield, Downside Road, Guildford	Approve	Refused	No appeal as yet		

Application number	Site address and brief description of development	Officer recommendation	Committee decision	Appeal decision	Costs sought	Costs awarded Yes/No
20/P/02042	Cheynes, Brook Lane, Albury	Approve	Refused	No appeal as yet		
21/P/01582	Land at Wisley Airfield, Hatch Lane, Ockham	Approve	Refused	No appeal as yet		
20/P/01708	Land at Wisley Airfield, Hatch Lane, Ockham	Approve	Refused if they were able (non-determination appeal)	Pending		

Commentary – Eight appeals have been lodged against decisions which were overturned at planning committee. Decision have been received in respect of six appeals of those, three have been dismissed, two allowed and one withdrawn. Two decisions are pending. Of the decisions received this represents a percentage of 50% dismissed, 33% allowed.

It is noted that two decisions are pending and four applications have not been appealed as yet. This could therefore significantly change the overall picture.

2021 overall appeal decisions as a comparison (note this INCLUDES the committee overturn decisions):

Appeals determined 53
 Appeals allowed 16
 Appeals dismissed 33
 Appeals withdrawn 2
 Mixed decision 2

Percentage of total appeals dismissed 62%

All appeal Cost decisions 2021

3.5 These are the costs applications made during 2021:

19/P/01980 – Berry Farm, Westwood Lane – Costs application made against the Council – Application Refused

19/P/01881 – Valentines Farm, Rose Lane, Ripley – Costs application made by the Council – Application Refused

20/P/00605 – Hillrise, Orestan Lane, Effingham – Costs application against the Council – Application Refused

20/P/00922 – Land West of A3, Grove Heath Road, Ripley – Costs application against the Council – Application refused

20/P/00127 – Oakmead, Ockham Lane – Costs application against the Council – Application refused

20/P/01216 – Land off Field Way, Send – Costs application against the Council – Partial award of Costs Granted

19/P/02149 – Land Rear of 5 Send Barns Lane, Send – Costs application against the Council – Application refused

21/P/00282 – Shepherds Hill, Peaslake – Costs application against the Council – Application refused

4 Latest decisions

4.1 2022 overturns table

Commentary – To date no appeal decisions have been received in respect over committee overturn decisions made during 2022. Therefore it was not considered necessary to include any information here. The next update will review this position and provide an update of relevant decisions.

To date overall appeal performance for 2022 is as follows:

Appeals determined	42
Appeals allowed	9
Appeals dismissed	31
Mixed decision	1
Withdrawn	1
& dismissed	74%

4.2 2022 Costs decisions

Costs decisions have been received in respect of the following appeal decisions:

21/P/00253 – Binton Farm, Binton Farn House, The Sands – Costs application made against the Council – Application Refused

20/D/00099/2 – Land at May and Juniper Cottages, Ash Green Road, Ash – Costs application made against the Council – Application was allowed

21/P/00181 & 21/P/00927 – Little Romanys, Lawbrook Lane, Peaslake – Costs application made against the Council – Application was refused

20/P/02222 – Rear of Christmas Hill & Crossways – Costs application made against the Council – Costs application allowed

20/P/01461 – Land at Ash Manor, Ash Green Road, Ash – Costs application made both by and against the Council – the application against the Council was refused, the costs application by the Council was allowed with partial award of Costs granted.

Observations on appeals data since previous report

- 4.3 Notably several decisions have been received in respect of committee overturn decisions where those appeals have been dismissed on housing schemes and those decisions are of particular interest in the matters taken into account by the Inspector.
- 4.4 Of specific interest is the appeal decision in respect of Land at Ash Manor which has recently been dismissed. The original decision identified three reasons for refusal and several other matters were raised by a Rule 6 Party during the course of the appeal. The decision turned mainly on the heritage issues and the inspector concluded the public benefits did not outweigh the harm. It remains prudent to identify the costs associated with the appeal:

Heritage witness: £20,000 (inc VAT)
QC: £122,200 (ex VAT)
Supporting barrister: £76,811.67 (ex VAT)
Veteran tree support: £930 (inc VAT)
Planning witness: C. £20,000.
Webcasting fee: £3,258

Total (with planning witness proviso): £243,199.67

This does not include GBC officer time to support the appeal, time totalling several days was spent supporting the appeal. Whilst it is clearly positive in terms of the decision made it is important to understand the cost to the Council to ensure that a robust defence is made.

Officer time

- 4.5 The following table was provided with the previous report and it is useful to include again here.

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

5 Consultations

5.1 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 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.

6. Key Risks

6.1 The key risks in this area of planning work:

- 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 former 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.
- In addition to reputational risk associated here there is additional risk that failure to meet these standards could result in Government intervention to remove decision making powers to the planning inspectorate
- 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, this is discussed in Section 7.

7. Financial Implications

7.1 The financial implications can of course be significant when it comes to planning appeals. The main costs are in defending decisions at appeal. These are demonstrably 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. It is also noted that the budget provision for appeals is relatively low, analysis of this shows that this budget has been exceeded regularly and therefore it should be examined whether this budget is set at the appropriate level.

- 7.2 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. It is difficult to project budgeting for appeal spending as it is an unknown factor at the start of the year. Budgeting for 'poor decision making' would not be desirable, however, there should be further consideration of actual costs in this area. Appeals are a statutory right and Council should defend robust decisions appropriately.

8. Legal Implications

- 8.1 There are no direct legal implications associated with the report. However, appeals carry significant legal implications. 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. It should also be noted that planning decisions are also subject to legal proceedings (judicial reviews).

9. Human Resource Implications

- 9.1 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.

10. Equality and Diversity Implications

- 10.1 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

11. Climate Change/Sustainability Implications

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

12. Summary of Options

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

13. Conclusion

- 13.1 The previous six months has not presented a particularly clear picture on the trend of appeal decisions. Delays in receiving appeal decisions remain significant.
- 13.2 Given the date of appeal decisions officers again suggest reverting to an annual document to examine decisions received during specific 12 month periods and ensure meaningful trends and information can be reported.

14. Background Papers

None

15. Appendices

None