

Guildford Borough Council

Report to: Corporate Governance Standards Committee

Date: 27 July 2023

Ward(s) affected: All Wards

Report of Director: Executive Head of Planning Development

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Report Status: Open

Planning appeals monitoring report

1. Executive Summary

- 1.1 A report entitled 'Planning Appeals Monitoring Report' was reported to the Corporate Governance and Standards Committee on 16 June 2022. The contents and conclusions were noted, and it was agreed that future monitoring reports be presented annually, to see if any patterns are emerging in respect of member overturns, costs of overturn appeals and costs awards. In addition, this updated report seeks to identify targeted training for members of the Planning Committee and its substitutes. This report is thirteen months after the previous report and provides an update.
- 1.2 A detailed report on planning appeals including details of cost applications is reported to every Planning Committee. The information contained in this report has been taken from the information contained on previous Planning Committee agendas. There is also a detailed training programme that has been developed

and will be rolled out shortly, this will provide a monthly training session for officers and members with a different topic each month.

2. Recommendation to Committee

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

3. Reason for Recommendation:

- 3.1. To enable the Committee to monitor the Council's performance on planning appeals.

4. Exemption from publication

- 4.1 No

5. Purpose of Report

- 5.1 The purpose of this report is to update and review the position regarding appeals. The previous report was considered by the Committee on 22 June 2022. This report will focus on the data relating to 2021-2023, the last report looked at data back to 2019. The Committee is referred to the previous report which was considered by Members in June 2022.

6. Strategic Priorities

- 6.1 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 and also are very demanding.

7. Background

- 7.1 Earlier reports identified that future 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	11	37	5	3	2	1
2023*	12	33	6	2	0	0

* Part Year

7.2 The report to this Committee in June 2022 sets out the data relating to the decision making by the Planning Committee dating back to 2019. This report will not repeat this historical information.

2021

7.3 Eight appeals were 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 where there was no appeal against the decision. This could therefore significantly change the overall picture. The 2021 overall appeal decisions as a comparison:

- Appeals determined: 53
- Appeals allowed: 16
- Appeals dismissed: 33
- Appeals withdrawn: 2
- Mixed decision: 2
- Percentage of total appeals dismissed: 63%

2022 Committee overturns table for 6 months (June to December)

Application number	Site address	Officer recommendation	Committee decision	Appeal decision	Cost Sought	Cost Awarded
21/P/01683	High Brambles East Horsley	A	R	Allowed	No	No
21/P/00428	Howard of Effingham	A	R	Allowed	Y	Awaiting decision
20/P/01057	White Horse Yard Ripley	A	R	No	No	No
22/P/00203	Laurel Bank Cottage Seale	A	R	No	No	No

The overall appeal performance for decisions received in 2022 is as follows:

- Appeals Determined 90
- Appeals allowed 36
- Appeals dismissed 52
- Mixed Decision 1
- Withdrawn 1
- Percentage dismissed 58%

Cost applications

- 4 costs applications refused
- 2 costs applications allowed
- 1 partial award of costs

2023 Committee overturns table

Application number	Site address	Officer recommendation	Committee decision	Appeal decision	Cost sought	Cost award
22/P/01151	Pit Farm Guildford	A	R	No appeal	No	No

Application number	Site address	Officer recommendation	Committee decision	Appeal decision	Cost sought	Cost award
22/P/01831	New Road Chilworth	A	R	No appeal	No	No
22/P/01845	Abbotswood East Horsley	A	R	No appeal	No	No
22/P/00977	Streamside Ash	A	R	No appeal	No	No
22/P/01336	North Street Guildford	A	R	Appeal lodged	No	No

The overall appeal performance for decisions received in 2023 is as follows:

- Appeals Determined 94
- Appeals allowed 22
- Appeals dismissed 69
- Withdrawn 3
- Percentage dismissed 73%

Cost applications

- 4 costs applications refused

7.4 Overall whilst there have been more appeals over the past two years, the success rate year on year is improving. Success rate in defending applications for costs has also improved year on year. It should be noted that whilst a decision has been made on both appeals relating to the Howard of Effingham appeal referred to above, the Council is yet to receive a decision on the costs application.

7.5 It should be noted that there are now two complex appeals that are 'live' appeals. Officers are preparing for the Wisley appeal against non-determination with an Inquiry starting in late September and closing in late November (with 24 days sitting). The level of resource required to support this Inquiry and its impact on delivering other parts of the Service cannot be underestimated.

7.6 The North Street appeal has now been lodged and a provisional date for a 6-day Inquiry has been set for the beginning of December. Officers will be running this appeal in parallel with the new application relating to this site. A report was considered by the Executive on 22 June 2023 ‘Supplementary Estimate for funds in respect of potential appeal against Member overturned item and appeal against non-determination’ which gave a budget estimate of £350,000. The Planning Committee will be kept updated on this appeal.

Quality of Decisions by DLUCH

7.7 Government performance measures for planning include both speed of decision and quality of decision. Quality is measured by the percentage of appeal decisions that are overturned i.e. where the appeal is allowed. This performance is measured over a 2-year rolling programme with figures published periodically. The last figures were published in June 2023 covering the period January 2020 to December 2021. Guildford’s figures are set out below:

Total decisions	Non-Major appeals	Overturn % at appeal	Quality of decisions (% overturned at appeal)
3,007	137	38	1.3%

Non-Major applications

Total decisions	Major appeals	Overturn % at appeal	Quality of decisions (% overturned at appeal)
3003	Not recorded	36	1.2%

7.8 Whilst the returns suggests that there is not an issue with the quality of decision it needs to be acknowledged that these figures do not cover more recent decisions. Internal reports are run which currently suggest that the real time figure is nearer 7.5%. As appeal decisions are issued by PINS as and when they are made, there is significant

time lag between the refusal of planning permission, lodging appeals and the final decision from PINS (this could be up to two years). This will continue to be closely monitored acknowledging that figures can change from day to day.

8. Key Risks

8.1 The key risks in this area of planning work are:

- Reputational; should we lose a significant number of appeals and have costs regularly awarded against us
- Failure to meet government targets and falling below the government rolling 'two year' threshold for appeal outcomes will raise the issue of Designation on the grounds of quality.
- 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 challenge the Council's ability to maintain a 5-year housing land supply and force the Council back into a 'tilted balance' situation. This could lead to the Council being vulnerable to speculative development.
- Financial; particularly in the current climate, this is discussed in Section 9.

9. Financial Implications

9.1 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.

- 9.2 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.

10. Legal Implications

- 10.1 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 of 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).

11. Human Resource Implications

- 11.1 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.

12. Equality and Diversity Implications

- 12.1 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.

13. Climate Change/Sustainability Implications

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

14. Conclusion

14.1 The data has not presented a particularly clear picture on the trend of appeal decisions. Delays in receiving appeal decisions remain significant.

14.2 Given the date of appeal decisions officers suggest that the most appropriate way for the Council to continue to have oversight of the quality of decision making and specifically the quality of decision making for the Planning Committee would be for there to be a review of the reporting to Planning Committee.

15. Background Papers

None

16. Appendices

None