

# Guildford Borough Council

Report to: Corporate Governance Standards Committee

Date: 6 June 2024

Ward(s) affected: All Wards

Report of Director: Assistant Director: 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 27 July 2023. The contents and conclusions were noted, and it was agreed that future monitoring reports would 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 eleven 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 meeting of the Planning Committee. The information contained in this report has been taken from the information contained on previous planning agendas. There is also a training programme that has been carried out during the year, further training is being arranged for the coming year.

## **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 None of this report is exempt from publication.

## **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 in July 2023. This report will focus on the data relating to 2023-24.

## **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 on resources.

## **7. Background**

- 7.1 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	11	37	5	3	2	1
2023	12	50	8	2	1	1
2024*	12	20	2	0	0	0

\* Part Year

7.2 The report to Corporate Governance & Standards Committee in July 2023 sets out the data relating to the decision making by the Planning Committee dating back to 2019.

### 2023 Committee overturns table

Application number	Site address	Officer recommendation	Cttee decision	Appeal decision	Cost sought	Cost award
22/P/0115 1	Pit Farm Guildford	A	R	No appeal	No	No
22/P/0183 1	New Road Chilworth	A	R	No appeal	No	No
22/P/0184 5	Abbotswood East Horsley	A	R	No appeal	No	No
22/P/0097 7	Streamside Ash	A	R	No appeal	No	No
22/P/0133 6	North Street Guildford	A	R	Appeal lodged	No	No

Application number	Site address	Officer recommendation	Cttee decision	Appeal decision	Cost sought	Cost award
22/P/0115 1	20 Pit Farm Road	A	R	Appeal allowed	No	No
21/P/0115 1	12 Oak Hill Wood Street Village	A	E	Appeal dismissed	No	No

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

- Appeals Determined 127
- And Appeals allowed 49
- Appeals dismissed 78
- Withdrawn 2
- Percentage dismissed 61%

#### **Cost applications**

- 4 costs applications refused
- 1 cost application was allowed

7.3 Overall, the number of appeals in 2023 was higher than in 2022 (127 compared with 94 in 2022). The percentage of appeals successfully defended has decreased from 2022 where 73% of appeals were dismissed. This is something that needs to be closely monitored. Success rate in defending applications for costs has been good.

7.4 It should be noted that for the second part of 2023 there are now two complex appeals that are live appeals. Officers had the Wisley appeal against non-determination with an Inquiry that started in late September and closed in late December with 34 days sitting. The level of resource required to support this Inquiry and its impact on delivering other parts of the Service cannot be underestimated.

7.5 The North Street appeal with a 6-day Inquiry has been set for the beginning of December was withdrawn a few days before the start of the

Inquiry. This required considerable resource to deal with the planning application that was running in parallel, to negotiate and complete a Section 106 relating to the application as well as prepare evidence and Proofs for the Inquiry that did not take place.

### **Quality of Decisions by DLUHC**

- 7.6 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 latest figures published cover the 24 months to the end of March 2023. Guildford’s figures are set out below:

<b>Total major appeal decisions</b>	<b>Overturn % at appeal</b>	<b>Quality of decisions (% overturned at appeal)</b>
73	7	9.6%

### **Non-Major applications**

<b>Total non-major decisions</b>	<b>Non-Major appeals</b>	<b>Overturn % at appeal</b>	<b>Quality of decisions (% overturned at appeal)</b>
3,147	170	57	1.8%

Whilst the returns suggests that there is not an issue with the quality of decision on non-majors, it needs to be acknowledged that these figures do not cover more recent decisions. The previous Committee report confirmed that internal reports suggested that the real time figure is nearer 7.5% for the performance on major applications; the current official report suggests a slightly worse situation. As appeal decisions are issued by PINS as and when and there is significant time

lag between the refusal of planning permission, lodging appeals and the final decision from PINS (this could be up to 2 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 as follows:

- 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 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 the 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 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 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.