

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 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 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 Going forward reports will look 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 consultants' costs, 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. Going forward, the twice-yearly updates will focus on the previous two calendar years only.

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 tables in Appendices 1 to 4 draw out the member overturns for each year from 2018 to 2021 and looks at those decisions in more detail. For future reports, this will be linked to Government performance figures on appeals.

4. Observations on appeals data since previous report

- 4.1 Since the previous reports, four further appeals have been allowed against Committee overturn decisions.
- 4.2 A further four decisions have been appealed and are pending a decision, with several other decision made recently with no opportunity to lodge an appeal at the time of writing this report. Therefore, there is the chance of a significant number of further allowed appeals. It is also noted that this means twice yearly reporting does not capture a significant number of decisions. A single annual update would carry more data to allow a better review.
- 4.3 As noted in the earlier report it is important to understand the cost of defending an appeal in addition to specific costs awards which can be made as part of the

appeal process. The previous report provided some information on this, there are two further significant appeals where this can also be highlighted:

- 20/P/01216, as this appeal was dealt with under written representations officers were able to undertake the work without the need to appoint external consultants. However, there remained a significant time cost. Officers spent approximately a full week of work (37 hrs) on statement preparation. Using the time cost figures below this equates to around £3,000 of officer charge time. On top of this the Council's solicitor was heavily involved in reviewing the reasons for refusal. This is especially noticeable where the appeal was allowed with costs awarded indicating that the Council's refusal was unreasonable. Members should note this as an entirely avoidable cost.
- 18/P/02456 & 20/P/01461, appeal against non-determination had been lodged prior to the Planning Committee meeting. Public Inquiry scheduled for 11 January:
 - Consultant fees £17,000 minimum
 - Counsel fees C.£80,000 for QC + £35,000 for Junior
 - In addition to this will be significant officer costs for planning and legal support throughout the appeal

4.4 This demonstrates the range of costs that appeals can involve and even at the lower end the amounts are not inconsequential and multiplied over several appeals can become considerable sums. Larger appeals, in this case a public inquiry, carry very significant costs. Whilst we obviously need to wait for the outcome of the appeal, councillors should note the general costs to the Council that result from this level of appeal.

Officer time

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

Officer	Fees per hour (inc. 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

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

4.6 The previous report identified that the Task and Finish group had been assembled and meetings have now commenced. A number of the recommendations have been discussed to date and the next meeting is due to look in detail at the Member overturn process.

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 the Lead Councillor, 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 are 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 then 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 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 below.

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 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. 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 the 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 picture through 2021 shows an overall trend of Member overturn decisions that have been appealed being ultimately allowed on appeal. The costs associated with defending those appeals both in consultant terms and in terms of officer time costs are becoming more significant. Noticeably a public inquiry to be held January 2022 has already seen expenditure committed in excess of £100,000.
- 13.2 There remains a concerning possible trend with the number of undetermined appeals resulting from Member overturns. Whilst these cannot be prejudged if all are allowed, they would point to concerns over the quality of decision making at

the committee level. With the review group in place tasked with implementing the recommendations of the Local Government Association Review of planning committee there is an opportunity to consider this in greater detail.

- 13.3 It is recommended that this update report reverts to a single annual update as the timing of appeal decisions means that twice yearly reporting does not present sufficient data to establish a trend or meaningful update.

14. Background Papers

None

15. Appendices

Appendix 1: 2018 overturns table

Appendix 2: 2019 overturns table

Appendix 3: 2020 overturns table

Appendix 4: 2021 overturns table