

REPORT OF JENNY CLIFFORD, THE HEAD OF PLANNING AND REGENERATION

APPEAL DECISIONS 15/16

Portfolio Holder Cllr R J Chesterton
Responsible Officer Head of Planning and Regeneration

Reason for Report: To provide information on the outcome of planning appeals for the financial year 15/16.

RECOMMENDATION: That the report be noted.

Relationship to Corporate Plan: Planning decision making is relevant to achieving corporate priorities: thriving economy, better homes, empowering our communities and caring for our environment.

Financial Implications:

Planning appeals can prove expensive to the Council in terms of: Staff resources both within the Planning Service and other sections such as Legal, Financially if specialist consultant assistance, expert witnesses and external legal advocacy are required. This is more likely at public inquiry. There are also financial implications for the Council at appeal if an appellant can prove the Council has acted unreasonably. If so, the Planning Inspectorate can require that the Council pay the appellant's appeal costs.

Legal Implications:

By their nature appeals involve independent assessment by the Planning Inspectorate of the case and the Council's decision. The Council needs to ensure that its planning decision making is robust in order to reduce risk of challenge, maximise appeal success and reduce the impact of appeals on budgets.

Risk Assessment:

Appeal statistics provide a useful check on decision making by comparing appeal outcomes with those nationally, the number of appeals and outcomes with previous years and whether any costs have been awarded against the council on the basis of unreasonable behaviour. A risk to the Council are the increasingly tight thresholds that the Government is seeking to apply over appeal performance as an indicator of the quality of planning application decision making. Whilst existing thresholds are being met, they are proposed to be tightened, thereby increasing risk of designation as underperforming.

Consultation carried out with:

None.

1.0 APPEAL PERFORMANCE AND NATIONAL COMPARISON.

1.1 Attached at **Appendix 1** is a summary of planning appeals determined between 1st April 2015 – 31st March 2016. 34 appeals were determined within that period.

0		Withdrawn
10	(29%)	Allowed
24	(71%)	Dismissed

1.2 The total number of appeals is similar with the last few years. Planning Inspectorate statistics for the whole of the financial year 2015/16 are not yet available. Those issued to date (quarters 1, 2 and 3) of this financial year indicate the percentage of all appeals allowed nationally (England) at an average of between 32% - 34%. The figure for all appeals in Mid Devon over the whole of 2015/16 was 29%. This indicates the appeal performance is broadly aligned with that for England as a whole.

2.0 ALLOWED APPEALS.

2.1 Of the 10 appeals allowed, 2 of these were refused by Planning Committee contrary to officer recommendation:

- 14/01452/MFUL Installation of a solar energy farm on 13.34ha of land to generate 5.5 megawatts of energy (Revised scheme) – Land east of Bowdens Lane, Shillingford.
- 14/02077/FULL Erection of a dwelling with parking and associated access(revised scheme) – 11 Uplowman Road, Tiverton.

2.2 The other allowed appeals:

- 1 was for a solar PV farm at Stoneshill Farm, Willand Road, Cullompton, recommended for refusal by officers and refused by Planning Committee.
- 7 were determined by officers under delegated authority: 2 were prior notifications for the change of use of agricultural buildings under class MB, 1 for the felling of a TPO tree, 4 were for a range of other development proposals.

3.0 DISMISSED APPEALS.

3.1 Of the 24 dismissed appeals, 4 were determined or considered by Planning Committee:

15/00771/FULL formation of layby for parking of vehicles /access to Woodland, north of Higher ford House, Chawleigh – Inspector supported

decision of Planning Committee to refuse permission contrary to officer recommendation.

14/01915/FULL Variation of condition to increase installed capacity of AD plant to 1,00Kw, Menchine Farm, Nomansland (non-determination appeal).

13/0076/NUCU appeal against the issue of an enforcement notice at Hackpen Hill, Blackborough.

15/0033/FULL Change of use of residential garage /workshop to dwelling, Ravensdale, Blackborough.

- 3.2 20 were considered by officers under delegated powers. Of these, 5 related to prior notifications for the change of use of agricultural buildings to dwellings under classes MB or Q.

4.0 COSTS

- 4.1 Over the period covered by this report, a cost award against the Council was sought by the appellant in relation to unreasonable behaviour on 2 cases.

- 4.2 A partial award of costs against the Council was made by the Planning Inspectorate in 1 of these cases (solar farm at Bowden's lane, Shillingford). The financial claim against the Council has not yet been established.

5.0 COMPARISON WITH PREVIOUS PERIODS.

- 5.1 Comparison with the last reports on this subject giving appeal figures recorded is as follows:

1st January - 31st December 2009 37 appeals, 23 (62%) dismissed.
1st January - 31st December 2010 28 appeals, 22 (78%) dismissed.
1st January – 31st December 2011 37 appeals, 22 (60%) dismissed
1st January – 31st December 2012 33 appeals, 16 (48.5%) dismissed
1st January – 31st December 2013 37 appeals, 20 (54%) dismissed
1st January – 31st December 2014 42 appeals, 27 (64%) dismissed
1st April 2015 – 31 March 2016 34 appeals, 24 (71%) dismissed

The percentage of appeals dismissed has returned to levels a couple of years ago having dipped in 2012 and 2013.

6.0 GOVERNMENT TARGETS FOR APPEAL PERFORMANCE.

- 6.1 The Government seeks to improve the speed and quality of planning decision making. In the event that the Secretary of State views that a Local Planning Authority is not adequately performing its function of determining applications it will be designated as underperforming and special measures applied. The performance of each authority in terms of speed and quality of decision making is monitored. The measure to be used to assess the quality of decision making is the average percentage of decisions on applications for all

major development that have been overturned on appeal. The threshold for inadequate performance by a Local Planning Authority is currently 20% or more major application decisions made over the previous two years being overturned at appeal. The Council's performance against this as at the end of March 2016 was 10%, thus exceeding the Government's current quality of decision indicator.

- 6.2 The 'Technical consultation on implementation of planning changes' issued by the Department for Communities and Local Government in February 2016 reviews this quality of decisions threshold. As also indicated in the Autumn Statement, the Government has indicated an intention to reduce the threshold referred to in 7.1 above from 20% to 10% in order to drive improvement and safeguard against poor performance. This represents a service risk going forward and reinforces the need for robust decision making that can be successfully defended. The same document also consults on whether to introduce an additional measure for the quality of decision making: 10 - 20% or more non-major application decisions made over the previous two years being overturned at appeal.
- 6.3 For Members information where a Local Planning Authority is designated as underperforming it is required to produce an action plan to address areas of weakness. It also grants applicants for major development a choice over whom to submit their application to. It introduces the ability to apply for planning permission directly to the Planning Inspectorate as an alternative to applying to the Local Planning Authority. Application assessment and decision making is therefore removed from the local level. In these circumstances the Local Planning Authority does not receive an application fee, but is still responsible for certain administration functions associated with the applications.
- 6.4 3 appeal decisions between 1st April 2015 and 31st March 2016 related to major applications. Of those 2 were allowed and 1 dismissed.

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Circulation of the Report: Cllr Richard Chesterton
Members of Planning Committee

List of Background Papers: Planning Committee agendas and minutes 2015/16.
DCLG Improving planning performance – Criteria for designation. June 2014
DCLG Planning performance and the planning guarantee –Government response to consultation. June 2013
DCLG Technical consultation on implementation of planning changes February 2016
Growth and Infrastructure Act 2013

Planning Inspectorate Statistical Report: England
2015/16, Quarters 1, 2 and 3