

CHESHIRE EAST COUNCIL

STRATEGIC PLANNING BOARD

Date of meeting: 8th February 2012
Report of: Stephen Irvine, Development Management and Building Control Manager.
Title: Appeals Record in 2011
Portfolio Holder Cllr Rachel Bailey

1.0 Report Summary

- 1.1 This report summarises the Council's records on appeals in 2011 (71.3%) and looks into any lessons that can be learnt from it and applied in 2012 and beyond.

2.0 Decision Required

- 2.1 For noting by the Strategic Planning Board

3.0 Recommendation

- 3.1 That the Committee note the Council's appeals performance for 2011 (71.3%) and its success in most instances in defending planning appeals.
- 3.2 That the Committee endorse setting a target of a 74% appeals success in 2012 and 76% in 2013.
- 3.3 That the Committee note the main policy issues raised in cases the Council lost on appeal.
- 3.4 That the Committee note the reasons for costs awards in 2011 and Officers seek to reduce them in 2012.

4.0 Financial Implications

- 4.1 There are no financial implications.

5.0 Legal Implications

- 5.1 There are no legal implications with the recommendation.

6.0 Risk Assessment

- 6.1 There are no risks associated with this decision.

7.0 The Council's Appeals Record in 2011

Facts

7.1 The Council fought a total of 122 appeals in 2011 of which:

- 113 where against planning decisions.
- 4 were enforcement appeals.
- 5 were Tree Preservation Order Appeals.

7.2 The Council's record in 2011 was as follows:

Performance

Appeals Dismissed: 87 (71.3%)

Appeals allowed: 35 (28.7%)

Costs

Costs awarded against Cheshire East: 8.

Costs awarded to Cheshire East: 1.

Costs awards dismissed: 8.

Performance

7.3. The overall appeals performance of the Council in 2011 was well above the national target of 60%. A 71.3% success rate in appeals is considered good and indicates that the decisions made by Officers and the Council's three Planning Committees are robust and generally well founded in the majority of policy areas.

7.4. Nevertheless, there is still some room for improvement and to this end Officers will be seeking a 74% success rate this year with the aim of achieving 76% in 2013.

7.5. Furthermore, it should be noted that, with the implementation of the Council's pre-application charging system, the number of appeals should reduce as this process should 'iron-out' a significant numbers of faults in applications before an application is submitted.

7.6. A review of the 35 appeal decisions the Council lost on appeal revealed that the following application issues were the most raised:

- Impact on living conditions of adjacent occupiers (loss of outlook, light and privacy) – 6.
- Impact on the character and appearance of the open countryside – 6.
- Impact on the character and appearance of the area – 8.
- Impact on the character and appearance of a Conservation Area – 5.
- Highways safety matters (access and parking) – 4.

- Green Belt issues – 4.

- 7.7. Whilst there is no indication that the Council are losing an unacceptable amount of applications in any one area, it is clear that the Council need to be vigilant in the above policy areas to ensure that it applies its planning policies fairly and reasonably. In particular, the above indicates that there is a need to assess the impact of a scheme on the character and appearance of an area very carefully. As such, Officers have been informed of the above to ensure this happens.

Costs

- 7.8. Eight awards of costs were made against the Council in 2011. These awards cost the Council a total of £ 48 409.68. This is considered unacceptable by Officers and they will be looking to significantly lower it in 2012.
- 7.9. A review of the reasons for these costs revealed that the majority of costs awards were on Committee overturns (5 out of 8 cases) or on legal or appeal matters (3 out of 8 Cases).
- 7.10. The main reason given for the award of costs was about failure to provide adequate documentary evidence to support a reason for refusal (5 out of 8 cases).
- 7.11. There was no specific type of application where costs were awarded against the Council.
- 7.12. For information, a summary of the reasons costs were awarded against the Council is set out below.

Site: New Road, Wrenbury (11/0041N)

Committee Overturn: Yes.

Reason for Costs Award:

No evidence to support reason for refusal that other sites for housing were available in the area.

Costs: £15591

Site: Wrenbury Fishery (10/1776N)

Committee Overturn: Yes

Reason for Costs Award:

Unreasonable reasons for refusal re: sustainability of the site and late submission of the council's appeal statement.

Costs: £3000

Site: 416 Newcastle Road (10/4539N)

Committee Overturn: Yes.

Reason for Costs Award:

No evidence to support a reason for refusal on i) impact on character and appearance of the area, (ii) need for development.

Costs: £5365.98

Site: Little Island Nurseries (10/4497N)

Committee Overturn: Yes

Reason for Costs Award:

Unreasonable failure to take account of expert advice (British Horse Society) supporting the scheme.

Costs: £2589.75

Site: Holford House (10/4283M)

Committee Overturn: No.

Reason for Costs Award:

Unnecessary preparation of Unilateral Undertaking and subsequent applicant time (A condition should have been used).

Costs: £2023

Site: Woodside Poultry Farm (10/3506M)

Committee Overturn: Yes

Reason for Costs Award:

Reason for refusal on impact of the development on future residents found to be unreasonable.

Costs: £1024.65

Site: Canal Road (10/2653C)

Committee Overturn: No.

Reason for Costs Award:

Unreasonable delay in completing the S106 agreement.

Costs: £4202.30

Site: Whittakers Green Farm (10/2215N)

Committee Overturn: No.

Reason for Costs Award:

No evidence to support noise, pollution, odour and highways concerns.

Costs: £14613

8.0 Conclusion

8.1. The appeals performance of the Council in 2011 was well above the national target of 60%. At 71.3%, the success rate in appeals is considered good and indicates that the decisions made by Officers and the Council's three Planning Committees are robust and generally well founded in the majority of policy areas.

8.2. A review of the 35 appeal decisions the Council lost on appeal revealed that the following application issues were most raised:

- Impact on living conditions of adjacent occupiers (loss of outlook, light and privacy).
- Impact on the character and appearance of the open countryside.
- Impact on the character and appearance of the area.

- Impact on the character and appearance of a Conservation Area.
- Highways safety matters (access and parking).
- Green Belt issues.

Whilst there is no indication that the Council are losing an unacceptable amount of applications in these areas, it is clear that the Council need to be vigilant in the above policy areas to ensure that this does not become the case.

- 8.3. Eight awards of costs were made against the Council in 2011. These awards cost the Council a total of £ 48 409.68. A review of the reasons for these costs revealed that the majority of costs awards were on Committee overturns or on legal or appeal matters. The main reason given for the award of costs was about failure to provide adequate documentary evidence to support a reason for refusal.
- 8.4. In view of the above, it is clear that Members and officers should seek to reduce the costs made against the Council by reducing the number of unnecessary Committee overturns, ensuring legal and appeal matters are dealt with efficiently and that reasons for refusal are sound and evidenced.