CHESHIRE EAST COUNCIL

SOUTHERN PLANNING COMMITTEE

Date of meeting:	28 March 2012
Report of:	Stephen Irvine, Development Management and Building Control Manager.
Title:	Appeals in January and February 2012
Portfolio Holder	Cllr Rachel Bailey

1.0 Report Summary

1.1 This report summarises the Council's appeals record for the first two months of the year.

2.0 Decision Required

2.1 For noting by the Southern Planning Committee

3.0 Recommendation

3.1 That the Committee note the Council's appeal's performance for January and February 2012 (77.77%) and its success in most instances in defending planning appeals.

3.2 That the Committee note the reasons the Council lost some appeals and a recent Cheshire West appeal that raised issues in relation to housing land supply.

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

7.1 The Council fought a total of 122 appeals in 2011.

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

Performance
Appeals Dismissed: 87 (71.3%)
Appeals allowed: 35 (28.7%)

8.0 2012 Performance

8.1. The full list of appeals determined in this period is attached as Appendix 1.

8.2. It shows that the Council dealt with 19 appeals during the period that had the following results:

- 13 appeal cases dismissed.
- 2 appeal cases part-dismissed and part-allowed.
- 3 appeal cases allowed.
- 1 appeal withdrawn.

8.3. The Council were successful in 77.77% of its appeals. This is well above the Government target of 60%. It is also above last year's figure of 71.3% and target figure for 2012 of 74%.

Cases that were allowed

8.4. In relation to the three cases the Council lost, two were overturned officer recommendations. Specifically the lost cases were:

11/0573M - MINSHULL LANE, CHURCH MINSHULL
This application was for a poultry house and feed hopper.

The application was called into Southern Planning Committee. Whilst it was recommended for approval by Officers, the Committee choose to refuse the application on the grounds that the proposal:

- Would not create or maintain employment or involve the diversification of a farm business.
- Was unacceptable in terms of the design of the proposed building and its isolation in the context of its surroundings.

The Inspector considered the land use, character and appearance, noise impact and highways issues the case raised, but concluded that the land use was appropriate and it would not have a harmful impact on the character and appearance of the surrounding area in any way.

As such, he allowed the appeal.

11/1742M - 11 WOODVALE ROAD, KNUTSFORD, CHESHIRE, WA16 8QF
This application was for a two-storey extension to the front and rear, plus an additional rear single-storey extension.

The Council refused the application on the grounds that the proposed extension, by reason of its height, depth and position, coupled with the change

in levels, would be oppressive, overbearing and result in a loss of outlook to the first floor bedroom window to 13 Woodvale Road.

The Inspector agreed that the main issues were the effect of the extension on the street scene and on living conditions at number 13. However, he found that:

> *"the degree of harm would (not) be so significant as to justify refusal of the proposal and there would be no overlooking of or loss of privacy at No.13".*

As such, he allowed the appeal.

11/1469N - LAND IN FRONT OF THE CHESHIRE CHEESE, CREWE ROAD, SHAVINGTON CUM GRESTY, CREWE
This application was for a 12.5m high telephone mast, following negotiations with Officers to reduce the height of the mast from over 15m in height.

The application was called into Southern Planning Committee. There were a considerable number of objections to the scheme. Whilst it was recommended for approval by Officers, the Committee choose to refuse the application on visual amenity grounds and failure to consider alternative sites.

The Inspector considered the main issues to be the effect of the mast on the character and appearance of the streetscene and whether there were other preferable locations for it. He also covered concerns on highways safety and health. He concluded that the mast:

> *"….. would not have a significantly detrimental effect on the character and appearance of the street scene along Crewe Road and that there are no other preferable locations where the mast could be erected*".

As such he allowed the appeal.

Part dismissed and part allowed cases

8.5. In relation to the part dismissed / part allowed cases, one was a Committee overturn. These cases are summarised below.

10/4431C - BURNS GARAGES LTD, CANAL STREET, CONGELTON
This application was for security fencing to a car parking area.

The Council refused the application on the basis that:

- The development was an intrusive feature which had a harmful effect on the character and appearance of the Grade II Listed and Locally Listed Cockshuts Path and its setting.

- The development had a detrimental impact upon the appearance and setting of the Moody Street conservation area when viewed in the context of the approach from Cockshuts Path.

- The cumulative impact of the unauthorised and unsympathetic development had an overall negative impact on the character and appearance of the area and the streetscene.

The Inspector dismissed the appeal in relation to the boundary wall to Cockshuts Path, arguing that this part of the fence affected the listed path and its setting. However, he allowed the appeal relating to the remainder of the development, arguing it:

"preserves the character and appearance of the Conservation Area and the setting of St Peter's Church".

11/1550N - OAKSIDE, 37 CREWE ROAD, HASLINGTON
This proposal was for the erection of a wall, pillars and railings to the from boundary.

The application was called into Southern Planning Committee. Whilst the proposal was recommended for approval by Officers, the Committee choose to refuse the application on the grounds that the proposed rear verandah would be overbearing and an unneighbourly form of development which would impact on the amenity of the adjacent property.

The Inspector disagreed with the Committee's view, feeling that the proposed veranda:

"would not harm the living conditions of the occupiers of 33 Crewe Road in any way".

However, he dismissed the appeal against refusal arguing that:

"the completed boundary wall and pillars along with the proposed railings would harm the character and appearance of the street scene …"

contrary to the views of both the Committee and Officers.

Committee Overturns that were won

8.6. There were also two cases where Officer reasons for approval were overturned by Members and the refusal was won on appeal. These cases were:

11/1722C - 14 SMITHFIELD LANE, SANDBACH
This application was for the demolition of an existing house and erection of 5 two-storey houses.

The application was forwarded to Southern Planning Committee for approval. However, the Committee disagreed and refused permission on the grounds that the form and layout of the proposed development was not sympathetic to the character of the surrounding area.

On appeal, the Inspector held that the development would be harmful to the established character of the area and unsympathetic to the height, scale, form and grouping of buildings. As such, he dismissed the appeal.

11/2520C - THE SANDPIPER, 62 THE HILL, SANDBACH
This application was for an external staircase and timber exit gate.

Officers recommeded this application for approval. However, the matter was called into Southern Planning Committee on the grounds of the height of the dwellings, the development not being in keeping with the surrounding area, plus loss of privacy and amenity concerns.

Following debate, Southern Planning Committee considered the staircase would:

- result in disturbance and a loss of amenity to residential properties
- would not provide adequate and safe provision for access and egress by pedestrians to the public highway, due to the dangers posed by vehicles reversing out of driveways in Booth Avenue.

On appeal, the Planning Inspector considered that ASB and noise on Booth Avenue would outweigh any advantage that would result in more convenient access created by the staircase. He therefore dismissed the appeal on these grounds. However, he did not consider that the gate created access or highways safety issues and therefore felt this element of the scheme was acceptable.

9.0 Other planning appeals

APP/A0665/A11/2159006 - LAND BOUNDED BY ASH ROAD, CHESTER ROAD AND FOREST ROAD IN CUDDINGTON, NORTHWICH

9.1 Officers consider that another case in the neighbouring borough of Cheshire West and Chester Council is also worth noting because of its relevance to issues being considered in Cheshire East and because it has been referred to by agents at Strategic Planning Board recently.

9.2 The land in question is defined as ‘open countryside’.

9.3 The application was for outline planning permission for up to 150 units, including access, public open space and associated works. 30% affordable housing was proposed.

9.4 Whilst it was a large site within Environmental Impact thresholds, the Inspector held it would not give rise to significnat environmental effacts. Consequently, it was not EIA development.

9.5 There were a considerable number of objections to the appllcation from residents and the Parish Council about:

- the extension of the village into the countryside,
- the impact of the dwellings on the quality of villlage life,
- pressure on resources and facilities,
- the need for more housing,
- traffic congestion and access for emergency vehicles (residents presented their own traffic survey),
- parking problems,
- dangers to bike riders,
- loss of water pressure,
- power cuts,
- impact on badgers and wildlife,
- impact on the sewerage system,
- capacity of schools,
- whether there was sufficient play space for additional children,

amongst other concerns.

9.6. The Inspector considered that the case turned on whether the:

i) Current requirements for housing would warrant the scheme,
ii) Development of this green-field site would undermine the planned housing objectives, the spatial vision for the area or wider policy aims,
iii) Proposal would damage the character of the village, the appearance of the countryside or any feature that ought to be preserved,
iv) Scheme should be curtailed until suitable improvements are made to the Cuddington Waste Water Treatment Works.

9.7. Cheshire West only has a housing land supply of 2.3 years, a decline (of some 40%) from 2010's 3.8 years. Furthermore, they had no appropriate mechanism or policy proposed to address this situation.

9.8. The Inspector concluded that:

"The evidence adduced demonstrates a deteriorating deficiency in the 5-year housing supply currently culminating in a substantial shortfall. Moreover, in the circumstances that pertain, I consider that there is no adequate 'management measure' to address that shortfall and no reasonable prospect of one being available shortly. Hence, there is a clear failure to demonstrate a 5-year supply of deliverable sites and, in accordance with PPS3, favourable consideration should be given to this application for housing, subject to the advice in paragraph 69.

9.9 The Inspector then went on to consider whether the scheme would provide a good mix of high quality housing and entail the efficient use of a suitable, environmentally sistainable site. He also considered whether this scheme would *"risk lifting the lid on development beyond settlement boundaries theerby encouraging housing on large areas of countryside and undermining the regeneration of Northwich"*

9.10 He concluded that:

> *"… the prospect of a deluge of development in the countryside remains largely speculative. Moreover, even if inconceivable levels of investment and an unimaginable change in market conditions were to 'encourage' the imminent provision of all the 2754 dwellings identified, the sum total would be sufficient for barely 1.7 years; a shortfall in the 5 year supply would remain. The prospect of the posited 'spectre' materialising must be remote: and, the danger it might pose must be limited.*
>
> *Nor is there any compelling evidence that permission for the appeal proposal would undermine the regeneration of Northwich"*

9.11 He went on to add that:

> *"the proposal did not undermine a proper plan-led approach to development and that the proposal would properly reflect current planning aims for housing and the spatial vision …. For the area; it would also generally accord with the wider policy objectives applicable here"*

and that:

> *"such a scheme would offer a sound basis for achieving a reasonably efficient use this site and for providing a 'good mix' of high quality housing capable of reflecting the needs of a wide cross-section of the community, including those requiring affordable dwellings".*

and concluded that the site was in *"an inherently sustainable location".*

9.12 The Council claimed that because the site was in open countryside, a deviation from policy was only allowed in exceptional circumstances. However, the Inspector held that that:

> *" …. a severe shortfall in housing requirements is neither countenanced by the RSS nor addressed by policy RDF2. Hence, the policy does not provide the appropriate context in which to balance the 'need for housing' against 'protection for the countryside'. On the contrary, the balance is identified in PPS3. In my view, the accumulated level of the shortfall evident here would be capable of being exceptional enough for housing development to be considered favourably especially where no specific environmental damage is identified and the provisos set out in paragraph 69 of PPS3 are met".*

He continued:

> *" …. the recent tenor of ministerial statements and the approach heralded by the draft NPPF seems to me to imply a rather more robust response to housing applications than bestowing 'favourable consideration' where an up-to-date 5-year supply of deliverable housing sites cannot be demonstrated.*

For all those reasons, I consider that this scheme would meet the remaining provisos set out in paragraph 69 of PPS3. The proposal would not damage the character of the village, the appearance of the countryside or any feature that ought to be preserved. On the contrary, it would be capable of providing a wide mix of good quality housing and represent an appropriately efficient use of a highly suitable and sustainable site".

9.13. Whilst United Utilities objected to the scheme on the grounds that the incidence and volume of foul sewage spills at manholes would increase substantially, the Inspector was not convinced that the proposal would result in the problems suggested. Furthermore, he dismissed residents and the Parish Council's concerns re: traffic impact and congestion, power outages, overlooking and ecology issues.

Conclusion

9.14. The Inspectors conclusion was as follows:

I have found that there is a deteriorating deficiency in the 5-year housing supply currently culminating in a substantial shortfall. Worse still, there is, as yet, no adequate 'management measure' to address that deficiency and no reasonable prospect of one being available shortly. Hence, favourable consideration should be given to this application for housing, subject to the provisos listed in paragraph 69 of PPS3. Since I consider that this scheme would properly reflect planning aims for housing and the spatial vision for the area and be capable of providing a wide mix of good quality housing on a highly suitable and sustainable site, I find that the provisos set out in paragraph 69 are met. The balance is thus in favour of developing this site just beyond the current settlement limit of Cuddington. On the evidence available, I am not convinced that the proposal would result in a significant increase in 'spills' of foul sewage and, given the absence of any objection from the Environment Agency, I doubt the need to limit the proposed development. Hence, and in spite of considering all the other matters raised, I find nothing sufficiently compelling to alter my conclusion that this appeal should be allowed.

He therefore concluded that the appeal be allowed.

Costs Hearing

9.15 The appellant's (Fox Strategic Land and Property and Johnstone Godfrey) claimed that the Council behaved unreasonably as they:

- Prevented development that could properly have been permitted in the light of the Development Plan, national planning policy (PPS3) and all other material considerations.

- Prolonged proceedings by the introduction of what was effectively a new reason for refusal that remained unsubstantiated (specifically permission was refused solely because the site lies beyond the settlement limit of Cuddington and within open countryside where the erection of new buildings

would not normally be permitted and that the scheme would risk 'lifting the lid' on settlement boundaries and thereby erode large areas of countryside around towns and villages, jeopardise the evident urban focus of policies, impair the regeneration of Northwich and undermine the plan-led approach to development.

- Issued a reason for refusal against the professional and technical recommendation of officers. Although authorities are entitled to reach a different decision, the advice they were given was that needed to show reasonable planning grounds for doing so and produce relevant evidence on appeal to support such a decision in all respects. Cogent reasons for departing from the detailed, thorough and careful consideration of all the issues set out in the planning officer's report were absent. Indeed, the reason for refusal asserted a breach of policy without identifying any actual harm or addressing other material considerations.

They consequently submitted a costs application against Cheshire West.

9.16 The Inspector concluded that:

"Quite properly Councils do not have to follow the recommendations of their officers. But it seems to me that particularly cogent reasons should be required to justify departing from the sort of detailed, thorough and careful consideration of all the issues presented to them in this planning officer's report. The bald statement that the proposal would breach the policy presumption embodied in 'saved' policy GS5, although correct, simply fails to acknowledge other policies in the Plan as well as any other material consideration. On the face of it such a stance would fail to fulfil the basic requirements of the Act. It would also appear to ignore, rather than accommodate, the proffered professional advice. And, the absence of any alleged harm (such as an adverse impact on the landscape, or the village, or local residents or nature conservation interests) simply serves to accentuate that deficiency.

I fully accept that such defects would not matter much provided evidence was to be produced at appeal stage to substantiate the reason for refusal. But the line adopted simply asserts that permission for the scheme would risk those damaging consequences flowing from the effects of prematurity and precedent. For the reasons set out in my decision letter, I consider that the evidence adduced fundamentally fails to demonstrate that the appeal proposal would entail serious risks emanating from either source. Moreover, I think that the absence of any reference to the guidance set out in the General Principles and PPS3 relating to 'prematurity' (explicit or otherwise as far as I can discern) confounds any realistic chance of demonstrating otherwise.

I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated. Hence, I allow this application for a full award of costs in the terms set out below."

Commentary

9.17 It should be noted that Cheshire East's housing land supply position is considerably stronger than Cheshire West's. Furthermore, the Interim Policy on Housing has been brought forward to address this situation, whilst the Planning Inspector here felt that Cheshire West had done little to address their housing shortfall in a meaningful way.

9.18 Nevertheless, this appeal shows that Inspectors are putting considerable weight on the PPS 3 housing supply argument that, if a 5-year supply of deliverable sites cannot be demonstrated, then favourable consideration should be given to applications for housing. Members and Officers should note that such an argument can outweigh a presumption against building on open countryside where no 'harm' can reasonably be indentified.

9.19 Moreover:

- failure to give weight to such an argument,
- fully justify going against it,
- ignoring rather than accomodating professional advice,
- not identifying 'harm' in a refusal,

can lead to a full costs award against a Local Planning Authority, as it did in this case.

APPENDIX 1

APPEAL DECISIONS JANUARY AND FEBRUARY 2012

Application number	Development description	Main Location	Decision description	Agenda description	Overturn Y/N	Appeal decision date	appeal dec desc
09/4225M	Certificate of lawful development for a proposed swimming pool enclosure	THE GRANGE, MOSS LANE, OLLERTON, KNUTSFORD, CHESHIRE, WA16 8SH	negative certificate	Delegated Agenda	N	08/02/2012	Withdrawn
10/2984W	Application for Removal or Variation of a Condition following Grant of Planning	WHITTAKERS GREEN FARM, PEWIT LANE, BRIDGEMERE, CW5 7PP	Not determined	05.01.11- Strategic Planning Board	N	19/01/2012	Dismissed
10/4431C	Security Fencing to Retail/Service Car Parking Area	BURNS GARAGES LTD, CANAL STREET, CONGLETON, CW12 3AA	refused	Delegated Agenda	N	23/02/2012	Part allowed/part dismissed
10/4489N	Development of Land at Hall O'Shaw Street to Provide 14 Dwellings	LAND TO THE REAR OF 91, HALL O SHAW STREET, CREWE, CHESHIRE	refused	02.02.11- Southern Planning Committee	N	03/02/2012	Dismissed
11/0573N	The Erection of Poultry House and Feed Hopper with Associated Access Road	Land adjacent Minshull Lane, Church Minshull, CW5 6DX	refused	14.09.11 - Southern Planning Committee	Y	07/02/2012	Allowed
11/1742M	Construction of 2 storey side extension to front and rear	11, WOODVALE ROAD, KNUTSFORD, CHESHIRE, WA16 8QF	refused	Delegated Agenda	N	29/02/2012	Allowed
11/1469N	Proposed Vodafone Installation at Crewe Road, Crewe	LAND IN FRONT OF THE CHESHIRE CHEESE, CREWE ROAD, SHAVINGTON CUM GRESTY, CREWE	Determination - refusal (stage 2)	01.06.11 - Southern Planning Committee	Y	17/01/2012	Allowed
11/1550N	Remodelling of Front of Property to Restore the Nature of Original Single Proper	37, CREWE ROAD, HASLINGTON, CHESHIRE, CW1 5QR	refused	26.10.11 - Southern Planning Committee	Y	03/01/2012	Part allowed/part dismissed
11/1648N	Proposed Replacement Dwelling	WOODLANDS COTTAGE, WHITCHURCH ROAD, SPURSTOW, CHESHIRE, CW6 9RU	refused	Delegated Agenda	N	18/01/2012	Dismissed
11/1722C	Demolition of Existing House and Erection of 5no Two Storey Houses	Gwenstan, 14, SMITHFIELD LANE, SANDBACH, CHESHIRE, CW11 4JA	refused	03.08.11 - Southern Planning Committee	Y	18/01/2012	Dismissed
11/1746N	Change of Use for Land 12' Wide Adjacent to the Property. Currently in Ownership	8, KEMBLE CLOSE, WISTASTON, CW2 6XN	refused	Delegated Agenda	N	19/01/2012	Dismissed
11/1755C	Demolition of Existing Building and Erection of Three Detached Dwellings	CRANAGE NURSERIES, 79, NORTHWICH ROAD, CRANAGE, WA16 9LE	refused	Delegated Agenda	N	07/02/2012	Dismissed
11/1793N	Single Storey Extension to Rear of Property	Fields View, MIDDLEWICH ROAD, WOOLSTANWOOD, CW2 8SD	refused	Delegated Agenda	N	18/01/2012	Dismissed
11/1979M	Retrospective Planning Permission for Erection of Wooden Fence	9, OLD HALL CRESCENT, HANDFORTH, CHESHIRE, SK9 3AX	refused	Delegated Agenda	N	16/01/2012	Dismissed

11/2311N	CHANGE OF USE OF LAND FROM AGRICULTURAL TO GARDEN & DRIVEWAY/PARKING AREA	THE ASH, WOODHOUSE LANE, AUDLEM, CREWE, CW3 0DT	refused	Delegated Agenda	N	09/01/2012	Dismissed
11/2520C	A 1200 Wide Hardwood External Staircase From The Yard At The Rear	The Sandpiper, 62, THE HILL, SANDBACH, CHESHIRE, CW11 1HT	refused	14.09.11 - Southern Planning Committee	Y	18/01/2012	Dismissed
11/3071M	Erection of a single storey side extension to form new principle entrance to the	CYDONIA COTTAGE, KNUTSFORD ROAD, ALDERLEY EDGE, CHESHIRE, SK9 7SS	refused	Delegated Agenda	N	21/02/2012	Dismissed
11/3615M	Alterations to single storey dwelling	BOWESLEIGH, GREENDALE LANE, MOTTRAM ST ANDREW, MACCLESFIELD, SK10 4AY	refused	Delegated Agenda	N	03/01/2012	Dismissed
11/3790N	FIRST FLOOR EXTENSION TO PROVIDE LEVEL ACCESS SHOWER ROOM/BEDROOM AND THROUGH FL	7, BAKER CLOSE, CREWE, CW2 8GS	refused	Delegated Agenda	N	28/02/2012	Dismissed