CHESHIRE EAST COUNCIL

NORTHERN PLANNING COMMITTEE

Date: 8 November 2017
Report of: David Malcolm: Head of Planning (Regulation)
Title: Planning Appeals Report

1.0 Purpose of Report

1.1 To summarise the outcome of Planning Appeals that have been decided between 1st April 2017 and 30th September 2017. The report provides information that should help measure and improve the Council's quality of decision making in respect of planning applications.

2.0 Decision Required

2.1 That the report be noted.

3.0 Background

3.1 All of the Council's decisions made on planning applications are subject to the right of appeal under section 78 of the Town and Country Planning Act 1990. Most appeals are determined by Planning Inspectors on behalf of the Secretary of State. However, the Secretary of State has the power to make the decision on an appeal rather than it being made by a Planning Inspector – this is referred to as a 'recovered appeal'.

3.2 Appeals can be dealt with through several difference procedures: written representations; Informal Hearing; or Public Inquiry. There is also a fast-track procedure for householder and small scale commercial developments.

3.3 All of the Appeal Decisions referred to in this report can be viewed in full online on the planning application file using the relevant planning reference number.

3.4 This report relates to planning appeals and does not include appeals against Enforcement Notices or Listed Building Notices.

4.0 Commentary on Appeal Statistics

4.1 The statistics on planning appeals for the first quarter (Q1) and second quarter (Q2) of the year are set out in Appendix 1. A list of the appeals is set out in Appendix 2 and 3.

4.2 The statistics in Appendix 1 are set into different components to enable key trends to be identified:

- Overall performance;
- Performance by type of appeal procedure;
- Performance on delegated decisions;
- Performance on committee decisions;
- Overall numbers of appeals lodged;
- Benchmarking nationally.

4.3 The overall number of appeals lodged has fallen by 39% when compared to the same period in 2016. Between 1st April 2016 and 30th September 2016 69 Appeals were lodged. 42 Appeals were lodged between 1st April 2017 and 30th September 2017. It is also noticeable that the number of appeals lodged has fallen in the 2nd quarter this year, from 29 in Q1 to 13 in Q2. The number of planning applications determined has remained constant at a high level, so the reduction in appeals is not a result of fewer planning decisions made. The reduction in appeals lodged therefore appears to be an indication of improvements in the overall quality of decision making. This may be reflective of improved negotiation with applicants in reaching solutions to issues, and the adoption of the Local Plan reducing the number of speculative appeals.

4.4 In terms of the outcomes of the appeals decided, more have been allowed than would be expected against a national average, across the board (with the exception of householder appeals). Overall, in the year to date, 47% of appeals have been allowed against a national average of 31%.

4.5 The vast majority of appeals were determined by written representation, 47 out of 62. Of those 47 decisions, 51% were allowed against a national average of 29%. The sample of decisions by Public Inquiry and Informal Hearing is too low to provide meaningful trends, although it is notable that both Inquiries determined in this period were allowed.

4.6 In respect of Householder Appeals, only 20% were allowed which is better than the national average of 36%.

4.7 31% of appeals against delegated decisions were allowed, which is exactly in line with national average.

4.8 Appeals against committee decisions have been less favourable. Overall 69% of appeals made against committee decisions have been allowed. In the second quarter this figure rose to 75%. This outcome is not solely a result of Members overturning a planning officer recommendation. Appendix 2 and 3 illustrate that 7 refusals of planning permission against officer recommendation were successfully defended by the Council. However, the overwhelming majority of decisions where officer recommendations were overturned have resulted in the appeal being

allowed. This was the case for 67% of those decisions. These figures emphasise that a decision contrary to officer recommendation based on good planning grounds may be defended, but too often decisions are made contrary to officer advice without good reason and with insufficient evidence. The total of 21 appeals over the period against decisions made contrary to officer advice should be considered too many in itself.

4.9 It should be noted that, due to the timescales of the appeals process, any improvements in committee decision making made in the last 3 months will not yet have filtered through.

5.0 Commentary on Appeal Decisions

5.1 This section summaries several appeal decisions that have implications for the Council. All of the decisions have importance for different reasons but due to the volume of decisions only a few are selected for comment in this report.

5.2 The Council is now beginning to receive appeal decisions since the adoption of the Cheshire East Local Plan Strategy. Application ref. 17/0197C is an example of decisions being made in accordance with the adopted Development Plan. The proposal was for a small housing development in the Open Countryside at Betchton. The appeal was dismissed. The Inspector noted that:

> *The Council is now able to demonstrate a five year supply of housing land. The development plan is not absent or silent and relevant policies for the supply of housing are not out-of-date. Consequently, the appeal proposal must be determined in accordance with the development plan unless material considerations indicate otherwise in accordance with Section 38(6) Planning and Compulsory Purchase Act.*

5.3 This is an important guiding principle of the plan-led system. The appeal was subsequently dismissed as the Inspector agreed with the Council that the proposal ran contrary to policies of the Development Plan and there were no material considerations sufficient to outweigh a decision in accordance with it.

5.4 The decision also emphasises the importance of maintaining a five year supply of housing land.

5.5 An appeal decision for an ‘out of centre’ retail development in Macclesfield exemplifies the challenging decisions that are required to be made at Planning Committee. Application ref. 15/5676M, for the development of the Barracks Mill site, was refused by the Council due to the concern that there would be significant impact on the vitality and viability of Macclesfield Town Centre.

5.6 In allowing the appeal for 12,800 square metres of out-of-centre retail floorspace, the Inspector found that the proposal would divert trade from Macclesfield Town Centre and would therefore impact on its vitality and viability. The Inspector considered that the cumulative comparison impact on the town centre would be in the region of 9.6%. However, he found that such an impact on vitality and viability and on local consumer choice and trade would not be 'significantly adverse', which is the test of the National Planning Policy Framework and the newly adopted Local Pan Strategy (Policy EG 5 refers). These conclusions were drawn subject to the imposition of detailed conditions restricting the amount and type of retail goods that can be sold from the site.

5.7 The retail conditions imposed by the Inspector would limit the amount of 'bulky' items such as carpets, floor coverings, furniture, home furnishings, electrical goods, domestic appliances, DIY goods and materials and gardening tools and equipment that could be sold. More importantly, the conditions would limit overlap with clothes retailers in the town centre by restricting the sale of such goods to 10% of the total net floorspace. This makes the conditions more restrictive than originally proposed in the committee report and certainly more restrictive than the appellant argued for. By restricting the ratio of clothing for sale, the conditions will also preclude other clothing retailers from relocating their clothing, beauty and fashion sales to the Barracks Mill site. A minimum unit size has also been imposed to ensure that the scheme does not create smaller shops with similar occupiers to the town centre.

5.8 In terms of qualitative impact, the Inspector noted that presently, shoppers are choosing to travel to other 'out-of-centre' retail parks to destinations such as Lyme Green, Handforth Dean, Stanley Green, Stockport, Manchester City Centre and the Trafford Centre. To this end, the Inspector considered that the appeal proposal would provide a realistic alternative to competing retail parks further afield and therefore would improve local consumer choice and reduce present leakage from Macclesfield by bringing "different types of retailers to Macclesfield who would otherwise struggle to find suitable premises in the town". In doing so, the Inspector concluded that "this would represent a significant benefit, as would the regeneration and redevelopment of a vacant brownfield site in a prominent location close to the town centre". The appeal was therefore allowed.

5.9 In the majority of appeals, both parties bear their own costs of the process. This was the case with the Barracks Mill appeal, for example. However, a costs award may be made by the Inspector where they consider that unreasonable behaviour has occurred. The Appellant is required to evidence why the appeal should be made, but of equal importance the Council must be able to properly evidence its decision based on planning grounds alone. Applications ref. 16/3569M and 16/4087M are examples of costs being awarded against the Council because it was unable to substantiate the reason for refusal. In this case planning permission existed for 2No. Apartments on the site. The

applicant wished to further subdivide the building into either 3 or 4No. Apartments. The subdivision involved a small extension to the building, of circa 16 sq. m. Both applications were refused due to "over development and over intensification of use causing harm to the character and appearance of the Conservation Area". The Inspector allowed the appeals and concluded that the Council had failed to substantiate the reasons for refusal, in the face of advice from its officers that the proposals were acceptable. He concluded that the appellant should not have needed to deal with these reasons for refusal and had incurred unnecessary expense in doing so.

5.10 This was an example of a clear cut decision that should not have gone to appeal. However, as mentioned at paragraph 4.8 of this report, committee decisions contrary to officer recommendation can be a healthy part of the process when it is based on evidence, policy and good planning grounds. A good example of this is ref. 16/3610M. The proposal was for 3No. Apartments, redeveloping a site that had previously been granted permission for an office development. Planning permission was refused, contrary to officer advice, due to the substandard level of amenity for future occupiers. The Inspector agreed with the Council's decision and dismissed the appeal. On this occasion officers were able to substantiate the reason for refusal during the appeal because it could be evidenced that the proposal breached policies of the Development Plan.

6.0 Recommendation

6.1 That Members note the contents of the report.

7.0 Risk Assessment and Financial Implications

7.1 As no decision is required there are no risks or financial implications.

8.0 Consultations

8.1 None.

9.0 Reasons for Recommendation

9.1 To learn from outcomes and to continue to improve the Council's quality of decision making on planning applications.

For further information:
Portfolio Holder: Councillor Ainsley Arnold
Officer: Peter Hooley – Planning & Enforcement Manager
Tel No: 01625 383705
Email: Peter.Hooley@cheshireeast.gov.uk