

CHESHIRE EAST COUNCIL

NORTHERN PLANNING COMMITTEE

Date: 15th August 2018
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 January 2018 and 30th June 2018. Two quarterly reports are combined to provide information for the year end 2017/18 and the first quarter of 2018/19. 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 full year 2017/18 are set out in Appendix 1. A full list of the appeals for the fourth quarter (Q4) is set out in Appendix 2.
- 4.2 The statistics for the first quarter of 2018/19 are set out in Appendix 3 and a full list of the appeals for this quarter is set out in Appendix 4.
- 4.3 The statistics 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.
- 4.4 The overall number of appeals lodged has remained consistent and averages out at approximately 120 - 140 planning appeals annually. At present, approximately 30% of decisions to refuse planning permission will result in a planning appeal.
- 4.5 In terms of the outcomes of the appeals decided, the performance is very close to the national average; 33.6% of appeals were allowed in the full year for 2017/18 against a national average of 32%. For the first quarter of this financial year, however, 36.7% of appeals have been allowed.
- 4.6 Compared to recent years, the statistics show a reduction in the number of appeals held through public inquiry, which is a reflection of the adoption of the Local Plan Strategy and the subsequent reduction in major housing appeals.
- 4.7 In respect of Householder Appeals, only 13% were allowed over the full year to the end of March 2018. This compares very favourably to the national average for the same period of 38%. The first quarter of this financial year has since seen a rise in the number of householder fast-track appeals allowed, with more appeals (5) allowed in this quarter than in the whole of the previous year (4). This trend will be monitored in future reports as there has been no obvious change in decision making process that should account for this variation.
- 4.8 Only 22% of appeals against delegated decisions were allowed in the full year 2017/18, which is much better than the national average of 32%. The first quarter of the current year has shown appeals allowed at 31%, which is consistent with national average.
- 4.9 Appeals against committee decisions remain less favourable. Overall 63% of appeals made against committee decisions have been allowed during the full year 2017/18. When decisions contrary to officer

recommendation are taken into account, this figure rises to over 70% of appeals allowed. From the appeals lists in Appendix 2 and 4, there were 7 decisions made by committee to refuse planning permission contrary to officer recommendation and 6 of these were then allowed at appeal.

- 4.10 Appendix 2 illustrates that one refusal of planning permission against officer recommendation was successfully defended by the Council at appeal. However, the overwhelming majority of decisions where officer recommendations were overturned have resulted in the appeal being allowed. These figures continue to emphasise that a decision contrary to officer recommendation based on empirical evidence and 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 29 appeals, decided over the full year period 2017/18, submitted against decisions made contrary to officer advice should be considered too many in itself.
- 4.11 It should be noted that, due to the timescales of the appeals process, these figures will reflect decisions made prior to the last 3 months at the very latest.
- 4.12 It should also be emphasised that the appeal process runs to very strict procedural guidelines. Deadlines for appeal statements, site visits, hearing and Inquiries are fixed. A high volume of appeals places a significant burden on the planning department and it is good practice to work to reduce the number of appeals received.

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 has now received a number of important appeal decisions since the adoption of the Cheshire East Local Plan Strategy. In respect of housing developments, these have been reported to Members in previous reports and have confirmed the Council's position on the provision of a 5 year housing land supply.
- 5.3 This position continues to be challenged at appeal, with developers seeking to demonstrate that the delivery of housing in the Borough is falling short of requirements. The Council has robustly defended its position and, based on evidence, has been successful in demonstrating a 5 year supply of housing land. In the recent appeal decision dated 10th April 2018 for a housing proposal at Land West of New Road, Wrenbury, the Inspector stated: "*Whilst I have concluded that at the*

present time the supply of housing land is not quite as healthy as the Council believes, there is a supply which exceeds the five year requirement. When considered along with recent facts relating to both the supply of land and delivery of housing units, I see no reason to depart from the conclusions of the local plan Inspector in finding that there is sufficient provision to ensure that local housing needs can be met.”

- 5.4 This appeal decision serves to confirm a 5 year supply of housing land in Cheshire East. However, similarly to other appeal decisions where a more precautionary approach has been adopted with the application of the “tilted balance” (e.g. Land at Shavington Villa), it also emphasises that whilst there are many elements to the pace of housing delivery on the ground, the Council must continue its recent track record of facilitating housing delivery through the efficient processing and decision making on planning applications for housing in line with the Cheshire East Local Plan Strategy.
- 5.5 Application ref. 16/4306C was subject to an appeal decision on 18 January 2018 following an Inquiry in October 2017. The proposal was for a small scale housing development of 6 dwellings on a site adjacent to the settlement boundary of Goostrey. The key issue for this appeal was the impact on the Jodrell Bank Radio Telescope. The appeal was dismissed due to the impact on the telescope as a result of cumulative exceedances in the levels of interference for radio astronomy. Significant weight was attached to the impact on the research facility, recognised of global importance.
- 5.6 This decision follows earlier appeal decisions that have been dismissed for larger developments where the Council has sought to uphold local plan policies for the protection of Jodrell Bank Observatory. In the light of those decisions, the local planning authority has been applying significant weight to the cumulative impacts on Jodrell Bank, even when individually the impacts have been relatively minor. This decision confirms that electro-magnetic interference arising from small scale developments can and does have a harmful impact on the workings of the Telescope and should be resisted to protect this important asset. The decision emphasises some of the complexities of assessing the individual impacts beyond purely the scale of the development, with location, proximity and orientation just some of the determinative factors.
- 5.7 The decision recognises that there has been a degree of inconsistency through both LPA decision and Appeal Decisions in relation to small scale developments in the Jodrell Bank Observatory consultation zone. In large part this has arisen from the nature of consultation responses that the Council now receives which are now worded to demonstrate the harmful impact of small scale and cumulative developments.

5.8 Whilst it should be recognised that there may be an opportunity to improve consistency through policy and working with Jodrell Bank on the wording of consultation responses, this Appeal Decision emphasises and justifies a precautionary approach to any new housing development in the Jodrell Bank consultation zone.

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:

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