

CHESHIRE EAST COUNCIL

SOUTHERN PLANNING COMMITTEE

Date: 7 February 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 October 2017 and 31st December 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 year to date are set out in Appendix 1. A full list of the appeals for the third quarter (Q3) is set out in Appendix 2.

- 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 remained consistent and averages out at approximately 120 planning appeals annually. It was previously reported that the number of appeals lodged was falling in the last quarter, however this was due to delays in the appeals being registered with the Council, not in the number of submissions reducing. 120 appeals annually represent approximately 2.5% of all planning decisions that the Council makes. At present, approximately 1 in 4 decisions to refuse planning permission will result in a planning appeal.
- 4.4 In terms of the outcomes of the appeals decided, more have been allowed than would be expected against a national average (with the exception of householder appeals). Overall, in the year to date, 36% of appeals have been allowed against a national average of 31%. However, the overall performance this quarter has been very strong, with **only 17% of all appeals allowed**.
- 4.5 The outcomes for the third quarter have been better than the national average for Public Inquiries, Hearings, Written Representations and Householder Fast-track Appeals.
- 4.6 In respect of Householder Appeals, only 7% were allowed compared to the national average for the previous quarter of 40%.
- 4.7 Only 10% of appeals against delegated decisions were allowed in the quarter, taking the yearly average down to 22% - which is well below the national average of 31%
- 4.8 Appeals against committee decisions have been less favourable, although the outcomes have improved in the latest quarter. Overall 64% of appeals made against committee decisions have been allowed. In the third quarter this has reduced to 43%, but it is notable that all of the 3 appeals allowed were decisions made against officer recommendation.
- 4.9 For the year to date 17 appeals have been allowed following decisions to refuse planning applications contrary to officer recommendation. When a committee has made a decision contrary to officer recommendation and the decision has been appealed, the development has been allowed in 71% of those cases.

- 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 24 appeals over the period 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 committee 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. Although one of the appeals referred to falls outside of the reporting period, it is referred to as it potential raises important issues for decision making.
- 5.2 The Council is now beginning to receive appeal decisions since the adoption of the Cheshire East Local Plan Strategy. Whilst the early decisions confirmed the Council's definitive position of being able to demonstrate a five year supply of housing land, this position has been challenged via recent planning appeals at Public Inquiry.
- 5.3 On 8 November 2017, an appeal against the decision of the Council to refuse outline planning permission for up to 400 homes at White Moss Quarry, Alsager (WMQ) was dismissed due to the scheme's conflict with the Local Plan settlement hierarchy and its spatial distribution of development.
- 5.4 However, in his decision letter, the WMQ Inspector did not come to a clear conclusion whether Cheshire East had a five year supply of deliverable housing land. His view was that it was either slightly above or slightly below the required 5 years. In this context, the Inspector engaged the 'tilted balance' set out in the 4th bullet point of paragraph 14 of the National Planning Policy Framework (NPPF). This introduces a presumption that planning permission is granting permission unless

any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole

- 5.5 On 4 January 2018, an appeal against the non-determination of an outline planning permission for up to 100 homes at Park Road, Willaston was dismissed due to conflict with Local Plan policies that sought to protect designated Green Gap, open countryside and rural character. The Inspector also took the view that the housing land supply was either marginally above or below the required 5 years. On this basis, he adopted a 'precautionary approach' and assumed a worst case position in similarly engaging the 'tilted balance' under paragraph 14 of the Framework.
- 5.6 The Council is currently reviewing this appeal decision and is taking legal advice on the approach taken by the Inspector towards housing land supply. The Council is continuing to update its evidence regarding housing land supply to ensure that decisions are taken in the light of the most robust evidence available.
- 5.7 What is clear from the WMQ and Park Road appeal decisions, is that policies within the adopted Local Plan Strategy are being given significant weight by Inspectors in deciding planning appeals, sufficient to warrant the dismissal of appeals where conflicts arise with them, even when the 'tilted balance' in paragraph 14 of the NPPF is engaged.
- 5.8 The decisions continue to emphasise the importance of maintaining a five year supply of housing land in the plan-led system. The Council's five year supply will be further supplemented as allocated sites within the Local Plan Strategy are brought forward. In this context there is particular importance for decision makers in the planning process to be cognisant of the need for the delivery of the allocated housing sites.
- 5.9 Whilst many of the significant appeal decisions related to housing development, the Council has also received important decisions on other forms of development. One decision of note is application ref. 16/1353M which was for a proposed water sports and outdoor activity centre at the former Mere Farm Quarry.
- 5.10 This appeal was an example of a Member decision against officer advice and illustrates that can be a healthy part of the decision making process. In this case it had been emphasised that it was a balanced decision and there was evidence of ecological harm that officers were able to use at the appeal hearing. Interestingly, and somewhat unusually, the reasons that the Inspector dismissed the appeal were not directly related to the reason given by the Strategic Planning Board. Although the Inspector considered there would be some residual harm to the interests of biodiversity they were not considered to be significant. The appeal was dismissed as the Inspector considered the

development to be inappropriate development in the Green Belt without the very special circumstances needed to justify it.

- 5.11 The Inspector noted that there would be social and economic benefits to the proposal, including benefits to the rural economy and benefits to education, health and well-being. However, she did not consider that the benefits clearly outweighed the harm to the Green Belt that had been identified. One can interpret from the decision, that had the site been in a non-green belt countryside location the development would almost certainly have been allowed. The decision therefore serves to emphasise the strict control of development in the Green Belt.

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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