

Title: **Planning Appeals Decisions**

Portfolio Holder: **Planning and Development – Cllr Jeff Osborn**

Reporting Officer: **Christine Caistor – Major Applications and Appeals Officer**

Purpose

This report considers and comments on planning appeal decisions made in the fourth quarter (October-December) 2005

Background

Members will recall the report to the Planning Committee in January last year, in which it was agreed that a quarterly report of appeal decisions would be presented to Committee for information in addition to the regular committee reports. This is the fourth report for this year. The comparative figures for the previous three quarters are also included for easy reference, in addition to the annualise figures for 2005.

The section of the corporate plan covering 'Improving Development Control' has an objective 'to ensure high quality planning decisions based on up to date planning policy.' One of the key performance targets is the percentage of appeals allowed against the Council's decision to refuse planning applications. The percentage of appeals allowed against the Council's decision is a key performance indicator of the Development Control Service. The following performance targets have been set in the Performance Plan –

2004 / 5 – 35%	2007 / 8 – 29%
2005 / 6 – 33%	2008 / 9 – 27%
2006 / 7 – 31%	2009 / 10 – 25%

In 2004/05 a performance of 40% was achieved.

Key Issues

Appeal Decisions for period 1st October 2005 to 31 December, 2005

[The previous three quarters for 2005 and the total for the whole year are also included for comparison purposes]

	Oct - Dec	July - Sept	April –Jun	Jan – Mar	Total 2005
Total decisions made by PINS	15	20	41	35	111
Appeals Allowed:	7 (47%)	8 40%	12 (29%)	12 (34%)	39 (35%)
Appeals Dismissed:	4 (27%)	10 50%	25 (61%)	20 (57%)	59 (53%)
Appeals Withdrawn:	3 (20%)	1 5%	3 (7%)	1 (3%)	8 (7%)
Appeals Split:	1 (6%)	1 (5%)	1 (3%)	2 (6%)	5 (5%)

Analysis of Turnaround Appeal Decisions.

(i.e. the Planning Committee resolved to refuse applications where the officer recommendation was to grant permission / approval / consent)

	Oct - Dec	Jul-Sept	April – June	Jan – Mar	Total 2005
Total 'Turnaround appeals'	5	4	10	12	31
Turnaround Appeals Allowed:	3 (60%)	3 (75%)	7 (70%)	7 (58%)	20 (64%)
Turnaround Appeals Dismissed	0 (0%)	1 (25%)	3 (30%)	5 (42%)	9 (29%)
Turnaround Appeals Withdrawn	2 (40%)	0 (0%)	0 (0%)	0 (0%)	2 (6%)
Turnaround Appeals Split	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)

Awarded Costs: October - December

Number of cost applications made: 3

Number of cost application allowed: 1 (33%)

Number of cost application refused: 2 (67%)

Comments

The number of decisions received in this quarter continues to fall compared to the high in April-June. They do however remain high, at 111 in total for 2005, compared to 64 in the 2004. This is still probably because of the 3 month time limit for appeals working its way through the system and the Inspectorate taking measures to reduce the backlog.

In the report to Committee last year, the figures for 2004 were set as the baseline for future comparison. The number of appeals allowed (i.e. won by the appellant) in 2004 was 33% and for the financial year 2004/5 was 40%. The Council set a target for 35% for 2004/5, falling to 33% for the year 2005/6. The percentage of appeals allowed in the last quarter has risen to 47%, from the 34% recorded in the first quarter. This is a worrying trend. However, the annualised figure for the calendar year 2005 as a whole is 35%. The national average figure is 33% for the financial year 2003/4 set out on the Planning Inspectorate website. This year's performance is therefore 2% above the national average at present and would appear likely to exceed the Council's own performance target set for 2005/6 if the rise in appeals allowed continue at the current rate.

Planning appeal performance, measured as a percentage of appeals allowed, is an important figure for the Council because the Government has introduced the abatement of the Planning Delivery Grant where performance on appeals is poor. In the last quarterly report Members were advised that appeal performance figures were being used to calculate the Planning Delivery Grant for the next financial year (2006/7), based on the period 1st October, 2004 to 30th June, 2005. The national performance level for this period was 32.65 % of appeals allowed against refusals. 40% above this figure was 45.71%. This Council was 1.5% below this number and therefore just clear of any abatement of the Planning Delivery Grant.

However, in calculating the percentage of appeals allowed the Inspectorate included split decisions and your officers have formally expressed concern about this interpretation. In the reports to committee during 2005, split decisions have been identified separately. For

2005 this amounts to 5 decisions, which, if included in 'allowed' decisions, would raise the relevant figure by another 5% to 39% appeals allowed.

In summary, the number of appeals decisions received continue to fall but the number allowed continues to rise. This is a worrying trend. This could be exacerbated if the split decisions are included as suggested by the Planning Inspectorate. They remain to be identified separately in this report in the interest of consistency.

Of the 15 decisions received in this quarter, 5 were for decisions made by the Committee against the officers recommendation. This is also a figure by which the Councils performance is measured. Of these 3, (60%) were allowed (i.e. the Inspector did not support the committee's decision) and 2 were withdrawn before an appeal decision was made. In many cases the issues considered in a planning decision maybe close on balance and the appeals can go either way. As with the last quarter, the small number of appeals in this category has a more dramatic effect on the percentage figure which is demonstrated by the volatile nature of these figures during the past year. However, over 2005 as a whole, this figure represent some 65% (20/31) of all the appeal decisions. This is a significant increase in the percentage of turnaround appeals allowed compared to the 50% in 2004.

Applications for costs against the Council can only be made where appeals are considered by Inquiry or Hearing. There were 3 claims for costs in the last quarter of which 1 was granted in full against the Council. This was for the appeal for 67 dwellings and associated works at Phase 7b, Staverton Marina. No detailed claim has been received from the Appellants to date, but one is is expected shortly.

For the year as a whole, 7 claims for costs were made of which 2 were granted against the Council. The claim reported in the last quarter for the appeal for the erection of a dwelling at The Paddocks, Whitehead Lane, Bradford on Avon is still being discussed and no settlement has yet been agreed. The remainder of the claims were dismissed which indicates that decisions have been made on sound planning grounds which could be substantiated and properly defended on appeal.

Current Appeal Case Load

The number of appeals received is shown in the table below. In this last quarter the Council have received is less (19) than the previous quarters in the year. Over the year as a whole we have received 88 appeals compared with 119 in 2004. This trend probably reflects the change back from three months to six months in the period in which an appeal can be lodged. Greater opportunity now exists for negotiated solutions to be sought to planning refusals before the applicant has to resort to an appeal.

Just over half the appeals (58%) were against decisions issued under delegated powers both for this quarter and for the year as a whole. The number of appeals submitted against committee decisions, both in support of and against officer recommendations, has remained largely consistent, at just over a third (36% for 2005). During the year, the percentage number of appeals for Committee 'turnarounds' (at variance to officers recommendations) has fluctuated in each quarter, but averaged out over the year at 24% (21/88)

Number of appeals received

	Oct-Dec	July - Sept	Apr – June	Jan–Mar	Total 2005
Total appeals lodged	19	25	21	23	88
Number of Written representations	14 (74%)	16 (64%)	13 (62%)	21(91%)	64 (73%)
Number of hearings	2 (10%)	4 (16%)	5 (23%)	1 (4%)	12 (14%)
Number of Inquiries	3 (16%)	5 (20%)	3 (14%)	1 (4%)	12 (14%)
Number of appeals against refusal	18 (96%)	21 (84%)	18 (86%)	21 (91%)	78 (89%)
Number of non determination	1 (5%)	2 (8%)	1 (5%)	1 (4%)	5 (6%)
Number of appeals against conditions	0 (0%)	1 (4%)	2 (9%)	1 (4%)	4 (4%)
Number against legal Agreements		1 (4%)			1 (1%)
No. of appeals against delegated decisions	11 (58%)	12 (48%)	13 (62%)	15 (65%)	51 (58%)
No. of appeals against Committee decision that support officer recommendation	2 (10%)	7 (28%)	2 (10%)		11 (12%)
No. against committee turnarounds	5 (26%)	3 (12%)	5 (23%)	8 (35%)	21 (24%)
No. of non determination	1 (5%)	2 (8%)	1 (5%)		4 (5%)
No applications 'called in' by First Secretary of State	0 (0%)	1 (4%)			1 (1%)

The majority (74%) of the appeals are written representation (an exchange of written statements) in this quarter, which is consistent with the annual figure of 73%. The numbers being submitted for hearings or public inquiries has fluctuated during the year but averages out at 14% each (i.e. 12 appeals in each category). Only 1 application has been called in this year by the Secretary of State which will be heard at a Public Inquiry in May 2006. There are, however, 6 other major applications currently with the Secretary of State, for which he has issued a Direction preventing the Council from issuing permissions, whilst he considers whether to call them in or not. If some or all or 'called in' it will require the Council to give evidence at the respective public inquiries.

Future reporting of appeals information to Planning Committee

The current way in which appeal information is reported to this committee was introduced in late January last year.

It is proposed to continue reporting appeal information in the current form as follows:-

- At each Planning Committee
 - Details of all appeals received in the period leading up to the preparation of papers for that committee.
 - Details of all appeal decisions received in the period leading up to the preparation of papers for that committee.
 - Details of any hearings and inquiries scheduled after that date of the committee.
- At a Planning Committee every quarter
 - A report of appeal statistics, including analysis of performance and trends.

Changes may be brought forward in the statistical reporting of appeal information as result of ongoing correspondence with the Planning Inspectorate, particularly with regard to the reporting of 'split decisions', the inclusion or not of appeals which are withdrawn and the thresholds for abatement of planning delivery grant. This may result in changes in the way in which the appeal statistics are reported and may give rise to a need to adjust planning appeal performance targets.

The information recorded over the past year suggests there are decisions which require further analysis. For example 'turnaround' appeal decisions where the appeal has been dismissed (ie the Inspector has agreed with the Planning Committee) and appeals allowed where a delegated decision or officer recommendation was to refuse. However, at present priority has to be given to other areas of work and it is likely that this analysis will have to wait until later in the year.

The views of members on the continuing reporting of appeal information are requested.

Financial Implications

There are no financial implications relating directly to this report. There are financial implications to the council in the appeal process, particularly where consultants are used to represent the council, Planning Delivery Grant and in cases where costs may be awarded against the council. Reference to particular claims for costs have been addressed in the body of the report

Legal Issues

There are no legal implications relating directly to this report. Planning appeals are part of the council's statutory duties under planning legislation most notably section 78 of the Town and Country Planning act 1990.

Human Rights

There are no human rights implications relating directly to this report.

Recommendation

- 1 The Committee notes the analysis of planning decisions and the current appeal caseload.
- 2 The current way in which appeal information is reported to this committee be continued.