

West Wiltshire District Council

Planning Committee

8 March 2007

Planning Appeals Decisions

Purpose

This report considers and comments on planning appeal decisions made in the third quarter (October - December) 2006.

Background

Members will recall that since January 2005, The Major Applications and Appeals Officer has presented a report each quarter to update Members on the appeals performance. This is in addition to the regular committee reports itemising individual appeal decisions.

One of the objectives in the Corporate Plan for Development Control is 'to ensure high quality planning decisions based on up to date planning policy.' One of the principle tools for measuring such quality decisions is the appeal decisions. Therefore, one of the Development Control Service performance targets is the percentage of appeals allowed against the Council's decision to refuse planning applications.

In 2004/05 a base performance figure of 40% appeals allowed was established.

The performance targets for this indicator is set in the Performance Plan as amended in 2006 / 7 as follows—

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

However, the Planning Inspectorate have, since 2005, also monitored appeals performance as part of the calculation for the Planning Delivery Grant. The basis on which these statistics are reported has therefore been altered to bring it in line with the approach taken by the Planning Inspectorate. They include only appeal decisions where the council has refused planning permission and not those for non-determination, conditions, advertisements, enforcement or certificates of lawfulness. The Planning Inspectorate also counts appeals which result in a split decision as an appeal allowed and this is now reflected in the figures below.

The aim has been to bring the performance target in line with the national average for this performance indicator which has remained at 33%.

Annual comparisons

This is the first time we have been able to make some annual comparisons with the appeal data in order to see if there has been any significant trends. The figures for each year

have been tabulated below and the 2004 figure modified to comply with the current practice.

Number of Appeal decisions

	2004*	2005	2006
Total appeal dec'ns	61	103	68
No allowed	25	44	24
No. dismissed	36	59	44
Percentage allowed	41%	43%	35%

* figures modified to comply with current PINS practice

The number of decisions received each year is important as it provides a direct comparison with the Council's own performance standard set out in the Performance Plan. This has shown that in 2004 and 2005 the percentage of appeals dismissed was constant in the lower to mid 40's. The figures for 2006 indicate that the Council has improved its performance on appeals allowed, to a point only 2% above the national average and the Council's own target for 2006/7. Whilst this may not have achieved the target it does show a significant improvement.

This may be accounted for by more careful consideration of the planning applications, the adoption of an up to date Local Plan, adoption and publication of supplementary planning guidance and the targeted efforts of both officers and Members in seeking to ensure that planning decisions can be justified on the planning merits of the case.

Number of appeals received

	2004	2005	2006
Total appeals lodged	117	88	71
Number of Written representations	92	64	55
Number of hearings	15	12	7
Number of Inquiries	10	12	9

The number of appeals submitted was at an all time high when the base line was set in 2004. Some of this was due to the change in law whereby the submission of appeals had to be within 3 months of the date of the decision. This has, since 2005 reverted back to 6 months which allows time for further negotiations and revised applications before an applicant has to consider an appeal. The majority of the appeals are still dealt with by written representations (an exchange of statements)

Key Issues

Appeal Decisions for period 1st October 2006 to 31 December, 2005

[The previous three quarters and the annualised total are also included for comparison purposes]

	Oct – Dec 06	July – Sept 06	Apr – Jun 06	Jan – Mar 06	Total
Total decisions made by PINS	15	17	21	15	68
Appeals Allowed (inc Split Decisions)	6 (40%)	5 (29%)	7 (33%)	6 (40%)	24 (35%)
Appeals Dismissed:	9 (60%)	12 (71%)	14 (67%)	9 (60%)	44 (65%)
Appeals Split	0	2	0	0	2
Appeals Withdrawn:	1	0	1	0	2

In addition the following appeals not against the refusal of planning permission (and therefore not included in the above statistics) were decided :-

	Oct – Dec 06	July – Sept 06	Apr – June 06	Jan –Mar 06	Total
Total decisions made by PINS	1	2	3	2	8
Call in appeals Allowed Dismissed		1 (100%)			1 (12.5%)
Non Determination Allowed Dismissed	1 (100%)		1 (100%)	1(50%) 1(50%)	2 (25%) 2 (25%)
Conditions Allowed Dismissed			1 (100%)		1 (12.5%)
Advertisements Allowed Dismissed		1(100%)	1 (100%)		2 (25%)
Trees Allowed Dismissed					
Total Allowed Dismissed	1 1(100%)	2 1 (50%) 1 (50%)	3 1 (33%) 2 (66%)	2 1 (50%) 1 (50%)	8 3 (37%) 5 (63%)

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 06	Jul – Sept 06	Apr – Jun 06	Jan-Mar 06	Total
Total 'Turnaround' appeal decisions made by PINS	5	4	8	2	19
Turnaround Appeals Allowed: (incl. split)	3 (60%)	3 (75%)	5 (63%)	2 (100%)	13 (68%)
Turnaround Appeals Dismissed	2 (40%)	1 (25%)	3 (37%)	0 (0%)	6 (32%)
Turnaround Appeals Split	0	1	0	0	1
Turnaround Appeals Withdrawn	0	0	1	0	0

Awarded Costs: Oct – Dec 06

Number of cost applications made: 1

Number of cost application allowed: 1

Number of cost application refused: 0

Comments

The total number of decisions received in this quarter (15) has dropped compared to the previous two quarters. On an annualised basis, the total number of decisions for the past 12 months is 68, which continues to fall since 2004.

Taking the same category of appeals used by the Planning Inspectorate, the percentage of appeals allowed in the last quarter was 40% compared to the 29% in the previous quarter and 33% or 40% in the two prior quarters. This is a disappointing upward move during the last quarter especially after the improvements achieved in the previous two quarters. However this may be partly due to the small number of appeals which tends to exaggerate the percentage figures.

Members will recall that last year the Government introduced the abatement of the Planning Delivery Grant where performance on appeals is poor. This Council has in the past fallen just below the threshold and therefore just clear of any abatement of the Planning Delivery Grant. Although the annualised figure for 2006 is 35%, the volatility of the quarterly figures gives rise to some concern and a lot will rest on the performance figures for the next quarter Jan – March 2007.

The number of appeals following decisions made by the Committee against the officers recommendation is also a figure by which the Council's performance is measured. Of the 15 decisions taken for performance data received in this quarter, only 5 were committee

decisions against the officer recommendation. Of these, 3 (60%) were allowed [i.e. permission granted] and 2 (40%) was dismissed [i.e. permission was refused].

In many cases the issues considered in a planning decision maybe close on balance and the appeals can go either way. As with the previous quarters, the small number of appeals in this category has a more dramatic effect on the percentage figures. Over the year there has been a marginal decline in the percentage allowed. However, the annualised figure for 2006 is high at 68% (13 out of 19 cases) compared to 65% in 2005 and 50% in 2004.

Applications for costs against the Council can only be made where appeals are considered by Inquiry or Hearing. There was only 1 claim for costs in the last quarter which was allowed by the Inspector. Over the year as a whole there has been 4 applications for costs 2 of which were allowed and 2 dismissed. The Council is still waiting for two claims to be submitted from the same developer so that they can be settled.

Current Appeal Case Load

The number of appeals received is shown in the table below. In this last quarter the Council have received 25, which is a significant increase on the number in the previous two quarters. Over the past 12 months we have received 71 appeals compared with a total of 88 in 2005 as a whole and 119 in 2004. This probably reflects the end of the time when there was only three months to lodge an appeal, which has now reverted to 6 months, and the associated backlog experienced by the Planning Inspectorate. Such periods allow for negotiated solutions to be sought to planning refusals before the applicant has to resort to an appeal.

The majority (72%) of appeals received in the last quarter were against decisions issued under delegated powers. The number of appeals submitted against committee decisions has therefore reduced to 24% of which 16% were against turnaround decisions. Over the past 12 months, 21 appeals have been submitted against Committee decisions which is about 29% of the total.

Just over two thirds (68%) of the appeals in this quarter are written representation (an exchange of written statements), which is significantly less than the previous three quarters (80-85%). During the quarter there were 4 hearings and 4 public Inquiries. All the appeals require some form of written submissions within strict timetables set by the Inspectorate. Hearings and Inquiries also require more detailed preparation by the officers in order to present the Council's case in front of an Inspector. These are commitments which the case officers undertake in addition to their normal case work.

Number of appeals received

	Oct – Dec 06	July – Sept 06	Apr – Jun 06	Jan – Mar 06	Total
Total appeals lodged	25	13	13	20	71
Number of Written representations	17 (68%)	11 (85%)	11 (84%)	16 (80%)	55 (77%)
Number of hearings	4 (16%)	1 (8%)	1 (8%)	1 (5%)	7 (10%)
Number of Inquiries	4 (16%)	1 (8%)	1 (8%)	3 (15%)	9 (13%)
Number of appeals against refusal	24 (94%)	13 (100%)	12 (92%)	18 (90%)	67 (94%)
Number of non determination	1 (4%)	0	1 (8%)	0 (0%)	2 (3%)
Number of appeals against conditions	0	0	0	0 (0%)	0
Number against legal Agreements	0	0	0	0 (0%)	0
No. of appeals against delegated decisions	18 (72%)	6 (46%)	10 (76%)	12 (60%)	46 (65%)
No. of appeals against Committee decision that support officer recommendation	2 (8%)	0	1 (8%)	0 (0%)	3 (4%)
No. against committee turnarounds	4 (16%)	7 (56%)	1 (8%)	6 (30%)	18 (25%)
No. of non determination	1 (4%)	0	1 (8%)	0 (0%)	2 (3%)
No applications 'called in' by First Secretary of State	0	0	0	2 (10%)	2 (3%)

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 external consultants and barristers are used to represent the council. There are also financial implications for the 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.