

SUBJECT:	Review of Planning Appeals Performance in 2016
REPORT OF:	Cllr Peter Martin Cabinet Portfolio for Sustainable Development
RESPONSIBLE OFFICER	Director of Services - Anita Cachiolli
REPORT AUTHOR	Robert Young Interim DC Manager email : byoung @chiltern.gov.uk
WARD/S AFFECTED	All wards affected by the item of report

1. Purpose of Report

This report analyses planning appeal decisions received between 1 January and 31 December 2016, identifies performance issues arising and recommends measures to address these in the light of new performance targets being introduced by the Government.

RECOMMENDATIONS

1. That the Council adopts an Interim Design Guidance Document for residential development to provide robust guidance for applicants/agents in terms for design, materials, scale, density, ridge height, room sizes, back to back distances, garden areas, bin stores, energy saving matters, parking, turning areas and landscaping.
2. That the Head of Sustainable Development be authorised to engage external support to prepare a draft Interim Design Guidance Document and funding of up to £25,000 be allocated from the Planning Reserve to meet the costs.
3. The Development Control Team continue to assist in the progression of Development Management planning policies required in the emerging joint local plan for Chiltern and South Bucks District Councils and provide the framework for a future Supplementary Planning Document (SPD) on New Build following adoption of the Local Plan.
4. That the Head of Sustainable Development in consultation with the Interim Development Control Manager review training and development requirements for planning staff including report writing, handling of planning appeals, key appeal legislation and case law.
5. That the Head of Sustainable Development and senior planning staff carry out regular reviews of appeal outcomes and consider any necessary actions in liaison with the Portfolio Holder for Sustainable Development and the Chairman of Planning Committee.

2. Reasons for Recommendations

To ensure the Council adopts best practise with regard to its handling of planning appeals and meets proposed government performance targets.

3. Content of Report

Types of Appeals

3.1 There are 3 procedures that an appeal can follow; written representations, a hearing or a public inquiry. All the appeal decisions in 2016 (84 in total) were decided by the Planning Inspectorate and involved these 3 types of appeal process which are covered in more detail below. The majority of appeals lodged (78%) are dealt with by written representations. None were decided by the Secretary of State, who tends to decide the very large or contentious proposals.

Written Representations

3.2 With this procedure the Inspector considers written evidence from the appellant, the Local Planning Authority and anyone else who has an interest in the appeal. The planning issues associated with this type of appeal are usually less complex. Householder appeals are heard through a specific written representation procedure and there is no option to submit further information by either the Council or third parties. In 2016 there were 78 appeals determined under this procedure.

Hearings

3.3 Planning hearings are an effective way of presenting planning arguments to an Inspector in person, without the more formal atmosphere of an Inquiry. They also allow the Inspector to examine important issues in depth by asking questions of the parties involved. Hearings are usually completed in one day or less, so they are suitable for relatively straightforward appeals and those where there is little or no public interest. However, local residents may go to the hearing and give their views to the inspector. In 2016 only 4 appeals were determined under the Hearing procedure.

Inquiry

3.4 In 2016 only 2 planning appeals were dealt with by Public Inquiry (2.3% of the total applications received annually). An Inquiry is open to the public and provides for the investigation into, and formal testing of, evidence usually through the questioning ("cross examination") of expert witnesses and other witnesses. Parties may be formally represented by advocates. The site may be visited before, during or after the inquiry. Statutory parties are entitled to participate in an inquiry. Interested parties can attend and may participate in an inquiry at the discretion of the Inspector.

Awards of Costs

3.5 Where the council or an appellant is considered to have behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, the Planning Inspector may make an award of costs. To reduce the risks of an award of costs it is important :-

- to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case

- to ensure decisions are based on sound and robust reasons for refusal which stand up to scrutiny on the planning merits of the case, and not to add to the other party's costs through avoidable delay,
- to discourage unnecessary appeals use by encouraging the agent/applicant to consider revising their planning application in order to meet planning policy requirements and take account of local objections.

Making Decisions - Reasons for Refusal

- 3.6 All reasons for refusing permission should be clear and comprehensive. If the elected members' decision to refuse differs from that recommended by their planning officers, it is important that their reasons for doing must similarly be clear and concise. Officers will liaise with and advise the Chairman when there is a Planning Committee overturn to ensure that the Committee's reasons for refusal are relevant, clear and supportable. Clear reasons for refusal will also help continued discussions with the applicant/agent and may mean that an agreement can be made without the need for an appeal. However, should an applicant appeal, the reason for refusal will need to be clear and strong enough to withstand scrutiny by the Planning Inspectorate (PINS).
- 3.7 PINS determine some written representation appeals via the "fast track" system. In the case of "fast track" appeals there is no opportunity for the Council to submit any further information or further statement to PINS beyond the application documents and the case officers' report on the application. Approximately a third of appeals against the authority's decisions are determined using the PINS "fast track" system – these are normally householder developments where the appeal period is reduced to 12 weeks (84 days).
- 3.8 Accordingly, it is important that the case officer's report provides a clear and robust explanation for the decision which the authority has made. In cases where a decision is made by the Planning Committee and they overturn an officer recommendation for approval by refusing the applications, it is essential that the Committee minute explains in sufficient detail why the Committee came to a different view from the officers.

It should be noted that the number of appeals relative to the number of planning applications received and determined by the authority is around 4%, as the majority of applications submitted to the authority are approved. The number of overturns i.e. Committee decisions against officer recommendation is also low.

Analysis of Current Performance

- 3.9 Currently 45.2% of appeals are allowed which is above the Government target maximum of 35%, with a slight improvement on performance since Quarter 3. Details of the appeals allowed and dismissed in 2016 are attached at Appendices A and B. Information about government performance targets is attached at Appendix C. Appeal decisions tend to come in batches as PINS administration has fallen behind in performance resulting in a number of appeals being validated then allocated to various Inspectors in a shorter period of time several weeks after official registration. Appeal decisions have also tended to arrive in batches. This has put more pressure upon the appeals administrator as workflow is much more erratic.
- 3.10 From analysis of the decisions a pattern has emerged where a number of appeals have been allowed. Firstly, this relates particularly to outbuildings plus garages in the Green Belt, where

Inspectors have considered that the impact in terms of scale design and position upon openness and character of the Green Belt (and in other cases within the AONB) has not been sufficient to dismiss an appeal. However, the overall number of appeals amounts to around 4% of the total applications determined and is still a relatively small percentage.

- 3.11 The dismissed appeal data shows there are some examples where similar proposals subject to appeal have been dismissed on the basis of conflict with the Green Belt and Areas of Outstanding Natural Beauty. So there considered to be a degree of inconsistency in a number of Inspectorate decisions over the past year.
- 3.12 There have also been a number of appeals allowed for 2 storey flanks/rear extensions. However, this should be put into perspective as the number of householder applications determined is around 1500-1700 per annum and appeals against this type of refusal represent a very small percentage of the total granted permission. There have also been a number of similar appeals for this type of extension which have been dismissed.
- 3.13 In terms of new build, it is evident that some Inspectors in their decisions are struggling with the Council's lack of a clear robust design guidance . This may in certain cases tip the balance resulting in an allowed appeal. It would be beneficial for officers, members, stakeholders and our customers, for the Council to formulate a more clear and concise interim design guidance for residential development. This is particularly important taking into account the projected increased pressure for residential development related to the emerging joint local plan which has been subject to a delay in its formulation and adoption process.
- 3.14 The majority of allowed appeals in 2016 (88%) were the result of delegated decisions by officers. So predominantly, it is a matter of Policy assessment and development management practice matter to be address.

4. Consultation

Not applicable at this stage.

5. Options

- 5.1. To formulate an Interim Design Guidance for new residential development to provide robust guidance for applicants/agents in terms for design, materials, scale, density, ridge height, room sizes, back to back distances, garden areas, bin stores, energy saving matters, parking, turning areas and landscaping. This will benefit planning officers in their negotiations with customers and also members in their review of delegated applications with officers and those applications which are to be determined at Planning Committee. Any future work in respect of developing up to date design guidance should not prejudice the progress of the Joint Local Plan. There is therefore likely to be a requirement for external consultancy support at an estimated cost of £20,000-£25,000. A draft programme for this work is attached at Appendix D. This option is a higher resource risk, but accords with good practice.
- 5.2. For the Development Control Team to continue to assist in the progression of Development Management planning policies required in the emerging joint local plan providing the framework for a future Supplementary Planning Document (SPD) for New Build following adoption of the Local Plan. There is concern to minimise risk to the Policy Team work on the Joint Local Plan. Hence the formation of a Development Control lead team with external

planning consultancy support. This is an option over the medium term, with an associated medium resource and risk.

- 5.3. A review of development and training needs for development control staff, including report writing and Appeal training and Barrister presentations on key appeal legislation and case law for staff and also members. Development control officer training should provide more focus upon policy interpretation to reduce appeal risk. This option accords with good practice and is an appropriate use of resources.
- 5.4. Regular review of appeal outcomes by officers and liaison with the Portfolio Holder for Sustainable Development and the Chairman of Planning Committee on any necessary actions. This option accords with good practice.

6. Corporate Implications

Financial The engagement of external consultancy support at an estimated cost of £20,000-25,000. It is also considered prudent to pursue a number of other low cost pro-active options, whilst balancing this with the priority of work for the emerging Joint Local Plan.

Therefore, further development of the Design Guidance work would need to use any spare capacity within the Development Control Team, plus an appointed planning consultant. This is currently the only realistic option to provide resources into developing an Interim Design Code and supported by a planning consultant to implement the agreed measures. The Joint Local Plan is still the top priority for the Policy Team so the latter will be kept advised and involved only as a "critical friend". Development Control performance should not be at risk from this approach.

7. Links to Council Policy Objectives

The project once implemented will lead to a more focussed approach to the assessment of residential design within Chiltern District delivering best value, an efficient and customer focussed planning service, development with secure by design principles, promoting sustainability in high quality development, conserving the environment, and protecting heritage assets and the natural environment within the Districts.

8. Next Steps

External consultancy support would be engaged if Members agree the preparation of an Interim Design Guidance document.

Background Papers:	None other than referred to in this report and the accompanying appendices
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