

Report to: Development Control Committee
Date of meeting: 13 March 2014
Report of: Development Management Section Head
Title: Annual review of planning appeals: 2012-2013

1.0 **SUMMARY**

1.1 This report reviews the planning appeal decisions made in 2012-2013, and provides statistical and other information for the Committee on the outcomes these appeals.

2.0 **RECOMMENDATIONS**

2.1 That the report be noted.

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Report approved by: Jane Custance, Head of Regeneration and Development

3.0 **PLANNING APPEAL STATISTICS FOR 2012-2013**

3.1 Appeal decisions

In 2012-2013, a total of 40 appeals were decided. Details of these appeals, arranged by type of appeal, are shown in Table 1.

Table 1 Appeals decided in 2012-2013 by type						
Type of appeal	England		Watford			
	%		%		Total number	
	A	D	A	D	A	D
s.78	35%	65%	19%	81%	5	20
Householder	36%	64%	50%	50%	5	5
Listed buildings	34%	66%	0%	100%	0	2
LDC	34%	66%	-	-	0	0
Enforcement	24%	76%	0%	100%	0	1
Advertisements, TPO and GPDO	32%	68%	50%	50%	1	1
TOTAL	35%	65%	28%	72%	11	29

A – Allowed; D - Dismissed

The “allowed” rate for s.78 and householder appeals for the year was 19%, very considerably below the average for England for the year in question (which was 36%). This indicates that the Council is continuing to make sound and defensible planning decisions, in line with adopted planning policies.

One of the householder appeals (Case 5) was a “split” decision, with planning permission being granted on appeal for part of the proposed development but refused for the remainder. However, in the Planning Inspectorate’s figures, this is counted as an “allowed” appeal, despite that fact that the Council had no objections to the part that was allowed and did object to the part that was refused. Were this case to be treated as “dismissed”, the balance in householder cases would be 40% allowed as against 60% dismissed, and the overall dismissal rate would be 75%.

The comparative figures in Table 2 below indicate that Watford’s planning decisions are very much in line with the figures for England as a whole.

Table 2 Summary of appeal decisions in 2012-2013		
	England	Watford
	%	%
Applications granted locally	87%	87%
Planning decisions taken to appeal	3.4%	3.8%
Appeals allowed	35%	28%
Local decisions which stand	98.8%	98.9%

Although the percentage of applications granted locally is the same as the national average, there is a greater propensity for applicants in Watford to appeal a refusal of planning permission. Nevertheless, significantly fewer appeals are allowed in Watford

compared to England as a whole, which again demonstrates the overall soundness of development management decisions in Watford.

Details of the 35 s.78 cases and householder planning appeals decided in 2012-2013 are set out in the Appendix to this report.

3.2 The determining issues

Appeal decision letters routinely state what the inspectors consider are the principal determining issues. An analysis of the 35 planning appeals determined in 2012-2013 (see Table 3 below) shows that the two main issues (together accounting for over 63% of all issues) are the character and appearance of the proposed development and its impact on the living conditions of neighbours.

Issue	Number of cases	%
Character and appearance of the development	24	43.6%
Living conditions of neighbours	11	20.0%
Access or highway safety	4	7.3%
Effects on trees	3	5.5%
Retail policy	3	5.5%
Suitability for proposed development	2	3.6%
Size of amenity space	2	3.6%
Effect on housing mix	2	3.6%
The relevance of s.106 contributions	2	3.6%
Local open space provision	1	1.8%
Reasonableness of condition	1	1.8%

The *Residential Design Guide* (RDG) was cited in 15 out of 24 appeals involving residential development; in 6 of these 15 cases (40%) the appeal was allowed. Overall, 17 out of the 24 cases (71%) were dismissed. In the 15 cases where inspectors referred to the RDG the key determining issues were the “character and appearance of the development” and the impact on the “living conditions of neighbours”.

The **key learning points** from the 35 planning appeal decisions are set out below (the case numbers refer to those listed in the Appendix to this report):

- (i) so long as a proposed development does not conflict with the objectives of the RDG, planning permission should be granted where no harm is caused by a failure to meet a particular requirement of the guidance [Cases 2, 7, 9 and 10];
- (ii) the harm caused by a proposed development must be tested against any existing harm and permission should be granted if the development will not make the existing situation any worse [Case 3];
- (iii) there can be no objection, per se, to modern design, but it must be in the right context [Case 19];
- (iv) considerable weight of evidence is required to set aside the retail sequential test in the National Planning Policy Framework (NPPF) [Cases 21 and 22];
- (v) when assessing a proposed development against the policies in the NPPF it is necessary to strike the right balance between the three strands of sustainable development (economic, social and environmental); failure to deliver against a fundamental core principal of the NPPF will be fatal to a scheme [Case 23];

- (vi) considerable weight can still be placed on the saved policies of the Watford District Plan 2000 (despite the age of this plan) where it can be shown that the saved policies are consistent with the NPPF [Cases 26, 27, 29 and 35];
- (vii) there has to be significant evidence to demonstrate that a proposal is contrary to an adopted policy [Cases 24 and 28];
- (viii) other appeal decisions will not be relevant unless the circumstances are strictly comparable [Cases 33 and 34];
- (ix) conditions must pass the tests in paragraph 206 of the NPPF (previously in Circular 11/95), i.e. they must be (i) necessary; (ii) relevant to planning; (iii) relevant to the development being permitted; (iv) enforceable; (v) precise; and (vi) reasonable in all other respects. Reasonableness must take account of local circumstances [Case 1];
- (x) neither a lack of knowledge of planning law nor a petition in support of a proposal are material planning considerations [Cases 31 and 32].

3.3 Method of appeal

Table 4 shows the breakdown of the 40 appeals by method of appeal.

Table 4 Method of appeal in 2012-2013					
	<i>Allowed</i>		<i>Dismissed</i>		<i>Total</i>
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>	
Inquiry or hearing	0	0%	3	100%	3
Written representations	11	30%	26	70%	37
Total	11	28%	29	72%	40

As can be seen from Table 4, 3 appeals decided in 2012-2013 were dealt with by way of an inquiry or hearing and 37 followed the written representations procedure.

3.4 Method of decision making

Of the 40 appeals determined in 2012-2013, 2 (5%) were the result of a Committee decision and 38 (95%) resulted from a delegated refusal.

The outcome of appeal decisions based on the method of decision making is shown in Table 5.

Table 5 Appeal outcomes in 2012-2013 by type of decision					
	<i>Allowed</i>		<i>Dismissed</i>		<i>Total</i>
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>	
Committee decision recommended for refusal	0	0%	1	100%	1
Committee decision recommended for approval	1	100%	0	0%	1
<i>Total Committee decisions</i>	<i>1</i>	<i>50%</i>	<i>1</i>	<i>50%</i>	<i>2</i>
Delegated decisions	10	26%	28	74%	38
Total decisions	11	28%	29	72%	40

3.5 Costs

A party to an appeal may seek an award of costs against the other party where it is alleged that that party has behaved unreasonably and that unreasonable behaviour has resulted in unnecessary or wasted costs. Such an award of costs can be sought regardless of the procedure adopted for determining the appeal.

Detailed guidance on the operation of the costs regime is given in DoE Circular 03/2009. Both appellants and local planning authorities can have costs awarded against them if they fail to follow the procedural requirements of the appeal process. Awards may be made against appellants for an unreasonable appeal and against local planning authorities for unreasonable refusal of planning permission and for failing to produce evidence to substantiate each reason for refusal.

In planning appeals there is a general expectation that both parties will meet their own expense. As a result, applications for costs are relatively infrequent and awards of costs even more so.

In 2012-2013, there were no applications for costs against the Borough Council and the Council did not make any applications for costs against an appellant.

	<i>Applications made</i>		<i>Applications determined</i>			
			<i>Allowed</i>		<i>Refused</i>	
	<i>Partial</i>	<i>Full</i>	<i>Partial</i>	<i>Full</i>	<i>Partial</i>	<i>Full</i>
Total	0	0	0	0	0	0

4.0 **IMPLICATIONS**

4.1 **Financial**

4.1.1 The Shared Director of Finance comments that there are no financial implications contained in this report.

4.2 **Legal Issues** (Monitoring Officer)

4.2.1 The Head of Democracy and Governance comments that there are no legal issues in the report.

Appendix

Annual review of planning appeals – 2012-2013.

Background Papers

The following background papers were used in the preparation of this report. If you wish to inspect or take copies of the background papers, please contact the officer named on the front page of the report:

- The Planning Inspectorate – appeal decision letters.

File Reference

None.