

EAST HERTS COUNCIL

DEVELOPMENT CONTROL COMMITTEE – 2 JUNE 2010

REPORT BY HEAD OF PLANNING AND BUILDING CONTROL

7. PLANNING APPEALS PERFORMANCE – OCTOBER 2009 – MARCH 2010

WARD(S) AFFECTED: All

Purpose/Summary of Report

- To enable Members to consider the performance of the Council in relation to planning appeals for the six month period October 2009 – March 2010.

RECOMMENDATION:

<u>RECOMMENDATION:</u>	
(A)	That performance in relation to appeals be noted.

1.0 Background

1.1 This report presents a summary of the performance of the Council in relation to planning appeals for the six month period October 2009 to March 2010.

2.0 Performance

2.1 During the six month period 58 planning appeal decisions have been made. In the calculations below I have not included withdrawn appeals or others which are not included in the definition of this indicator when performance was measured by the government. No appeals were withdrawn in this period, but one was turned away by the Planning Inspectorate as invalid.

2.2 Of the 58 appeals that have received a decision 16 have been allowed in full or in part. This is a performance figure of **27.6%**. The Council's target in relation to appeals for the 09/10 year was that no more than 29% should be allowed. Performance for the six months exceeded the target and in fact has represented the best performance against this indicator since the second half of

the 2006/07 year. (Note in respect of this indicator a lower percentage outcome is preferable).

2.3 There is no national target or performance figure. However performance information for the Unitary and District Councils across England is available. The most recent data is for the same period that this report covers – but is provision and subject to change. That data indicates that, nationally, 33% of appeals have been allowed. The East Herts position then, is more favourable when compared to the national data for this period.

2.4 Of the 58 planning decisions that have been appealed and resulted in a subsequent decision from the planning inspectorate, 6 of these decisions were made by the committee. One of these decisions was subsequently the subject of upheld (allowed) appeals. The rate of appeals allowed in relation to committee decisions therefore is 16.7%. Further details are set out in the table below:

Decision route	Total decisions	Decisions allowed	Percentage allowed
Delegated	52	15	28.8%
Committee – where recommended for refusal and committee agreed	4	nil	nil
Committee – where recommended for approval and committee disagreed	2	1	50%
Total for committee decisions	6	1	16.7%
TOTAL for all decisions	58	16	27.6%

3.0 Analysis

3.1 The second part of this report sets out to analyse appeal decisions that have been made and determine whether there are any points that can be taken from them to inform our future decisions. The table below gives information in relation to appeals with regard to the type of development proposed.

Type of development	Number of appeal	Percentage allowed
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	decisions	
New residential development (minor development – less than 10 new units)	15	20.0%
New residential development (major – 10 or more new units)	1	nil
Extensions, outbuildings etc at existing residential units (householder developments)	27	40.7%
Retail	5	40.0%
Leisure/ Tourism	3	nil
Commercial	2	nil
Wind Turbines – Benington	1	nil
Other – ecclesiastical, education, charity, etc	4	nil
TOTAL	58	27.6%

3.2 Two major schemes were considered at appeal. One of these related to housing – the Ware Park Mill redevelopment scheme in Hertford. That appeal was dismissed. The other major scheme was the wind turbine proposals at Benington. Again, that appeal was dismissed.

3.3 In relation to minor residential schemes, 15 of these that related to residential development were considered at appeal. The majority of these were for single new dwellings, or the change of use of an existing building for residential use. In terms of the schemes considered by the committee, Members may recall the proposals for enabling residential development at Bengoe Hall and new residential at Dowsetts Farm. Both were dismissed. A residential scheme at 19 Cambridge Road, Sawbridgeworth was also dismissed (other schemes for that site have been permitted) along with one at Maple Avenue, Bishop's Stortford.

3.4 Minor developments which have been granted permission at appeal are as follows: a conversion to residential use at Fore Street, Hertford, a replacement dwelling at Surrounded, High Wych and a new farm managers dwelling at Lysnader Park, Trimms Green.

3.5 Members will note the higher percentage of appeals permitted in relation to householder and retail schemes. The area of householder appeals continues to be the one where the greatest proportion of appeals are permitted. Officers continue to take steps to ensure consistency and repeat consideration of decisions

before they are made. Almost all schemes of this nature are dealt with through the delegated process, but Members may recall proposals at Elfering Bank, Little Hadham which were referred to the committee. That appeal was allowed.

3.6 There were no significant retail schemes considered through the appeal process in this period. Those represented here related to the change of use of existing units and the installation of security shutters. Two change of use appeals were allowed.

3.7 The leisure, commercial and other category of schemes referred to above contains a number of proposals that were dealt with at appeal. These included proposals for:

- a woodmans hut at Old Hertingfordbury Road, Hertingfordbury,
- moorings in association with the Ware Park Mill proposals, Hertford,
- a cricket school use at Tharbies Barns, High Wych,
- an education centre at Garden Lodge, Westmill and
- floodlit playing pitch, Cricketfield Lane, Bishop's Stortford.

All of these proposals were dismissed at appeal. Members may recall that the last of those listed above was dealt with by the committee.

3.8 Members have received a number of these reports summarising appeal data. Comparisons with previous periods can be made and a table setting this out is included in **Essential Reference Paper B**.

4.0 Costs of dealing with appeals

4.1 In the majority of cases, appeals are dealt with by the written representations route. As this indicates, this involves an exchange of written cases which a Planning Inspector will consider. Subject to criteria published by the Planning Inspectorate, a limited number of cases are dealt with either by an Informal Hearing or by the more formal Public Inquiry. In the former of these, the Council is usually represented by a planning officer. An enforcement officer or other technical officers may be present depending on the issues raised by the case. As these cases are being dealt with in an informal way, local ward Members are able (at the discretion of the Inspector) to come along to the hearing and speak.

- 4.2 Public Inquiries are a formal process at which the Council is legally represented. As well as a planning officer, there may be other expert witnesses present on behalf of the Council. Legal representation and expert witnesses can represent significant costs for the Council when dealing with appeals. Other parties – including local ward Members - are able to be present and speak, again at the discretion of the Inspector.
- 4.3 In addition to the costs involved in preparing and presenting the case, Members will be aware that, if the Council is found to have been unreasonable in relation to any appeal, it can be held liable to meet the costs of the other party(ies). The government has set out advice in relation to what may constitute unreasonable behaviour – and this covers a considerable range of circumstances. However, central to this, it is crucial that the Council is able to provide evidence or a justifiable case to back up its reasons for refusal.
- 4.4 In relation to unreasonable behaviour, a number of claims for costs have been made against the Council in the preceding six month period. These related to sites at Molewood Road, Hertford; St John Street, Hertford and Brookfield Nursery, Wormley West end. These claims have yet to be determined. A claim previously made in relation to a lawful Development Certificate at 53 Parnel Road, Ware has been determined. The claim has been unsuccessful.
- 4.5 The Council has also submitted a number of claims against other parties. Three of these were outstanding at the beginning of the period and two have now been determined in its favour. Appellants at Ware Park Mill, Hertford and Tesco, Hertford, were found to have been unreasonable in relation to some element of their appeals. A further claim remains outstanding at this stage.
- 5.0 Implications/Consultations
- 5.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Appeal decision letters within individual planning application files.

Statistics provided by the Planning Inspectorate at:

www.planninginspectorate.gov.uk

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ESSENTIAL REFERENCE PAPER 'A'

Contribution to the Council's Corporate Priorities/ Objectives	<p>Fit for purpose, services fit for you <i>Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.</i></p> <p>Caring about what's built and where <i>Care for and improve our natural and built environment.</i></p> <p>Shaping now, shaping the future <i>Safeguard and enhance our unique mix of rural and urban communities, ensuring sustainable, economic and social opportunities including the continuation of effective development control and other measures.</i></p> <p>Leading the way, working together <i>Deliver responsible community leadership that engages with our partners and the public.</i></p>
Consultation:	No consultation has been undertaken in the preparation of this report.
Legal:	None specific to this report. Members will be aware that legal issues can be raised by appeal proceedings in certain circumstances
Financial:	There are no direct financial consequences of this report. The matter of costs relating to appeals is raised above in the main body of the report. The actual costs of appeals are very much subject to the issue at dispute, the procedure followed in the appeal process and the requirement for expert witnesses. All cost impacts are revenue based and have the additional dimension of the requirement to cover other party costs if the Council has behaved unreasonable in any way.
Human Resource:	Appeals are dealt with by the Councils planning and other officers with the requirement for additional legal and expert witnesses as necessary
Risk Management:	One of the purposes of this report is to ensure that past performance is taken into account in future decision making and therefore reduce unnecessary risks to the Council.