

EAST HERTS COUNCIL

DEVELOPMENT CONTROL COMMITTEE – 15 DECEMBER 2010

REPORT BY HEAD OF PLANNING AND BUILDING CONTROL

6. PLANNING APPEALS PERFORMANCE: APRIL – SEPTEMBER 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 April – September 2010.

RECOMMENDATION: that	
(A)	The 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 April to September 2010.

2.0 Performance

2.1 During the six month period 50 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 In the calculations below I have not included withdrawn appeals or others which are not included in the definition of this indicator when performance was measured by the government. No appeals were withdrawn in this period, but one lapsed. This means that the appellant did not submit the correct papers to enable the appeal to proceed.

2.2 Of the 50 appeals that have received a decision 21 have been allowed in full or in part. This is a performance figure of **42.0%**. The Council's target in relation to appeals for the current year is that no more than 34% should be allowed. Performance for the six months was below target and represented the poorest performance since the first six months of the 08/09 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 – this is confirmed for the first quarter, but provisional for the second and subject to change. That data indicates that, nationally, 31% of appeals have been allowed. The East Herts position then, is less favourable when compared to the national data for this period.
- 2.4 Of the 50 planning decisions that have been appealed and resulted in a subsequent decision from the planning inspectorate, 5 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 20.0%. Further details are set out in the table below:

Decision route	Total decisions	Decisions allowed	Percentage allowed
Delegated	45	20	44.4%
Committee – where recommended for refusal and committee agreed	4	1	25.0%
Committee – where recommended for approval and committee disagreed	1	0	Nil
Total for committee decisions	5	1	20.0%
TOTAL for all decisions	50	21	42.0%

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 decisions	Percentage allowed
New residential development (minor development – less than 10 new units)	10	60%
New residential development (major – 10 or more new units)	3	nil
Major development – mixed housing, commercial and retail scheme	1	nil
Extensions, outbuildings etc at existing residential units (householder developments)	30	40%
Retail	1	100%
Leisure/ Tourism	2	50%
Commercial	3	33.3%
TOTAL	50	42.0%

- 3.2 Four major schemes were considered at appeal. Three of these were housing proposals – St John Street, Hertford, land adjacent to Leventhorpe School, Sawbridgeworth and Cole Green Works at Cole Green. All three were dismissed. A further major scheme was considered relating to the Day and Sons site at Station Road, Bishop's Stortford. A mixed scheme was put forward here comprising residential, retail, office and restaurant uses. This was also dismissed.
- 3.3 In relation to minor residential schemes, 10 of these 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. All of these were determined at the delegated level
- 3.4 During this six month period the proportion of householder appeals that have been permitted remains high at 40%. Whilst the Council remains successful in relation to the major schemes – no appeals were allowed – there is less success in relation to minor schemes. Members will note that during the six months, 60% of appeals in relation to minor new residential developments were permitted.
- 3.5 There were no significant retail schemes considered through the appeal process in this period. That referred to here related to the installation of security shutters.

3.6 The leisure/tourism and commercial categories of schemes referred to above contains five proposals that were dealt with at appeal. These were:

- Extension to the facilities at the Great Hadham Golf Club, Great Hadham – allowed;
- Car parking at the Lancaster Garage site, London Road, Bishop's Stortford - dismissed;
- Change of use to A2 (professional services) at 4 High Street, Bishop's Stortford - allowed;
- Conversion of a building to a holiday let at Anstey - dismissed;
- Change of use of a building from A1 (retail) to A3 (café/restaurant) use at 5 Parliament Square, Hertford – dismissed.

Only the first of these, the Great Hadham Gold Club proposals, were considered by the committee.

3.7 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, three claims for costs have been made against the Council in the preceding six month period. These related to sites at land adjacent to Leventhorpe School, Brookfield Nursery, Wormley West End and at St John Street, Hertford. Only the Brookfield Nursery claim has been successful, the other two claims were dismissed.
- 4.5 The Council has not submitted any claims in relation to decisions that have been made in this six month period.
- 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.