

# REPORT FOR DECISION

**MEETING:** PLANNING CONTROL COMMITTEE  
**DATE:** 20<sup>th</sup> SEPTEMBER 2011  
**SUBJECT:** PLANNING APPEAL PERFORMANCE  
**REPORT FROM:** DEVELOPMENT MANAGER  
**CONTACT OFFICER:** JOHN CUMMINS

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**TYPE OF DECISION:** COUNCIL

**FREEDOM OF INFORMATION/STATUS:** This paper is within the public domain

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**SUMMARY:** The report lists provides information on the performance in respect of Planning appeals in 2010/11

**OPTIONS & RECOMMENDED OPTION** The Committee is recommended to the note the report.

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## IMPLICATIONS:

<b>Corporate Aims/Policy Framework:</b>	Do the proposals accord with the Policy Framework? N/A
<b>Financial Implications and Risk Considerations:</b>	Director of Finance and E-Government to advise regarding risk management N/A
<b>Statement by Director of Finance and E-Government:</b>	N/A
<b>Equality/Diversity implications:</b>	N/A
<b>Considered by Monitoring Officer:</b>	N/A
<b>Are there any legal implications?</b>	No

**Staffing/ICT/Property:** N/A

**Wards Affected:** All

**Scrutiny Interest:** N/A

**TRACKING/PROCESS**

**EXECUTIVE DIRECTOR:**

Chief Executive/ Management Board	Executive Member/Chair	Ward Members	Partners
Scrutiny Commission	Executive	Committee	Council

**APPEALS PERFORMANCE FOR 2010/11**

**1.0 Introduction**

This report provides information on the current performance of the Council in respect of Appeals against decisions made on planning applications and Enforcement Notices.

Planning Appeals are handled by an independent agency of the DCLG called 'The Planning Inspectorate' and they are based in Bristol. The way that Appeals are handled is laid down by statute; with fixed timetables and legal procedures that have to be followed. If they are not, it leaves the Council and appellant, open to claims for costs.

There used to be national performance indicators for this area of work but these have been dropped and whilst figures are published on a national level, there are no formal links to any funding. However these statistics are now monitored by AGMA.

The Appeals work is an important part of the planning process and involves a very high level of expertise; takes up a substantial amount of officer time as well as involving working closely with our colleagues in legal and often external Counsel and as such warrants detailed analysis.

## 2.0 Planning Appeal decisions 1<sup>st</sup> April 2010 to 31<sup>st</sup> March 2011

	Appeals lodged	Appeal decisions	No. of appeals allowed	No. W/drawn	% allowed	% allowed National ave 2010/11
Committee decision	3 (3)	3 (4)	2 ( 3)	0 (1)	<b>75%</b> <b>(75%)</b>	<b>N/A</b>
Delegated decision	25 (21)	18 (26)	7 (3)	1 (0)	<b>39%</b> <b>(11%)</b>	<b>N/A</b>
All appeals	28 (24)	20 (31)	9 (6)	1 (1)	<b>42%</b> <b>(19%)</b>	<b>40%</b> <b>(39%)</b>

The number of appeal decisions, in respect of planning applications and advertisements consents, is 21, down from 31 last year. (2009/10 shown in brackets above.)

There were no awards of cost either against or in favour of the Council on planning appeal decisions.

### 3.0 Delegated Decisions subject to appeal.

It should be noted that following exceptional performance in previous years, we have now gone above the national average for the number of Appeals allowed, and this needs some analysis to understand why this has happened.

Two types of case have resulted in this increase, one being café/takeaways and the other being householder applications.

In relation to takeaway/café uses, we have had a particular problem where we have supported the local objections of residents, especially on over supply of takeaways and traffic/parking. The Inspectors seem to take a very clear stance that there has to be overriding reasons why a change of use from a shop to takeaway should not be approved and the number of takeaways, traffic/parking and associated noise is not given very much weight, especially in existing centres and on main roads. In one instance this resulted in 2 Appeals being lost as on each application the Inspector when he granted approval put hours of operation conditions and the subsequent Inspector allowed longer hours.

The second relates to householder applications where, again, the officers had supported neighbour objections, but the Inspector disagreed.

I am pleased to report that since the adoption of the revised SPD on Householder Extensions in January 2010, the number of householder appeals lost (4 in the pervious period) has been reduced to 0 (April 2011 to August 2011).

### 4.0 Committee Decisions subject to appeal.

In respect of the Committee decisions, three appeals concerned a proposal which was refused contrary to the officer recommendation to approve. Of these, two were allowed (see 52224 and 52510 below) and one appeal was dismissed (see 51704 below).

Allowed:

52224 - Black Moss Farm, Bolton Road, Radcliffe – residential development.

Costs application was made by the applicant, but this was refused by the Inspectorate and the Inspector gave reasoning for this based on the quality of the argument supporting the refusal, put forward within the Appeal statement of the Council.

52510 - 2 Bury Old Road, Whitefield - change of use to takeaway.

Dismissed:

51704 – Land Adjacent to 13 Windsor Close, Greenmount - new bungalow.

### **Procedures where Committee refuses applications against officer recommendation**

It is an applicant's right to Appeal any refusal of planning permission (or conditions attached to a consent or if appropriate, but more rarely, non-determination of an application) and the Appellants as the aggrieved party are given the initial choice of procedure by which the Appeals is handled. The Planning Inspectorate are reluctant to allow Inquiries or Hearings unless they are essential in accordance with their own published guidance for each procedure type.

Where the applicant opts for Written Representations, the Appeal Statements are prepared by the Development Management team and they will as far as possible fully support the reasons for refusal given by the Committee. This is the main reason why we need to be clear at the Committee that the reasons are based on material planning considerations and are not unreasonable.

Given that the officer report is always a balance of competing material planning considerations, no professional conflict arises supporting the Committee's decision in a Written Representations appeal and where costs applications have been made in the past, the Inspectorate has found that the Appeal case was valid and well argued and as such the Committee should be satisfied that it has been dealt with in a professional way.

The Council is finding that it is increasingly rare for an Appellant to request Hearings or Inquiries because of the time taken and cost involved. The only Appeal we have at the moment that is being dealt with at a Hearing is the case at 46-48 Bury Old Road, Prestwich where the reason for refusal was solely on Highways Grounds and as such the Highways team are supporting the decision on their professional recommendation.

However, if the Committee decided that we should ask the Planning Inspectorate to have an Informal Hearing or Public Inquiry and this position was accepted after due consideration by the Inspectorate, it would be impossible for the Officers to represent the case of the authority, as the professional opinion that they had already express would become part of the appeal process and open to questioning, possibly under oath and in those cases the officers would find themselves with a conflict of interest, if they had for example originally recommended approval of an application, which was then overturned by the Committee. This would possibly result in the need to retain outside planning consultants to represent the case and possibly Councillors would have to be called as witnesses.

This has potentially serious implications in terms of time and costs. Where an application for costs is upheld, the costs can be substantial for both Planning Consultant and legal representation, sometimes via Counsel, where the Council is unable to provide suitable in-house legal representation.

In addition, notwithstanding the fact that there may be strategic or other legal reasons to pursue the Hearing or Inquiry method, if an Appeal was pursued at a Hearing or Inquiry when the Appellant had asked for Written Representations and the Appeal, all the costs of the Appellant could be awarded against the Council, if the Inspector found that the Council had acted unreasonably and caused an applicant's wasted expenditure.

## **5.0 Enforcement Appeals**

During the year there were 5 appeals decisions in respect of Enforcement Notices. Of these 1 appeal was allowed:-

- Springside Farm – siting of a residential building.

Since this Appeal was determined we have mounted a challenge in the High Court as we believed the decision was 'flawed' in law by the Inspector making findings of fact that were not supported by evidence presented at the Inquiry. The Judge agreed and the decision has now been referred back to the Planning Inspectorate for them to re-determine the Appeal and we await that revised decision. Our Costs have been awarded as part of this process.

One appeal was lodged during the year was withdrawn immediately prior to the date of a Public Inquiry. We made an application for costs to the Planning Inspectorate and these were awarded against the appellant.

The national average for Enforcement Appeals allowed is 29% for those considered at Inquiries and 20% for written representation cases. Currently ours is 0%, a truly remarkable figure and reflects the hard work, commitment and professionalism of the Enforcement Team, the Planning Officers supporting them and our legal advisors.

## **6.0 Comment: Planning Appeals**

The number of appeals lodged and decided in respect of planning applications has reduced compared to the previous year and this is partially reflected by an increase in the number of applications approved to 87% (80% in the previous). The performance of Appeals as a result of Committee decisions has remained static, the performance on officer decisions has fallen considerably due to the Planning Inspectorate not being consistent in their decision making processes. However, we were only 2% above the national average of 40%.

### **Enforcement Appeals**

The level of appeal activity associated with Enforcement Action is considered to be relatively low when considered in the context that 71 Notices were served (61 in 2009/10) and the current 100% success rate on Appeals is exceptional.

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**List of Background Papers:** None

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