

Report to: Planning Committee
Date: January 2021
Title: Planning Application Performance and Appeal Record for the year 2020
Report of: Leigh Palmer
Ward: All
Purpose of report: To inform and update Members on the performance of determining planning applications and appeals
Officer recommendation(s): (1) Members are invited to note the content of the report.
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1. Executive Summary

- 1.1 This report is an information report for Members to note and includes factual evidence in relation to the planning application processing and the Councils record at appeal.
- 1.2 The report includes two supplementary sheets, the first is a summary of the appeals received with the calendar year 2020 and the second in a copy of a letter from Ministry of Communities Housing and Local Government.
- 1.3 Members should be aware that in relation to the appeals decided then the Inspectors full reasoning can be found within the case file on the Council's website.
- 1.4 Members will be aware that together we deal with a whole host of planning applications covering a range of differing forms of development.
- 1.5 Given the many & varied types of planning applications received Central Government require that all Councils report the performance in a consistent and coherent manner. To this end the many & varied applications are clumped together into three broad categories as identified by Govt. legislation (Major, Minor and Other) and the government have recently amended the criteria for the assessment of the Council's performance (see section on special measures below).

2. Special Measures (see also Appeal record section of this report)

- 2.1 Members may be aware that the Government have introduced new National performance criteria (Nov 2016 on speed and quality) against which all Council's will be judged. Persistent failure to perform against these targets

runs the risk of the Council being designated as 'Non- Performing' and special measures will initiated by Central Government.

- 2.2 The assessment of the new 'special measure' threshold has two limbs to it and reviews our performance on a backward rolling two-year basis, see tables 1 & 2 below. The data below is taken from the Govt figures as highlighted on their live data set tables.

2.3 Speed of Decision

- 2.4 It is evident from the figures below that the decisions taken for the survey period are currently above the special measure's threshold.

- 2.5 For the rolling two years the minimum level required is: -

2.6 Govt Target

- 2.7 Majors 60% EBC 87%

2.8 Govt Target

- 2.9 Non-Majors 70% EBC 86%

2.10 Risk Area

It is considered that there is significant headroom against these targets and as such the risk of Special Measures for Non-Performance on speed of decision is low, however given the low volumes of major applications there is the potential for extreme volatility in performance.

- 2.11 Officers are encouraged to offer/negotiate an 'extension of time' with the applicant/developer this should help to mitigate the risk level.

2.12 Quality of Decision (Appeal Overturns)

- 2.13 This section looks at appeal decisions and specifically the number/volume that have been allowed/overturned at appeal. It is clear from the data below that the Council are running more than these special measure thresholds.

2.14 Overturned Appeals

2.15 Govt Target

- 2.16 Majors 10%. EBC 12% (please see appeals section for detailed explanation on this issue.

2.17 Govt Target

- 2.18 Non-Majors 10%. EBC 0.6%.

2.19 Risk Area

- 2.20 One area for Members to note is the criterion relating to overturned Major appeals and the fact that given the very low volumes of Major application received and even less refused that an overturned appeal can have a significant impact upon performance.

- 2.21 Given the huge potential swing in performance because of the very low volumes involved that there is a very high risk of the Council falling under special measures threshold in this category.

- 2.22 Officers will advise on this issue when major applications are discussed/debated at future planning committees and Members are requested to be mindful of the impacts and consequences of refusing major applications.
- 2.23 Please see appeals section of this report for further analysis of the Councils appeal record.

3. **Appeal Analysis**

- 3.1 The appeal decisions letters received during 2020 have been analysed with the various decision permutations reported below.
- 3.2 Members will note from and performance section above that special measures is a direct consequence of our appeal record and is monitored by Government/Planning Inspectorate.
- 3.3 For the last Government survey period the Council were being assessed for special measures given the number of major applications overturned exceeded the National 10% performance indicator. Given the few major applications received for the survey period there is the potential for significant % swings. Notwithstanding this there were 4 major application overturns in the survey period and these related to:-
- 181058 - Meads Brow. Outline planning permission (Access and Layout) for demolition of the existing house and the construction of a new building housing 17 one and two bedroom apartments, with associated access and parking. Officer and Member refusal - too dense and out of character - The application site related to a small cul-de-sac of a modest number of bungalows. Officers and Members resolved that the insertion of a multi-storey apartment block would be wholly discordant with the character of the area.
 - 180040 - Kempston's Granville Road. Demolition of existing building and redevelopment to provide x16 residential units (Use Class C3) (x8 net additional), new vehicle access on Granville Road and car parking. (Resubmission following refusal of p/c 180040). Member overturn desire to keep the original building and replacement building out of character. The existing building was an attractive Edwardian Villa that was characterful and made a significant contribution to the local street scene but were not protected in any way. Officers liaised with the applicant and encouraged the application is supplemented with additional material and resubmitted. This was to establish if a local level decision could be delivered and or the number of reasons for refusal could be reduced. As is evident this appeal dropped to a single reason for refusal from the two formally. The application below 180985 was submitted following this advice.
 - 180352 - Savoy Court Hotel Cavendish Place. Planning permission for conversion of existing hotel into 15 residential self-contained flats (Listed Building Consent sought under application 180353) Member overturn flats perceived to be too small against National Space standards. Members were concerned about the size of the rooms as being inadequate even though they fell just within national space standards.

Members did not want to have people living in these sizes of flats within their Borough.

- 180985 - Kempston's Granville Road Demolition of existing building and redevelopment to provide x16 residential apartments (Use Class C3) (x8 net additional), new vehicle access on Granville Road and car parking. Member overturn desire to keep the original building and replacement building out of character. In reviewing these appeal overturns it does reflect the Governments desire to maximise housing delivery and where applications are in the balance then it appears from these decisions that the Government have a tilted balance in favour. Officer submitted a case in defence of the above overturns and as can be seen from the attached letter the Government has decided not to place Eastbourne Borough Council into Special Measures for this survey period.

- 3.4 In reviewing these appeal overturns it does reflect the Governments desire to maximise housing delivery and where applications are in the balance then it appears from these decisions that the Government have a tilted balance in favour.
- 3.5 Officer submitted a case in defence of the above overturns and as can be seen from the attached letter the Government has decided not to place Eastbourne Borough Council into Special Measures for this survey period.
- 3.6 It is important to note the content of this letter and it may result in an external peer review of the service including the operation of planning committee, but it also means that collectively we should be mindful of the potential for any refusal especially in relation to MAJOR applications could lead to an appeal and that appeal could lead to an overturn.
- 3.7 Officers will report on a regular basis the current % overturns that we have in relation to both major and non-major appeals.
- 3.8 The Table 1 below identifies the relevant decisions permutations, and it is acknowledged that the appeal volume is comparable to the levels of previous years.
- 3.9 It is considered important to review and analyse all appeal decisions across all application types as an indicator that we have applied a sound planning judgement at both delegated and planning committee level. It is considered therefore that reporting the appeal decisions in full to planning committee under a separate cover to this report will assist in understanding trends and common issues.
- 3.10 Appeal Analysis Table 1 Column 1
- 3.11 Officer recommendation for approval – Member overturned – Appeal Allowed (Officers right Members were wrong) It is important to keep a watching brief on this column as this is often the scenario where costs are awarded against the Council.
- 3.12 It is accepted that at times there are differences of opinion between officers and Members however for the appeal decisions received to date there only one case where this occurred last year.

- 3.13 Appeal Analysis Table 1 Column 2
- 3.14 Officer recommendation for approval – member overturned – appeal dismissed (Officers were wrong and Members were right) This shows that officers are not always right in the eyes of the Inspector, there no instances this year where this scenario has occurred.
- 3.15 Appeal Analysis Table 3 Column 3
- 3.16 Officer recommendation for refusal – Member support for refusal (committee or delegated) – Appeal allowed – Officers and Member were wrong. This shows that officers and Members are in tune, but the decisions have been overzealous with their recommendation and it has not been supported by the Planning Inspectorate.
- 3.17 This is also often a category where appeal costs can be awarded.
- 3.18 It is acknowledged that there are 5 appeals falling into this category within the survey period however it is important to continue to monitor as it is an indication that Officers may not be following planning policy/advice and skewing recommendations following neighbour concerns or trying to second guess the outcome of planning committee.
- 3.19 In essence it is important that officers do not shy away from making difficult recommendations especially where recommendations are in accordance with national and local advice/policies.
- 3.20 Appeal Analysis Table 4 Column 4
- 3.21 Officer recommendation for refusal – Member support for recommendation (committee or delegated decisions) – appeal refused (officers and Members were right). This column shows when Officers and Members are in tune and supported by the Planning Inspectorate. The higher the % the better, Members will note that this category is usually by far the largest, this is a reflection that the decisions that were taken were consistent with National and Local Policy advice/guidance.
- 3.22 Below in Table 1 are the analysis of the appeals received for the year 2020.

4. **Table 1**

	Officer Approve Cttee Refuse Appeal decision- Allowed	Officer Approve Cttee Refuse Appeal decision - Refused	Officer Refuse Cttee Support Refusal Appeal decision Allowed	Officer Refuse Cttee Support Refusal Appeal decision Refused
2013	7 (28%)	4 (16%)	2 (8%)	12 (48%)
2014	0 (0%)	4 (40%)	2 (20%)	4 (40%)
2015	0 (0%)	3 (21%)	2 (14%)	9 (65%)
2016	5 (18%)	1 (4%)	5 (18%)	17 (61%)
2017	0 (0%)	3(21%)	1(7%)	10(71%)
2018	0 (0%)	2(17%)	1 (8%)	9(75%)
2019	7 (33%)	1 (5%)	6 (29%)	7 (33%)
2020	1 (5%)	0 (0%)	5 (26%)	13 (69%)

4.1 Appeal Costs

- 4.2 As members will be aware the appeal process can award costs to any party involved in the appeal process where it can be demonstrated that any party has acted unreasonably. During 2020 the Council have received 4 costs appeals with 2 being allowed and two being dismissed.
- 4.3 Committee Decision one costs allowed and one dismissed.
- 4.4 Delegated Decision one costs allowed and one dismissed.
- 4.5 Members should note that collectively we should strive to avoid costs claims. Legal and Planning Officers will advise members at Planning Committee (prior to making a decision where there is the likelihood of a cost claim being successful).

4.6 Risk Area

- 4.7 Given the changes to the way the Government now assess what constitutes a good/well performing Council there is a very high risk of special measures on major applications being overturned at appeal.
- 4.8 To mitigate this risk case officers are encouraged to negotiate extension of time with the applicant/developer.
- 4.9 If/when an award of costs is made there is the potential for financial risk and a reputational risk and as such these must be closely monitored and where possible lessons should be drawn from these cases. In this regard the regular reporting on appeal decisions to planning committee should help to inform this issue.

5. **Planning Applications**

- 5.1 Given the new 'Non-Performing' special measure thresholds referred to above it is clear therefore that there remains the need for (quarterly) reporting of performance to Planning Committee so that issues, trends and pressures can readily be identified and dismissed. This report delivers to this aim.
- 5.2 The figures in Tables 1 – 2 below include the data from the Government return (currently excludes 'Notifications Prior Approvals and Certificates of Lawful development, trees and pre application submission). It is accepted that the Government have changed the content of the data that is analysed; however, this data is reported here to give the year of year comparison.

Decisions	2014	2015	2016	2017	2018	2019	2020
All determined	596	545	569	598	531	499	475
Delegated	521 (87%)	472 (87%)	505 (89%)	559 (93%)	478 (90%)	478 (96%)	450 (95%)
Granted	546 (92%)	488 (90%)	515 (91%)	544 (91%)	487 (92%)	426 (85%)	429 (90%)
Refused	50 (8%)	57 (10%)	54 (10%)	54 (9%)	49 (9%)	73 (15%)	46 (10%)

- 5.3 There are two broad conclusions that can be drawn from the above set of figures and these are that the declining number of determinations may be due to the Government expanding the permitted development tolerances; these types of submissions are not reported here and that the approval rate is consistently around 90%.
- 5.4 It is important to retain this approval rating at 90% as this is a key way to support the local construction and employment sector. It is known that most of the applications that were received relate to domestic extensions and these are constructed by local SME's.

6. **Recommendation**

- 6.1 That the content of this report and its appendix are noted.

7. **Appendices**

Appendix 1 - Summary of appeal decisions in 2020.

Appendix 2 - Ministry of Communities Housing and Local Government letter with respect to Special Measures.