

Report to: Planning Applications Committee

Date: 15 February 2023

Title of report: Summary of Planning Appeal Decisions received:
a) April 2021 to March 2022 (18 decisions in 12 months)
b) April 2022 to December 2022 (24 decisions in 9 months)

Recommendation: To note the outcome of appeal decisions summarised in Section 2 and Key Issues comments set out in Sections 3-6.

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1.	Executive Summary
1.1	The attached table (Appendix 1), ordered by date of decision, provides Members with a summary and brief commentary on the appeal decisions received by the Authority between April 2021 and December 2022, divided into financial years. (A summary of the last reporting period October 2020 to March 2021 is also provided for comparison purposes). Appendix 1 covers appeals dealt with by the Lewes District Council for the Lewes District Council area but not those dealt with by Lewes District Council on behalf of the South Downs National Park Authority.
2.	Previously Reported – October 2020 to March 2021
2.1	21 appeal decisions, of which 16 were dismissed (76%) and 5 allowed (24%). 1 application for award of costs (included above) which was approved. The Authority’s appeal performance in the financial year was 65% of appeals being dismissed (17 dismissed, 9 approved). No Judicial Reviews
2.2	This Report – April 2021 to March 2022 (18 decisions in 12 months) 18 appeal decisions, of which 16 were dismissed (89%) and 2 allowed (11%). This equates to the financial year performance. 1 application for award of costs (included above) was made <u>and not supported</u> . Of the 18 decisions

	<ul style="list-style-type: none"> - 13 Delegated Refusal. - 1 Committee Refusal. - 3 Committee Overturns - 1 Non – Determination <p>No Judicial Reviews were received</p>
2.3	<p>This Report – April 2022 to December 2022 (24 decisions in 9 months)</p> <p>24 appeal decisions, of which 14 were dismissed (58%) and 10 allowed (42%). This equates to the financial year (2022-23) to date performance</p> <p>5 applications for award of costs (included above) were made. 3 were not supported and 2 were partially awarded. The Council agreed to pay a total of £3,2875</p> <p>Of the 24 decisions</p> <ul style="list-style-type: none"> - 17 Delegated Refusal. - 1 Committee Refusal. - 3 Committee Overturns - 4 Non – Determination <p>No Judicial Reviews were received</p>

3.	Summary of Key Issues
3.1	<u>Lack of a 5-year housing land supply (5yIs)</u> More appeals are being submitted since Central Government altered the NPPF resulting in the Local Planning Authority's (LPA) Lewes Local Plan being considered to be out of date and therefore having to use/apply the Standard Methodology for housing need. As a result of this the LPA cannot show a 5year land supply (5yIs). It is currently running at 2.73 years
3.2	<u>More Appeals are being Allowed/Lost:</u> More appeals have been allowed in 2022-23, (to date), than in the two previous financial years, because of the reasons set out in 3.1 above
3.3	<u>More Hearings and Public Inquires – and More Costs:</u> There were no Hearings or Public Inquiries in 2021-22. To date in 2022-23 there have been 4 Hearings, and 4 Public Inquiries. And there are 2 Hearings and 4 Public Inquires in the pipeline for the rest of 22-23 and 23-24.
3.4	<u>Public Inquiries</u>

	<p>22/23 No 16 - LW/22/0754, South Road Wivelsfield, 45 UNITS ALLOWED</p> <p>22/23 No 20 - LW/21/0937, Broylegate Farm, Ringmer, 100 UNITS ALLOWED</p> <p>22/23 No 21 - LW/21/0262, Nolands Farm, Plumpton, 86 UNITS ALLOWED</p> <p>LW/21/0729, Ditchling Road Wivelsfield, 96 UNITS LIVE</p>
3.5	<p><u>Hearings</u></p> <p>22/23 No 22 - LW/21/0660, Sutton Road Seaford, 37 UNITS DISMISSED</p> <p>22/23 No 23 - LW/21/0967, Sutton Road Seaford, 36 UNITS ALLOWED</p> <p>22/23 No 24 - LW/21/0700, Telephone Exchange, Newick, 36 UNITS ALLOWED</p> <p>LW/22/0104, Chamberlains Lane Ringmer, 68 UNITS LIVE</p>
3.6	<p><u>Pipeline Public Inquiries</u></p> <p>LW/21/0694 Bishops Close Ringmer, 68 UNITS LIVE</p> <p>LW/22/0175 Bennetts Car Park Falmer, 555 UNITS LIVE</p> <p>LW/21/0986 Harrisons Lane Ringmer, 200 UNITS LIVE</p> <p>LW/22/0472 Harrisons Lane Ringmer, 75 UNITS LIVE</p>
3.7	<p><u>Pipeline Hearings</u></p> <p>LW/20/0104, Downland Park Newhaven, Caravan Site LIVE</p> <p>LW/20/0011, Averys Nursey Site, A26, 53 homes and employment LIVE</p>

4.	<p>Committee Overturns and Appeal Costs: Committee Overturns, over the survey period as a whole, (and including for all types of application), have been limited in 2021-22 and 2022-23 (to date) and have not necessarily resulted in appeals being allowed. This shows careful planning considerations by Committee Members</p>
4.1	<p>However, going forward, officers advise members to be increasingly and appropriately aware of overturn appeal cases in the pipeline, particularly those related to significant housing schemes on the boundaries of designated settlements. These are at risk of being “allowed/lost” and are likely to include further applications for awards of costs – again for the reasons set out in 3.1 above.</p> <p>Whilst cost issues should not be a decision-making issue, they are certainly indicative of real and serious policy tensions Lewes is experiencing on the lack of a 5 year land supply and the nationally agreed importance the Planning Inspectorate is according larger housing schemes. Officers, therefore, ask Committee members to consider this matter carefully, in their deliberations.</p>
4.2	<p>For background information, members should note that costs associated with defending these larger appeals, is currently running at £323,546 - not including the cost for the ‘pipeline’ appeals. This cost is being covered directly from Council reserves. This will become an increasing cause for concern if the appeals continue at the same frequency and cost, and be “allowed/lost”.</p>
4.3	<p>For appeals administered by way of a written representations and hearings that are small in nature and complexity - these are normally covered by direct staffing costs.</p>
4.4	<p>For those appeals administered by way of Public Inquiry and Hearing that are large scale schemes often outside the settlement boundaries then the costs include: Legal representation (barrister), expert witnesses (planning, landscape etc), venue hire and printing.</p>
4.5	<p>As noted above the costs to date do not include the pipeline cases and amount to an average cost of £54,000 per case and this does not include staff costs in supporting the process.</p>

5.	<p>Lewes “Character and Appearance”:</p> <p>On small housing schemes (1 – 4 dwellings), and where “character and appearance” is argued, Inspectors are generally finding in favour of good design over minor housing supply. However, on large housing schemes, that could make a significant difference to the Council’s housing supply, PINs is increasingly, (because of the lack of a 5yls), putting “housing before character and valued landscapes”.</p> <p>See paragraphs 3.4 and 3.5 above for decided Hearings and Public Inquiries. And therefore, Officers are concerned, in this regard, about the Pipelines described in paragraphs in 3.6 and 3.7.</p>
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6.	<p>Good Design:</p> <p>Since the government has produced more guidance and policy on “good design”, including changing the National Planning Policy Framework, (NPPF para 8 and Section 12), Inspectors are not only valuing designated Buildings, streets and landscapes, but also the “everyday character” of Lewes’s varied environment. This is generally supported by officers and Committee. This has also meant that Planning Inspectors have felt freer to get involved in design matters. So, whilst LW/21/03344 and 21/0996, were both dismissed on “character and appearance”, at 22/0051, the Inspector felt a “denser design” would be acceptable.</p> <p>22/23 No 9 – LW 21 03344, 11a Nutley Ave, Saltdean, 2 new homes DISMISSED 22/23 No 15 – LW 22 0051, Chyngton La Nth, Seaford, 2 new homes ALLOWED 22/23 No 19 – LW 21 0996, Haywards Hth Rd, Nth Chailey, new home DISMISSED</p>
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7.	<p>Legal Implications</p> <p>Considering “costs”. As a general rule, it is appropriate for members to be cognisant of costs risks in decision making. Case law has established that the risk of adverse costs is not in itself a material consideration when considering individual planning applications. This means Committee should not use costs information to make a different decision to the one that would have otherwise been made. However, as indicated at paragraph 4.1 of the report, “allowed/lost appeals and associated costs”, particularly with similar type/size applications, is a strong indication that the Planning Inspectorate views these Lewes decisions as being at some risk. Decision makers should therefore appreciate these indicative signals, and focus on the importance of having reasons for refusal that can stand up to scrutiny on the planning merits, supported by robust evidence, and up to date National and Local policy.</p>
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8.	<p>Recommendation</p>
8.1	<p>Members to note the content of this report.</p>

9.	Appendices
9.1	Appendix 1 - Summary findings of appeal decisions
10.	Background papers
10.1	None.