

**Report to:** Planning Applications Committee

**Date:** 19 April 2023

**Title of report:** Summary of Planning Appeal Decisions received:  
January 2023 to March 2023 (8 decisions in 2 months)  
April 2022 to March 2023 (32 decisions in 12 months)

**Recommendation:** To note the report for information.

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<b>1.</b>	<b>Executive Summary</b>
1.1	<p>The attached Appendix 1, (ordered by date of decision), provides Members with a summary and brief commentary of <u>the 8 further appeal decisions received by the Authority between January and March 2023</u>, (following on from the 15<sup>th</sup> January Committee Report which covered April 2022 to December 2022 – 24 decisions in 9 months).</p> <p>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.</p> <p>Committee is asked to note this report for information.</p> <p>At Section 6, the 18 Appeal Decisions received in 2021/2 are compared to the 32 Decisions received in 2022/23.</p> <p>Section 7 sets out summary of key issues and trends.</p> <p>Since Lewes' loss of a 5 year land supply, the Council's loss rate on appeals has increased from 11% (2021/22) to 46% (2022/23).</p> <p>Lewes is now receiving more appeals and more Hearings and Public Inquiries. Already for 2023/24, nine Hearings and Public Inquiries are Live and in the pipeline.</p> <p>More Hearings and Public Inquiries are increasing the cost burden on Lewes Council.</p> <p>The report at Section 8, compares two important new appeals decisions relating to settlement extensions. (See also Appendix 1 No 28 and No 29, in Ringmer (68 homes Dismissed) and Wivelsfield (95 homes Allowed), respectively).</p>

	<p>The report concludes, in Section 8, with officer advice to LPAC, to continue to support the 8 Tests of the 2020 Interim Policy Statement on Housing Delivery. These 8 Tests for “good housing development criteria” are also set out in Section 8.</p> <p>Section 9 summaries Lewes District South Downs National Park Appeal Decisions between November 2022 and February 2023, which are the last records received from the SDNP.</p>
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<p><b>2.</b></p>	<p><b><u>Previously Reported</u> – October 2020 to March 2021 (21 decisions in 6 months)</b></p> <p><b>21 appeal decisions, of which 16 were dismissed (76%) and 5 allowed (24%).</b></p> <p><b>1 application for award of costs (included above) which was approved.</b></p> <p><b>The Authority’s appeal performance in the financial year was 65% of appeals being dismissed (17 dismissed, 9 approved).</b></p> <p>No Judicial Reviews</p>
<p><b>3.</b></p>	<p><b><u>Previously Reported</u> – April 2021 to March 2022 (18 decisions in 12 months)</b></p> <p>18 appeal decisions, of which 16 were dismissed (89%) and 2 allowed (11%). This equates to the fiscal year performance.</p> <p>1 application for award of costs (included above) was made <u>and not supported</u>.</p> <p>Of the 18 decisions</p> <ul style="list-style-type: none"> <li>- 13 Delegated Refusal.</li> <li>- 1 Committee Refusal.</li> <li>- 3 Committee Overturns</li> <li>- 1 Non – Determination</li> </ul> <p>No Judicial Reviews were received.</p>
<p><b>4.</b></p>	<p><b><u>This Report:</u></b></p> <p><b>January and March 2023 (8 decisions in 3 months)</b></p> <p>4 appeal decisions dismissed and 4 allowed.</p> <p><b>April 2022 to March 2023 (32 decisions in 12 months)</b></p>

Therefore, the final figures for 2022-23 are:

32 appeal decisions, of which 18 were dismissed (56%) and 14 allowed (44%).

This equates to the fiscal year performance.

6 applications for awards of costs (included in the above figures) were made. 3 were not supported and 3 were partially awarded, although the Council will be contesting the latest Wivelsfield decision made on 23-2-23, (see 22/23 No 29 in Appendix 1). Therefore, Council in 2022-23 has paid £3,287 in awarded appeal costs.

Of the 32 decisions:

- 23 Delegated Refusal.
- 1 Committee Refusal.
- 5 Committee Overturns
- 3 Non – Determination

1 Judicial Review were received.

(22/23 JR is No 28 in Appendix 1 – South of Lewes Road, Broyleside Ringmer. 68 homes PINS 3299940 LW-22-0104).

**5. Comparing Lewes Appeal Decisions - 2021/22 to 2022/23**

<b>DISMISSED or ALLOWED</b>	<b>21/22</b>	<b>22/23</b>
Appeals Dismissed	16 (89%)	18 (56%)
Appeals Allowed (lost)	2 (11%)	14 (44%)
Cost Applications Made	1	6
Costs Awarded to Appellant	0	3 (partial)
Judicial Reviews (JR) Made	0	1
<b>TYPE OF REFUSAL</b>	<b>21/22</b>	<b>22/23</b>
Delegated Refusal	13	23
Committee Refusal	1	1
Committee Overturn	3	5
Non – Determination	1	3

6.	<b>Summary of Key Issues and Trends</b>
6.1	<p><b>Lack of a 5-year housing land supply (5yls)</b></p> <p>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 apply the Standard Methodology for housing need. As a result of this the LPA cannot show a 5year land supply (5yls). It is currently running at 2.73 years. This means that in planning appeals for new homes, in principle, <u>the delivery of homes is given greater planning weight in the "planning balance for decisions to approve or refuse"</u>.</p>
6.2	<p><b>More Appeals are being Allowed/Lost</b></p> <p>More appeals have been allowed in 2022-23 than in the two previous financial years, because of the reasons set out in 7.1 above.</p>
6.3	<p><b>More Hearings and Public Inquires</b></p> <p>There were no Hearings or Public Inquiries in 2021-22. In 2022-23 there have been 5 Hearings, and 4 Public Inquiries. And there are to date, 9 Hearings or Public Inquires in the pipeline for 2023-24.</p>
6.4	<p><b>Public Inquiries 2022-23</b></p> <p>22/23 No 16 - LW/22/0754, South Road Wivelsfield, 45 UNITS ALLOWED</p> <p>22/23 No 20 - LW/21/0937, Broyle gate Farm, Ringmer, 100 UNITS ALLOWED</p> <p>22/23 No 21 - LW/21/0262, Nolands Farm, Plumpton, 86 UNITS ALLOWED</p> <p>22/23 No 29 - LW/21/0729, Ditchling Road Wivelsfield, 96 UNITS ALLOWED</p>
6.5	<p><b>Hearings 2022-23</b></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>22/23 Nos 28 - LW/22/0104, Chamberlains Lane, (land south of Lewes Road/Laughton Road) Ringmer, 68 UNITS DISMISSED</p> <p>22/23 Nos 30 – LW/20/0011, Averys Nursery, Uckfield Road, Ringmer, 53 UNITS ALLOWED</p>
6.6	<p><b>Pipeline Public Inquiries/Hearings 2023-24</b></p> <p>1) LW/20/0104 - Downland Park Newhaven, Caravan Site LIVE – Hearing - 18<sup>th</sup> April 2023</p> <p>2) LW/22/0175 - Bennetts Car Park Falmer, 555 UNITS LIVE – Public Inquiry - 30<sup>th</sup> May 2023</p> <p>3) LW/21/0986 - Harrisons Lane Ringmer, 200 UNITS LIVE – Public Inquiry – 13<sup>th</sup> June 2023</p> <p>4) LW/22/0472 - Harrisons Lane Ringmer, 75 UNITS LIVE – Public Inquiry – 13<sup>th</sup> June 2023</p> <p>5) LW/22/0153 - Barcombe High Street 26 UNITS LIVE – Public Inquiry – 4<sup>th</sup> July 2023</p> <p>6) LW/22/0356 – Seaford Constitutional Club, Crouch Lane, Seaford 40 UNITS LIVE – Public Inquiry – 18<sup>th</sup> July 2023</p> <p>7) LW/21/0694 - Bishops Close, Ringmer, 68 UNITS LIVE – Hearing or Public Inquiry – No date</p> <p>8) LW/22/0282 - Land South of the Broyle, Ringmer, 70 UNITS Intention to Appeal</p> <p>9) LW/22/0255 – Round House Road, Ringmer, 53 UNITS Intention to Appeal</p>
6.7	<p><b>Committee Overturns</b></p> <p>Committee Overturns, over the survey period as a whole, (including for all types of application), have been limited in 2021-22 (3) and 2022-23 (5) and have not necessarily resulted in appeals being allowed. This shows careful planning considerations by Committee Members</p>
6.8	<p><b>Appeal Costs</b></p>

	<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 at 7.1 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>
6.9	<p><b>The Cost of Appeal in 2022/23</b></p> <p>For background information, members should note that costs associated with defending these larger appeals, is currently running at <b>£323,546</b> - 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>
6.10	<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>
6.11	<p>For those appeals administered by way of Public Inquiry and Hearing that are large scale schemes often outside the settlement boundaries - costs include: Legal representation (barrister), expert witnesses (planning, landscape etc), venue hire and printing.</p>
6.12	<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>
7.	<p><b>Understanding and Comparing Two Recent Key Appeal Decisions</b></p> <p>LW/22/0104, Chamberlains Lane Ringmer, 68 UNITS - DISMISSED</p> <p>LW/21/0729, Ditchling Road Wivelsfield, 96 UNITS - ALLOWED</p> <p><b>A summary of these two appeal decisions, along with scheme plans in relation to their settlement boundaries, are set out in Appendix 1 Nos 28 and 29.</b></p> <p>Officer assessment:</p> <p>a) <u>Outside Settlement Boundary, but close to the boundary</u></p>

Both schemes are close to settlements but just outside the formal planning boundaries. Both offer a significant contribution to the Authority' lack of a 5 year housing land supply (5yhls).

b) Lewes Spatial Strategies

In both appeal decisions, Inspectors were very concerned about the lack of a 5yhs and the Council's and Neighbourhood Plans "spatial strategies" that aim to focus growth and new homes only inside settlement boundaries

c) Harm to countryside character

Both address the change the proposed schemes would make on the character and appearance of the settlements and countryside. And, in both cases, Inspector's found there to be harm to the countryside character.

d) Rural public rights of way

Both were concerned with the suburbanisation of "rural public rights of way" as a result of the proposed new residential schemes.

e) Defining "Significant" countryside character harm

However, in the Ringmer case, the proximity to and impact on the South Downs National Park setting, (including views from SDNP) and impact on neighbour heritage assets, seemed to have weighed much more heavily than the need for homes to address the 5 yls shortage. (However, it should be noted that a further recent neighbour appeal decision – Broyle Gate Farm 21-0937 PINS 3298993, reported to 15/2 LPAC – whilst in the same location/setting, resulted in planning permission being approved).

In the Wivelsfield case, despite proposed significant changes to the settlement urban design pattern and immediate countryside, the absence of any special landscape/heritage characteristics seems to have allowed the Inspector to be more concerned about the lack of a 5yhs, leading to the appeal being allowed.

f) Interim Policy Statement on Housing Delivery (IPSHD) 2020 – 8 Tests (set out below)

The IPSHD was introduced to guide major housing development assessments whilst the Lewes LP was "out of date" and being reviewed. (These are "spatial strategy test" for where major development should be located – they are in addition to a range of sustainability, design and environmental criteria and tests all applications get assessed against). In principle, meeting the 8 tests would mean a development, could be supported. However, in both cases, Inspectors "broadly dismiss" the 2020 Interim Policy Statement on Housing Delivery 8 tests as "not statutory and not consulted on".

g) Officer Advice to Committee

Officers continue to advise Committee that the IPSHD is relevant to Committee decision making.

More major applicants assess schemes against the 8 test criteria, (e.g. Harrisons Lane, Ringmer).

In addition, the 8 tests of IPSH, broadly equate to LPA search criteria for new “allocated housing sites” for the new Lewes Local Plan.

LPAC is therefore asked to consider these conclusions when making decisions over the next 1-2 years.

### **2020 IPSDH – 8 Spatial Strategy Tests**

1. Site/development should be contiguous with settlement boundary.
2. Scheme should be appropriate to the size, character and role of the adjacent settlement, having regard to the settlement hierarchy, taking into account the cumulative impact of extant settlement unimplemented permissions.
3. The scheme should provide safe and convenient pedestrian and cycle access to local facilities and services in the adjacent settlement
4. The scheme should not result in actual or perceived coalescence of settlements
5. Within the setting of the SDNP, the proposed scheme demonstrates it will conserve the special qualities of the SDNP
6. The scheme can achieve Biodiversity Net Gain (BNG), through ecological impact assessments and biodiversity measures.
7. The scheme would make the best and most efficient use of land and responds sympathetically to the existing character and distinctiveness of the local countryside and adjoining settlement. (Arbitrary low density and piecemeal development will not be acceptable)
8. The scheme would be deliverable and viable, including affordable housing; on and off site infrastructure and green infrastructure.

### **8. South Downs National Park in Lewes District Appeals Decisions**

Latest records received from the SDNP are for the period Nov 2022 – Feb 2023. There were 3 Appeal Decisions. **All 3 were dismissed.**

**a) House Alterations including hip to gable and rear dormer.**

21/02960 PINS 3291920 – 67 North Way, Lewes BN7 1DJ

**b) Agricultural building extension and conversion to a dwelling**

20/05776 PINS 3294990 – Hoddern Farm Lane, Peacehaven BN10 8AR

**c) Temporary caravan extension**



<b>9.</b>	<p><b>Legal Implications</b></p> <p>Considering “costs.”</p> <p>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>
<b>10.</b>	<p><b>Recommendation</b></p> <p>10.1 Members to note the content of this report.</p>
<b>11.</b>	<p><b>Appendices</b></p> <p>11.1 Appendix 1 - Summary findings of appeal decisions, Lewes District, outside of the SDNP – January and March 2023</p>
<b>12.</b>	<p><b>Background papers</b></p> <p>12.1 None.</p>