

**Report to:** Planning Applications Committee

**Date:** 6<sup>th</sup> December 2023

**Title of report:** Planning Appeal Decisions and Analysis  
 Recap of Appeals Performance 2021 to 2023  
 Appeal Performance 2023-24 to date  
 Lewes Likely Designation on Quality Decisions Indicator and Proposed Action Plan

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

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| <b>1.</b> | <b>Executive Summary</b>  |
| 1.1       | <p>Committee is asked to note this report for information and to acknowledge the commitment to working to explore mitigation measures “Appeals and Decision-Making Action Plan” at Section 9.</p> <p><b>Sections 2 to 5</b><br/>         Sets out an Analysis of Appeal Decisions between 2021 and March 2023. Overall, this shows that appeal numbers are going up, (particularly in 22-23) and that the LPA is increasingly losing significantly more major appeals.</p> <p>This has coincided with the Lewes Local Plan “housing delivery polices” going out of date and the Authority not being able to show a 5-year housing land supply. In turn, particularly on major applications, Planning Inspectors are giving significant weight to “housing delivery,” even when they are outside planning settlement boundaries.</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 42% (2022/23), and to 44% (2023/24) this is likely to increase further.</p> <p>Awards of Costs against the LPA is also increasing significantly.</p> <p><b>Section 6</b><br/>         Sets out strong likelihood of Lewes being designated as “failing the national planning indicator P152 for Quality Decision on Major Applications”, this looks at the number of decisions overturned at appeal.</p> <p>The threshold for designation is 10% of major appeals lost compared to major decisions made.</p> <p>Lewes is currently at 32%.</p> |

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|     | <p>Calculation = 12 major appeals allowed, (between April 1<sup>st</sup>, 2021, and Nov 2023) divided by 37 major application decisions made (between April 1<sup>st</sup>, 2021, and 31<sup>st</sup> March 2023).</p> <p>This section sets out the implications of such a designation which is likely to occur in Q3 2023/24.</p> <p><b>Section 7</b><br/>Updates Committee on key issues and trends and again highlights the risk of the LPA being designated on the P152 Indicator “Quality of Decisions for Major Applications”.</p> <p><b>Section 8</b><br/>Officer General Advice to LPAC.</p> <p><b>Section 9</b><br/>Members are invited to explore “2024 Appeals and Decision-Making Action Plan”, which is likely to be requested of Lewes by Central Government, as part of any final designation as “failing the national planning indicator P152 for Quality Decision on Major Applications”.</p> |
| 2.  | <p><b><u>Previously Reported</u> – April 2021 to March 2022 (19 decisions in 12 months – all appeal decisions)</b></p>   |
| 2.1 | <p>19 appeal decisions, of which 17 were dismissed (89%) and 2 allowed (11%). This equates to the fiscal years performance.</p> <p>1 application for award of costs (included above) was made <u>and not supported</u>.</p> <p>Of the 19 decisions</p> <ul style="list-style-type: none"> <li>- 14 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>   |
| 3.  | <p><b><u>Previously Reported</u> - April 2022 to March 2023 (33 decisions in 12 months – all appeal decisions)</b></p>   |
| 3.1 | <p><u>33 appeal decisions, of which 19 were dismissed (59%) and 14 allowed (41%).</u></p> <p>6 applications for awards of costs were made. 3 were not supported and 3 were partially awarded.</p> <p>Therefore, Council in 2022-23 has paid £15,000 in awarded appeal costs.</p> <p>Of the 33 decisions:</p> <ul style="list-style-type: none"> <li>- 24 Delegated Refusal.</li> <li>- 1 Committee Refusal.</li> </ul>   |

|                             | <ul style="list-style-type: none"> <li>- 5 Committee Overturns</li> <li>- 3 Non – Determination</li> </ul> <p>1 Judicial Review was received.</p> <p>(JR – South of Lewes Road, Broyleside Ringmer. 68 homes PINS 3299940 LW-22-0104).</p>  |                             |                                |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
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| <b>4.</b>                   | <b>April 2023 to March 2024 to Date (18 decisions in 9 months)</b>  |                             |                                |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| 4.1                         | <p><u>18 appeal decisions, of which 10 were dismissed (55%) and 8 allowed (45%).</u></p> <p>4 applications for awards of costs were made.</p> <p>1 were not supported, and 3 were awarded.</p> <p>Therefore, Council in 2023-24 is likely to pay <b>at least £150,000</b> in awarded appeal costs. <u>This is a substantial increase on previous years.</u></p>   |                             |                                |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| <b>5.</b>                   | <b><u>Comparing Lewes Appeal Decisions – 2021-2024</u></b>  |                             |                                |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| 5.1                         | <table border="1"> <thead> <tr> <th><b>DISMISSED or ALLOWED</b></th> <th><b>21/22</b></th> <th><b>22/23</b></th> <th><b>23/24 To Date 21-11-23.</b></th> </tr> </thead> <tbody> <tr> <td><b>All Appeal Decisions</b></td> <td><b>19</b></td> <td><b>33</b></td> <td><b>18</b></td> </tr> <tr> <td>Appeals Dismissed</td> <td>17 (89%)</td> <td>19 (56%)</td> <td>10 (55%)</td> </tr> <tr> <td>Appeals Allowed (lost)</td> <td>2 (11%)</td> <td>14 (42%)</td> <td>8 (44%)</td> </tr> <tr> <td>Cost Applications Made</td> <td>1</td> <td>6</td> <td>4</td> </tr> <tr> <td>Costs Awarded to Appellant</td> <td>0</td> <td>3 (partial)</td> <td>3</td> </tr> <tr> <td>Judicial Reviews (JR) Made</td> <td>0</td> <td>1</td> <td>0</td> </tr> <tr> <td><br/></td> <td></td> <td></td> <td></td> </tr> <tr> <td><b>TYPE OF REFUSAL</b></td> <td><b>21/22</b></td> <td><b>22/23</b></td> <td><b>23/24 (TBC)</b></td> </tr> <tr> <td>Delegated Refusal</td> <td>13</td> <td>23</td> <td></td> </tr> <tr> <td>Committee Refusal</td> <td>1</td> <td>1</td> <td></td> </tr> <tr> <td>Committee Overturn</td> <td>3</td> <td>5</td> <td></td> </tr> <tr> <td>Non – Determination</td> <td>1</td> <td>3</td> <td></td> </tr> </tbody> </table> | <b>DISMISSED or ALLOWED</b> | <b>21/22</b>                   | <b>22/23</b> | <b>23/24 To Date 21-11-23.</b> | <b>All Appeal Decisions</b> | <b>19</b> | <b>33</b> | <b>18</b> | Appeals Dismissed | 17 (89%) | 19 (56%) | 10 (55%) | Appeals Allowed (lost) | 2 (11%) | 14 (42%) | 8 (44%) | Cost Applications Made | 1 | 6 | 4 | Costs Awarded to Appellant | 0 | 3 (partial) | 3 | Judicial Reviews (JR) Made | 0 | 1 | 0 | <br> |  |  |  | <b>TYPE OF REFUSAL</b> | <b>21/22</b> | <b>22/23</b> | <b>23/24 (TBC)</b> | Delegated Refusal | 13 | 23 |  | Committee Refusal | 1 | 1 |  | Committee Overturn | 3 | 5 |  | Non – Determination | 1 | 3 |  |
| <b>DISMISSED or ALLOWED</b> | <b>21/22</b>  | <b>22/23</b>                | <b>23/24 To Date 21-11-23.</b> |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| <b>All Appeal Decisions</b> | <b>19</b>   | <b>33</b>                   | <b>18</b>                      |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| Appeals Dismissed           | 17 (89%)  | 19 (56%)                    | 10 (55%)                       |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| Appeals Allowed (lost)      | 2 (11%)   | 14 (42%)                    | 8 (44%)                        |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| Cost Applications Made      | 1   | 6                           | 4                              |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| Costs Awarded to Appellant  | 0   | 3 (partial)                 | 3                              |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| Judicial Reviews (JR) Made  | 0   | 1                           | 0                              |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| <br>                        |   |                             |                                |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| <b>TYPE OF REFUSAL</b>      | <b>21/22</b>  | <b>22/23</b>                | <b>23/24 (TBC)</b>             |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| Delegated Refusal           | 13  | 23                          |                                |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| Committee Refusal           | 1   | 1                           |                                |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| Committee Overturn          | 3   | 5                           |                                |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| Non – Determination         | 1   | 3                           |                                |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| <b>6.</b>                   | <b><u>Quality of Decisions National Performance Indicator for Major Applications, and the Likelihood of Designation</u></b>   |                             |                                |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |
| 6.1                         | <p>“Improving Planning Performance – Criteria for Designation Rev 2022” sets out a critical national performance indicator P152a.</p> <p><u><a href="https://www.gov.uk/government/publications/improving-planning-performance-criteria-for-designation">Improving planning performance: criteria for designation - GOV.UK (www.gov.uk)</a></u></p> <p><b>Assessment Period</b></p> <p>April 2021 – March 2023, (plus 9 months to Dec 2023 to receive major appeal decisions from major application decided in 2021-2023)</p> <p><b>Performance Measure</b></p>   |                             |                                |              |                                |                             |           |           |           |                   |          |          |          |                        |         |          |         |                        |   |   |   |                            |   |             |   |                            |   |   |   |      |  |  |  |                        |              |              |                    |                   |    |    |  |                   |   |   |  |                    |   |   |  |                     |   |   |  |

Percentage of total number of major application decisions made that are subsequently overturned at appeal, once 9 months, (after the assessment period) has elapsed, to allow appeal decisions to come through and be taken into account.

So, the number of major appeals allowed/lost, (during the assessment period) divided by the number of major planning application decisions between April 2021 and March 2023.

### **Threshold**

10%+ of the total number of major decisions on applications overturned, (allowed/lost) at appeal, would make the LPA liable for “designation”.

### **Designation**

Designation is not automatic, and the LPA may discuss with DLUCH an action plans and mitigating circumstances.

Designation means that planning applicants can ask the Planning Inspectorate, (instead of the LPA) to determine major planning applications, but the LPA would continue to fund the costs of processing the planning applications, and carry out their administration, the application fee would go to the Government.

All Planning powers could be taken away from the Council and Government officials step in, and if to occur would have reputational damage to the authority.

### **April 2021 – March 2023, (plus 9 months to Dec 23 to receive major appeal decisions of major refusals decide in 2021-23)**

Over the assessment period 37 major application decisions were made by Lewes District Council (10 in 21-22 and 27 in 22-23).

To date (April 21 to Nov 23), 21 major appeal decisions have been received – 9 have been dismissed and 12 have been allowed. 12 = 32%.

Note that the threshold for designation is 10% and there is one month remaining of the assessment period.

#### **P152 for Quality Decision on Major Applications - Lewes**

| <b>Year</b>   | <b>Major Apps Decided</b> | <b>Major Appeal Decisions</b> | <b>Dismiss/Allow</b> | <b>Quality Indicator %</b> |
|---------------|---------------------------|-------------------------------|----------------------|----------------------------|
| 21-22         | 10                        | 4                             | 4/0                  |                            |
| 22-23         | 27                        | 10                            | 3/7                  |                            |
| 23-24 to date |                           | 7                             | 2/5                  |                            |
| All           | 37                        | 21                            | 9/12                 | 32 (i.e.,12/37)            |

#### **Lewes All Appeals % Allowed/Lost**

| Year          | All Appeal Decisions Dismissed/Allow | % of Appeal Allowed/Lost |
|---------------|--------------------------------------|--------------------------|
| 21-22         | 19                                   | 17/2                     |
| 22-23         | 33                                   | 19/14                    |
| 23-24 to date | 18                                   | 10/8                     |

**12 Major Decisions Allowed/Lost 2021 – 2023/24 to date.**

- Sep 22 - 21/0754 Wivelsfield, 45 homes (PAC Overturn)
- Nov 22 – 21/0937 Broyle Gate Ringmer, 100 homes (Non determination)
- Dec 22 – 21/0967 Sutton Rd Seaford, 36 homes (Non determination)
- Dec 22 – 21/0700 Telephone Ex Newick, 36 homes (PAC Overturn)
- Dec 22 – 21/0272 Nolands Farm Plumpton, 86 homes (PAC endorsed refusal)
- Feb 23 – 21/0729 Ditchling Rd Wivelsfield, 96 homes (PAC Overturn)
- Mar 23 – 20/0011 Avery’s Ringmer, 53 homes (PAC Overturn)
- Aug 23 – 22/0356 Con Club Seaford, 40 Flats (Non determination)
- Sep 23 – 22/0255 Round H. Rd Ringmer, 53 homes (Delegated)
- Oct 23 – 22/0153 Barcombe High St, 26 homes (PAC Overturn)
- Nov 23 – 22/0175 Bennett’s Field, Falmer 555 student rooms (Delegated)
- Nov 23 – 21/0694 Bishops Lane, Ringmer, 68 homes (PAC Overturn)

**7. Summary of Key Issues and Trends**

**7.1 Lack of a 5-year housing land supply (5yls)**

More appeals are being submitted since Central Government altered the NPPF resulting in the Local Planning Authority’s (LPA) Lewes Local Plan “housing delivery policies” 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 between 2.7 and 3.2 years. This means that in planning appeals for new homes, in principle, the delivery of homes is given significant planning weight in the “planning balance for decisions to approve or refuse.”

**7.2 More Appeals are being Allowed/Lost**

More appeals are being allowed/lost, and more costs are being awarded, when major appeals are allowed.

| DISMISSED or ALLOWED        | 21/22     | 22/23     | 23/24 To Date 21-11-23. |
|-----------------------------|-----------|-----------|-------------------------|
| <b>All Appeal Decisions</b> | <b>19</b> | <b>33</b> | <b>18</b>               |
| Appeals Dismissed           | 17 (89%)  | 19 (57%)  | 10 (55%)                |
| Appeals Allowed (lost)      | 2 (11%)   | 14 (42%)  | 8 (42%)                 |

**7.3 More Hearings and Public Inquires**

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|     | <p>There were no Hearings or Public Inquiries in 2021-22.</p> <p>In 2022-23 there have been 5 Hearings, and 4 Public Inquiries.</p> <p>To date in 2023-24 there have been 4 Hearings and 7 Public Inquiries.</p>   |
| 7.4 | <p><b>Public Inquiries 2022-23</b></p> <p>22/23 No 16 - LW/22/0754, South Road Wivelsfield, 45 UNITS<br/><b>ALLOWED</b></p> <p>22/23 No 20 - LW/21/0937, Broyle gate Farm, Ringmer, 100 UNITS<br/><b>ALLOWED</b></p> <p>22/23 No 21 - LW/21/0262, Nolands Farm, Plumpton, 86 UNITS<br/><b>ALLOWED</b></p> <p>22/23 No 29 - LW/21/0729, Ditchling Road Wivelsfield, 96 UNITS<br/><b>ALLOWED</b></p>   |
| 7.5 | <p><b>Hearings 2022-23</b></p> <p>22/23 No 22 - LW/21/0660, Sutton Road Seaford, 37 UNITS<br/><b>DISMISSED</b></p> <p>22/23 No 23 - LW/21/0967, Sutton Road Seaford, 36 UNITS<br/><b>ALLOWED</b></p> <p>22/23 No 24 - LW/21/0700, Telephone Exchange, Newick, 36 UNITS<br/><b>ALLOWED</b></p> <p>22/23 Nos 28 - LW/22/0104, Chamberlains Lane, (land south of Lewes Road/Laughton Road) Ringmer, 68 UNITS<br/><b>DISMISSED</b> (South Downs and Heritage issues) currently being challenged in the High Court.</p> <p>22/23 Nos 30 – LW/20/0011, Averys Nursery, Uckfield Road, Ringmer, 53 UNITS<br/><b>ALLOWED</b></p> |
| 7.6 | <p><b>Public Inquiries/Hearings 2023-24 and 2023/24 Pipeline</b></p> <p>1) LW/20/0104 - Downland Park Newhaven, Caravan Site<br/><b>LIVE</b> – Hearing - 18<sup>th</sup> April 2023 – Delayed to 16<sup>th</sup> January 2024</p> <p>2) LW/22/0175 - Bennetts Car Park Falmer, 555 UNITS<br/>Public Inquiry - 30<sup>th</sup> May 2023 – Delayed to 15<sup>th</sup> August 2023<br/><b>ALLOWED + Costs not supported.</b></p> <p>3) LW/21/0986 - Harrisons Lane Ringmer, 200 UNITS<br/>Public Inquiry – 13<sup>th</sup> June 2023 AWAITING DECISION</p>  |

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|  | <p><b>DISMISSED</b> (South Downs issue)</p> <p>4) LW/22/0472 - Harrisons Lane Ringmer, 75 UNITS<br/>Public Inquiry – 13<sup>th</sup> June 2023 AWAITING DECISION<br/><b>DISMISSED</b> (South Downs issue)</p> <p>5) LW/22/0153 - Barcombe High Street 26 UNITS<br/>Public Inquiry – 4<sup>th</sup> July 2023 AWAITING DECISION (Committee Overturn)<br/><b>ALLOWED + Costs supported.</b></p> <p>6) LW/22/0356 – Seaford Constitutional Club, Crouch Lane, Seaford 40 UNITS<br/>Public Inquiry – 18<sup>th</sup> July 2023<br/><b>ALLOWED</b></p> <p>7) LW/21/0694 - Bishops Close, Ringmer, 68 UNITS<br/>Public Inquiry – 3<sup>rd</sup> October 2023 (Committee Overturn)<br/><b>ALLOWED + Costs supported.</b></p> <p>8) LW/22/0282 - Land South of the Broyle, Ringmer, 70 UNITS<br/><b>LIVE</b> Hearing 14<sup>th</sup> November 2023 – Delayed to 9<sup>th</sup> January 2024</p> <p>9) LW/22/0255 – Round House Road, Ringmer, 53 UNITS<br/>Public Inquiry 1<sup>st</sup> August 2023<br/><b>ALLOWED + Costs supported.</b></p> <p>10) LW/22/0459 - Barcombe Mills, 70 Units LIVE - Hearing 14<sup>th</sup> November<br/><b>LIVE Hearing - AWAITING DECISION</b></p> <p>11) LW/22/0286 – Florence House, Seaford, 60 care bed homes LIVE –<br/><b>LIVE</b> Hearing 14<sup>th</sup> November – Delayed to 12<sup>th</sup> December 2023</p> |
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| 7.7 | <p><b>Committee Overturns</b></p> <p>Committee Overturns, over the survey period as a whole, (including for all types of application), are increasing - 2021-22 (3) and 2022-23 (5).</p>   |
| 7.8 | <p><b>Appeal Costs</b></p> <p>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 in terms of its lack of a 5-year land supply and the nationally</p> |

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|           | <p>agreed importance the Planning Inspectorate is according larger housing schemes. Officers, therefore, ask Committee members to consider this matter carefully, in their deliberations.</p>   |
| 7.9       | <p><b>The Cost of Appeals in 2022/24 to date</b></p> <p>For background information, members should note that costs associated with defending these larger appeals, have been as follows.<br/> 2022/224 to date = £652,000</p> <p>Costs awarded against the Council for unreasonable behaviour at appeal<br/> 2022/24 to date = £ 151,000</p> <p>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>  |
| 7.10      | <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>   |
| 7.11      | <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>   |
| 7.12      | <p>As noted above the costs to date is significant and amount to an average cost of defending a Public Inquiry £54,000 per case and this does not include staff costs in supporting the process.</p>  |
| <b>8.</b> | <p><b>Officer General Advice to LPAC</b></p>  |
| 8.1       | <p><u>Interim Policy Statement on Housing Delivery (IPSHD) 2020 – 8 Tests</u></p> <p>The IPSHD was introduced to guide major housing development assessments whilst the Lewes LP was “out of date” and being reviewed. In principle, meeting the 8 tests would mean a development, could be supported.</p> <p><b><u>2020 IPSDH – 8 Tests</u></b></p> <ol style="list-style-type: none"> <li>1.Site/development should be contiguous with settlement boundary.</li> <li>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.</li> </ol> |



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|            | <p>3. The scheme should provide safe and convenient pedestrian and cycle access to local facilities and services in the adjacent settlement.</p> <p>4. The scheme should not result in actual or perceived coalescence of settlements.</p> <p>5. Within the setting of the SDNP, the proposed scheme demonstrates it will conserve the special qualities of the SDNP.</p> <p>6. The scheme can achieve Biodiversity Net Gain (BNG), through ecological impact assessments and biodiversity measures.</p> <p>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)</p> <p>8. The scheme would be deliverable and viable, including affordable housing; on and off-site infrastructure and green infrastructure.</p> <p><u>Officer Advice to Committee</u></p> <p>Officers continue to advise Committee that the IPSHD is relevant guidance to Committee to aid their decision making.</p> <p>More major applicants assess schemes against the 8 test criteria.</p> <p>The 8 tests of IPSH, broadly equate to LPA search criteria for new “allocated housing sites” for the new Lewes Local Plan.</p> <p>LPAC is therefore asked to consider these conclusions when making decisions over the next 1-2 years.</p> |
| <b>9.</b>  | <b>Proposed “2024 Appeals and Decision-Making Action Plan”</b>  |
| 9.1        | <p>It is now highly likely that Lewes will be “designated” as failing to meet the national planning indicator for “quality decisions” on major applications.</p> <p>Should this happen, it will increasingly impact on major application decision making and the reputation of the Council and Service.</p> <p>Further sessions will be arranged with ALL Members and Subs of Planning Applications Committee to discuss and agree the range of activities/workstreams that can be instigated to explore and potentially mitigate the risk of decisions being overturned at appeal.</p>   |
| <b>10.</b> | Legal Implications  |
| 10.1       | <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</p>   |

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|            | <p>costs is not in itself a material consideration when considering individual planning applications.</p> <p>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 above, (paragraph 7.8-12), “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>11.</b> | <b>Recommendation</b>  |
| 11.1       | Members to note the content of this report and Comment on Section 9.   |
| <b>12.</b> | Background papers  |
| 12.1       | <p>Improving Planning Performance – Criteria for Designation Rev 2022</p> <p><a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/106222/improving_planning_performance_criteria_for_designation_rev_2022.pdf">Improving planning performance: criteria for designation - GOV.UK (www.gov.uk)</a></p>  |