

<b>COMMITTEE</b>	<b>PLANNING</b>
<b>DATE</b>	<b>November 2017</b>
<b>SUBJECT</b>	<b>SUMMARY OF PERFORMANCE OF THE PLANNING THIRD QUARTER 2017 (Jul - Sep)</b>
<b>REPORT OF</b>	<b>Leigh Palmer Senior Specialist Advisor (Planning)</b>
<b>Ward(s)</b>	ALL
<b>Purpose</b>	This report provides a summary of performance in relation to key areas of the Development Management Services for the relevant period
<b>Contact</b>	Leigh Palmer <a href="mailto:Leigh.palmer@eastbourne.gov.uk">Leigh.palmer@eastbourne.gov.uk</a> 01323 415 215
<b>Recommendations</b>	That Members note the content of this report

## **1.0 Introduction**

- 1.1 Members will be aware that together we deal with a whole host of planning applications covering a range of differing forms of development.
- 1.2 Given the many & varied types of planning application 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 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)
- 1.3 This report looks at the performance of the DM team across a number of elements of work in the following sections:
  - **Section 2 Special Measure Thresholds** – looking at new government targets
  - **Section 3 Planning Applications** – comparing volumes/delegated and approval rates
  - **Section 4 Pre Application Volumes** – comparison by type and volume over time
  - **Section 5 Refusals of Applications** – comparison of ward and decision level
  - **Section 6 Appeals** – An assessment our appeal record over time
  - **Section 7 Planning Enforcement** – An assessment of volumes of enforcement related activity.

## 2.0 Special Measures

- 2.1 Members may be aware that the Government have recently 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 be initiated by Central Government.
- 2.2 The assessment of the new 'special measure' threshold has two limbs to it and review our performance on a backward rolling two year basis, see tables 1 & 2 below:

### 1. Looking at the **speed** of decision

The speed with which applications are dealt with measured by the proportion of applications that are dealt with the statutory time or an agreed extended period.

Application type	2018 threshold
Major Speed	60% of all applications (October 2015 – September 2017)
Non Major Speed	70% of all applications (October 2015 – September 2017)

### 2. Looking at the **quality** of the decision made (with reference to overturned appeal decisions).

Application type	2018 threshold
Major Quality	10% of all appeal overturns (April 2015 – September 2017)
Non Major Quality	10% of all appeal overturns (April 2015 – September 2017)

The quality of decisions made by the Council measured by the proportion of decisions on applications that are subsequently overturned at appeal.

- 2.3 If the Council are identified as not complying with these standards/criteria they would be declared as 'non performing' and formal designation may follow.
- 2.4 In terms of formal designation there are two potential outcomes:-
- **Major applications** The applicant would have the ability to bypass the Council and go straight to the Planning Inspectorate for determination. This would mean that the Council would lose

determination control until such time as the designation is lifted.

- **Non-Major applications** The Council would have to submit to Central Government an action plan addressing the areas of weakness that it has identified as having contributed to the underperformance.

2.5 In analysing this data it is important to note that the development type categories have changed with regard to type of applications falling under the non-major category. The data included in this section of the report has been reproduced in this new format.

## 2.6 SPEED OF DECISION

It is evident from the table below that the decisions taken for the survey period are currently above the special measures threshold.

**Table 1**

Criteria: Speed																							
		Majors										Non-majors											
		All Major Decisions		Major Decisions within 13 week PPA, EoT or EIA Decisions		PPA, EoT or EIA Decisions in time		Out of time		Result				M&O Decisions		M&O Decisions within 8 weeks PPA, EoT or EIA Decisions		PPA, EoT or EIA Decisions in time		Out of time		Result	
Quarter 01	Oct - Dec 2015	1	0	1	0	1	0	0.00%				124	96	4	2	26	79.03%						
Quarter 02	Jan - Mar 2016	2	0	2	2	0	100.00%					119	101	5	5	13	89.08%						
Quarter 03	Apr - Jun 2016	4	1	2	2	1	75.00%					151	136	6	6	9	94.04%						
Quarter 04	Jul - Sep 2016	2	0	2	2	0	100.00%					117	96	3	3	18	84.62%						
Quarter 05	Oct - Dec 2016	2	0	1	1	1	50.00%					121	90	2	2	29	76.03%						
Quarter 06	Jan - Mar 2017	1	1	0	0	0	100.00%					105	88	2	1	16	84.76%						
Quarter 07	Apr - Jun 2017	2	0	2	2	0	100.00%					170	146	5	3	21	87.65%						
Quarter 08	Jul - Sep 2017	4	1	3	2	1	75.00%					113	85	4	2	26	76.99%						
total		18	3	13	11	4	77.78%					1020	838	31	24	158	84.51%						
		Minimum level require						60.00%										70.00%					

## 2.7 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.

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

## 2.8 QUALITY OF DECISION

This section looks at appeal decisions and specifically the number/volume that have been allowed/overturned at appeal. The Government's view that this performance indicator is a measure/reflection on the relevance of an up to date local plan and that the decision makers (officers at delegated and Members at planning committee) make the correct and informed decisions.

**Table 2**

Criteria: Quality		District matter Majors							Non-majors						
		All Major Decisions	Refusals	Appeals	Dismissed	Upheld	Pending	Result	Non-Major Decisions	Refusals	Appeals	Dismissed	Upheld	Pending	Result
Quarter 01	Oct - Dec 2015	1	0	0	0	0		0.00%	124	19	3	1	2	0	1.61%
Quarter 02	Jan - Mar 2016	3	0	0	0	0		0.00%	119	14	5	3	2	0	1.68%
Quarter 03	Apr - Jun 2016	4	1	1	1	0	0	0.00%	151	17	12	8	4	0	2.65%
Quarter 04	Jul - Sep 2016	2	0	0	0	0		0.00%	117	12	2	1	1	0	0.85%
Quarter 05	Oct - Dec 2016	2	2	1	1	0	0	0.00%	121	9	4	2	2	0	1.65%
Quarter 06	Jan - Mar 2017	1	0	0	0	0	0	0.00%	105	5	4	3	1	0	0.95%
Quarter 07	Apr - Jun 2017	2	0	0	0	0	1	0.00%	171	11	1	1	0	1	0.00%
Quarter 08	Jul - Sep 2017	4	0	1	1	0	0	0.00%	113	13	2	2	0	5	0.00%
	total	19	3	3	3	0	0	0.00%	1021	100	33	21	12	0	1.18%
		Minimum level required						10.00%							10.00%

## 2.9 Risk Area

One area for Members to note from this criterion is that given the very low volumes of major applications progressed/determined within the survey period the implications of this are that a small number of appeal decisions can have a significant impact upon performance.

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

2.11 Officers will advise on the 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.

## 3.0 Planning Applications

3.1 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.

3.2 The figures in **Tables 3 – 4** 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 analyse, however this data is reported here to give the year of year comparison.

3.3 **Table 3**

Decisions	2013	2014	2015	20-16	2017
All determined	574	596	545	569	431
Delegated	510 (89%)	521 (87%)	472 (87%)	505 (89%)	409 (96%)
Granted	521 (91%)	546 (92%)	488 (90%)	515 (91%)	399 (93%)
Refused	49 (9%)	50 (8%)	57 (10%)	54 (10%)	32 (7%)

3.4

<b>Table 4</b>	TYPE	NUMBER
2013	All determined	574
2014	All determined	596
2015	All determined	545
2016	All determined	569
2017	All determined	431
2017 Q1 (Jan - Mar)	All determined	122
	Delegated	115 (94%)
	Granted	116 (95%)
	Refused	6 (5%)
2017 Q2 (Apr - Jun)	All determined	183
	Delegated	176 (96%)
	Granted	170 (92%)
	Refused	13 (7%)
2017 Q3 (Jul - Sep)	All determined	126
	Delegated	118
	Granted	113
	Refused	13
2017 Q4 (Oct - Dec)	All determined	0
	Delegated	0
	Granted	0
	Refused	0

3.5 It is clear from the tables above that the volume of the cases determined

during the survey period has percentage levels consistent with previous years.

3.6 It is considered that in granting planning permission for 93% of all applications received that the planning services of Eastbourne Borough Council have supported/stimulated the local economy and also helped to meet the aspirations of the applicants and only where there are substantive material planning considerations is an application refused. (see appeal section below)

3.7 It is acknowledged that in 2017 the % of applications determined at delegated level has significantly increased; this is reflective of the changes made to the Council's scheme of delegation.

3.8 **All Application Data:**

Members should note that the Table 5&6 includes further application data by ward.

3.9 **Table 5 & 6**

Number for the Calendar Year 2017 and the calendar year 2016.

Applications Received (Including All Planning Applications - Pre application Schemes - Tree application & Invalid submissions). This table gives the full account of the workload coming through the section.

**Table 5**

YEAR	TOTAL AMOUNT
2015	1319
2016	1433
2017	1045

3.10 **Table 6**

Year 2016

4	DV Devonshire	216
5	HP Hampden Park	71
6	LG Langney	58
7	MD Meads	375
8	OT Old Town	155
9	RN Ratton	145
10	SA St Anthonys	127
11	SV Sovereign	107
12	UP Upperton	179
13	(blank)	
14	<b>Grand Total</b>	<b>1433</b>

Year 2017

DV Devonshire	119
HP Hampden Park	76
LG Langney	59
MD Meads	250
OT Old Town	93
RN Ratton	119
SA St Anthonys	101
SV Sovereign	77
UP Upperton	151
(blank)	
<b>Grand Total</b>	<b>1045</b>

### 3.11 Risk Area

Members are advised that there is likely to be year end spike in workload compared to previous years. This will need to be monitored in order to assess if there are resourcing issues.

## 4.0 PRE-APPLICATION ADVICE

- 4.1 In addition to the formal applications received the Council for this survey quarter offers a paid for pre application advice service. The table below indicates the numbers of pre-application enquiries received by the Council for the years 2014-16 and a rolling number for the current year.

**Table 7**

PROCESS NAME	NUMBER 2017	NUMBER 2016	NUMBER 2015	NUMBER 2014
PRE APP (Old Process)	0	0	0	53
PRE APP HOUSEHOLDER	88	220	163	126
PRE APP MEDIUM	84	147	159	108
PRE APP MAJOR	8	18	10	16
TOTAL	180	385	332	303

- 4.3 This information is considered to be relevant given that it is a barometer of the additional workload of the team. Members should note a significant spike being reported during 2016 and if this level continues there may well be a staffing/resource issue.

Members should be aware that the 2016 spike has been arrested to some extent following the introduction of a pre-application charging regime as of the 1<sup>st</sup> April 2017. The payments have yielded £8,550; whilst this remains significantly below the profiled budget the income does help to support the running of this element of the DM service.

- 4.4 In addition Members should note that our returns to central government are based on prescribed application categories and they do not necessarily highlight the volume of work going through the Planning section of the Council.

## 5.0 REFUSALS

- 5.1 Members requested further information on the number and break down of the refusal issued for the calendar year 2017 (to date). This information is highlighted within **tables 8 & 9** below.

- 5.2 Member should be aware that in common with other years we refuse fewer than 10% of the all applications received, with the overwhelming majority being refused at delegated level. For 2017:- 6 cases were refused at Delegated and 44 were refused at Planning Committee level. This refusal number is higher than that referred to in Table 4 as that table looked at the reportable applications to government and the table below look at all types of applications received

### 5.3 **TABLE8**

#### REFUSALS BY WARD

<b>REF Refused</b>	<b>50</b>
DV Devonshire	9
HP Hampden Park	4
LG Langney	3
MD Meads	7
OT Old Town	2
RN Ratton	4
SA St Anthons	4
SV Sovereign	8
UP Upperton	6
(blank)	3

### 5.4 **TABLE9**

#### REFUSAL BY DECISION LEVEL (COMMITTEE REFUSAL)

<b>REF Refused</b>	<b>50</b>
CCC Planning Committee	6
DDD Delegated List	44

- 5.5 For the survey period there have been two applications that have been refused at committee and include (Paint on the Pier, new bungalow at 21 Derwent Road, Change of use to restaurant/take-away at Beatty Road)

## 6.0 **APPEALS**

- 6.1 As commented above all applications that are refused have to the potential to be appealed by the applicant. The Council for the year 2017 have received 5 appeal decisions and the decision letters have been reported to



committees through the year.

## 6.2 Appeals decided by development type/application

**TABLE 10**

HHH Householder	2
OSR Outline (some reserved)	1
PCI Prior Notification Class IA	1
PPP Planning Permission	5
<b>Grand Total</b>	<b>9</b>

## 6.4 APPEAL ANALYSIS

The appeal decisions letters received during 2017 have been analysed with the various decision permutations reported below.

**Table 11**

	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	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%)	1(11%)	1(11%)	7(78%)

## 6.6

The above **table 11** identifies the relevant decisions permutations and it is acknowledged that the appeal volume is comparable to the levels of previous years. It is acknowledged that the highest volume appeal category continues to be the 'planning permission' type (5 cases for 2017); this is a wide and divers category covering all things from changes of use to replacement windows. The appeal rate/volume will continue to be monitored going forward with any trends that can be identified being reported via this report.

## 6.7

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.

6.8 Appeal Analysis **Table 11 Column 1**

**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.

It is accepted that at times there are differences of opinion between officers and Members however for the appeal decisions received to date there no instances this year where this scenario has occurred.

6.9 Appeal Analysis **Table 11 Column 2**

**Officer recommendation for approval – member overturned – appeal dismissed (Officers were wrong and Members were right)** This shows that officers are not always right, there is one case falling into this bracket in this survey period.

6.10 Appeal Analysis **Table 11 Column 3**

**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.

6.11 This is also often a category where appeal costs can be awarded

6.12 It is acknowledged that there is 1 appeal 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.

6.13 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.

6.14 Appeal Analysis **Table 11 Column 4**

**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

6.15 **Appeal Costs**

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 2017 the Council received one award of costs

- 6.16 There are no appeal costs for the Quarter survey period forming the content of this report.
- 6.17 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.
- 6.18 Risk Area  
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.

In an attempt to mitigate this risk case officers are encouraged to negotiate extension of time with the applicant/developer.

If/when an award of costs is made there is the potential for financial risk and also a reputational risk and as such these have to 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.

## **7.0 PLANNING ENFORCEMENT**

- 7.1 As outlined in the Planning Enforcement Policy Statement regular reporting of the enforcement function to Planning Committee is considered important as it keeps members aware of the cases and issues that are live in their area and it assists in:-
- Tackling breaches in planning control which would otherwise have an unacceptable impact on the amenity of the area;
  - Maintaining the integrity of the decision-making process;
  - Helping to ensure that the public acceptance of the decision making process is maintained.
- 7.2 Members will note some of the data places high volumes in the Devonshire ward, this reflects the focus given with/by the Difficult Property Group through S215 (Untidy Sites) legislation and also emphasises the support for the 'Driving Devonshire Forward' policy document.

Below in Table 12 highlights the number of enforcement cases opened/closed in 2017.

### **TABLE 12**

## 7.3

**Newly created cases**

Description	Total	Reference Number	Received Date
☒ Planning Enforcement Medium Priority	159		
☒ Planning Enforcement Low Priority	125		
☒ Planning Enforcement High Priority	26		
<b>Total</b>	<b>310</b>		

**Closed cases**

Description	Total	Reference Number	Closed Date
☒ Planning Enforcement Medium Priority	149		
☒ Planning Enforcement Low Priority	136		
☒ Planning Enforcement High Priority	26		
<b>Total</b>	<b>311</b>		

## 7.4 Cases Closed/Received

TABLE 13 Closed/Received Annual

## 7.5

YEAR	CLOSED	RECEIVED
2014	253	363
2015	347	332
2016	354	361
2017	310	311

## 7.6

It is important to note that the closure rate is generally consistent with the volume of the new cases received and as such there should not be an expanding backlog of live cases. Notwithstanding this Members should note that the volume of cases on the over 6months old list hovers around the 30 cases around 26% of all live cases.

TABLE 14 Cases over 6 months old

## 7.7

Year	Q1	Q2	Q3	Q4
2015	Not recorded	Not recorded	Not recorded	31
2016	29	19	25	32
2017	39	22	29	0

## 7.8

**Enforcement Related Notices served in 2016**

## 7.9

As members may know there are many differing types of enforcement notices the main ones being:-

- Enforcement Notice
- Stop Notice
- Temporary Stop Notice
- Planning Contravention Notices
- Breach of Condition Notices
- Injunctions

For the Calendar year 2017 12 notices (2% of all cases received) have been served.

7.10 It is clear that therefore that in excess of 98% of all enforcement cases are resolved/closed without the need to resort to a formal notice.

7.11 As Members will acknowledge from the adopted Planning Enforcement Policy that the serving of a notice is the last resort and that wherever possible a negotiated solution is preferable.

7.12 In terms of proactive monitoring of planning cases the following has been adopted:-

- **Monthly Site Meetings.** In relation to the Major development sites at Sovereign Harbour and Eastbourne College this will ensure early warning of potential breaches of planning control or where the developer wishes to alter their scheme for whatever reason and given this early warning officers can advise on the best ways forward.
- **Planning Condition Monitoring.** Using our back office system we are now regularly monitoring conditions of key decisions/cases, these are primarily planning committee cases.

7.13 Risk Area

Members should note that for this survey period the rate of cases created does exceed the rate of closure; if this were to continue then there is the potential for an increase in live enforcement cases to form a significant backlog. The general increase in live cases is also reflected in the increase in the number of cases on hand that are over 6 months old. At this time there does not appear to be any substantive risk but the issue will be monitored.

## **8.0 LEGAL AND HUMAN RESOURCES**

8.1 Save for the potential costs claim that could follow an appeal there are no other legal issues arising from this report.

It is considered that the current workload/capacity and the current level of performance can be sustained with/by the current establishment. However some scrutiny over the volume of work across the whole service area including pre-application submissions is required in order to ensure that the resource levels match the extent of work being submitted.

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