

Agenda item:

[No.]

Regulatory Committee

On 12<sup>th</sup> April 2012

Report Title. **Planning Appeals Update- Year Report 1<sup>st</sup> April 2011-23<sup>rd</sup> March 2012**

Report of **Director of Place and Sustainability**

Signed :

*Paul Smith*  
*Head of Development Management*

Contact Officer : **Marc Dorfman, Assistant Director, Planning and Regeneration**  
Telephone **020 8489 5538**

Wards(s) affected: **All**

Report for: **Non-Key Decision**

**1. Purpose of the report**

1.1. To update Members on the Planning Enforcement Appeals lodged between 1<sup>st</sup> April 2011 to 23<sup>rd</sup> March 2012.

**2. State link(s) with Council Plan Priorities and actions and /or other Strategies:**

2.1. The decisions made by the Planning Inspectorate play a vital role in justifying the Council's reasons to refuse planning permission, impose conditions attached to planning permissions, and reasons for issuing Enforcement Notices when applicants and interested parties exercise their right of appeal to the Secretary of State. The appeals process is administered by the Planning Inspectorate, an independent Central Government body which deal with appeals against the above decisions for all the local planning authorities in England and Wales.

2.2. The reasons to refuse planning permission, attach conditions to planning permission and issue Enforcement Notices must have close regard to the Council's adopted Unitary Development Plan and associated supplementary guidance and documents. Whilst "other

material planning considerations are important, close regard to the development plan is required by s55A of the Town and Country Planning Act 1990.

- 2.3. Consequently, the outcome of appeal decisions give to some extent a guide to the robustness of both the local planning authority's local planning policies and guidance and decision making processes on which they are based.

### **3. Recommendation**

- 3.1. That member's note the performance for 2011/12 from 1<sup>st</sup> April 2011 up to 23<sup>rd</sup> March 2012.

### **4. Reason for recommendation**

- 4.1. The administration of the appeals has fallen under the responsibility of the Development Management and Planning Enforcement service since July 2011, good progress continues with maintaining the high number of decisions upheld on appeal: of the 71 planning appeals determined, 16 were allowed and one appeal decision was split representing 23% of the appeals lodged. For Enforcement cases 43 appeals against enforcement notices were lodged with 4 allowed plus 2 Notices withdrawn due to appeals lodged against them meaning 83% of Notices were upheld by the appeal process.

### **5. Other options considered**

- 5.1. Not applicable

### **6. Summary**

- 6.1. This report advises members on appeal performance from 1<sup>st</sup> April 2011 to 23<sup>rd</sup> March 2012.

### **7. Chief Financial Officer Comments**

- 7.1 Not applicable

### **8. Head of Legal Services Comments**

- 8.1 The Head of Legal Services notes the contents of this report

### **9. Equalities & Community Cohesion Comments**

- 9.1 It is considered that there are no equalities, and community cohesion issues raised by this report.

## **10. Consultation**

10.1 Not applicable

## **11. Service Financial Comments**

11.1 The appeals are administered within the existing Development Management and Planning Enforcement budget with appeal responsibilities spread amongst Development Management and Planning Enforcement staff with administrative support. However where appeals are to be determined by public inquiry the assistance of Legal Services and when appropriate external legal counsel is required. A commitment to adequate preparations and clear well argued defence of the services planning and enforcement decisions service has minimised legal expenses and is reflected in the high degree of appeals 'won' by the local authority.

## **12. Use of appendices /Tables and photographs**

Table 1 – Overview of appeal decisions 2011-12  
Table 2- Breakdown of Planning Appeals 2011-12  
Table 3- Method of determination of appeals 2011-12

## **13. Local Government (Access to Information) Act 1985**

13.1 The Appeals caseload is held by respective case officers on behalf of the Head of Development Management and Planning Enforcement Case files held by the Team Leader for Planning Enforcement. Information is also available from the Planning Inspectorate (PINS) and also via the Planning Portal.

## **14. The Appeals Procedure: An Overview**

14.1 The right to appeal against decisions of the local planning authority are substantially set in sections 78 and 174 of the Town and Country Planning Act. The appeals to the Secretary of State are administered by the Planning Inspectorate (PINS). The regulations applied to appeals is contained within DoE Circular 05/00'Planning Appeals Procedure'

14.2 Section 78 of the Act confers on an individual the right to appeal to the Secretary of State where a local planning authority decide to:

- Refuse a planning application
  - Impose a condition on a grant of planning permission
  - Fail to determine a planning application or declare an application invalid
- 14.3 S174 of the Act provides for appeals against Enforcement Notices. However the right of appeal is limited to any person with an interest in the land or a relevant occupier, that is someone occupying the land at the time the Notice was issued.
- 14.4 There are seven grounds of appeal against an Enforcement Notice as follows:
- a) that planning permission ought to be granted for the planning breaches identified in the Notice
  - b) that the breach identified in the notice has not occurred
  - c) that the matters in the notice do not constitute a breach of planning control
  - d) that at the time the Notice was issued no enforcement action could be taken
  - e) that copies of the notice were not served as required by the Act
  - f) that the steps required to remedy the breach contained in the Notice are excessive
  - g) that the period specified in the notice to remedy the breach is unreasonably short
- 14.5 The first ground of appeal is in effect a planning appeal and consequently this requires a fee commensurate with the nature of the breach alleged in the Notice payable to both the local authority and the Planning Inspectorate.

#### **Time Limits for Appeals**

- 14.6 The time limit for lodging an appeal is 6 months after the date of a decision or the date of receipt of a non-determined planning application. However for 'fast-tracked' or householder appeals this is reduced to 12 weeks.
- 14.7 A further exception is where there is an enforcement notice on the land at the time the appeal was lodged, in this case the appellant only has 28 days to lodge their appeal. Failure to appeal on time may result in the appeal being rejected as out of time by PINS.
- 14.8 With regard to appeals against enforcement notices, the window for an appeal is between the date of issue of the Notice and the date it comes into effect. However service and/or receipt of a Notice may well be some time after the date of issue. Again failure to submit an appeal within this timescale may result in the appeal as being rejected out of time by PINS.

#### **Other Appeals**

- 14.9 There are other less common routes of appeal available with regard to Council decisions on applications for Lawful Development Certificates (LDCs), Applications for works to trees subject to a Tree Preservation Order (TPO), applications for conservation area consent (demolition in conservation area), appeals against Listed Building Enforcement Notices. These are tabled separately with regard to the appeals performance tables below.

## 15. Appeals Performance

- 15.1 Table 1 provides a table showing the appeals received and determined between in 2011-12 up to 23<sup>rd</sup> March 2012. The planning decisions upheld on appeal show that 56 of the 71 (80%) appeals determined were not successful.
- 15.2 With regard to Enforcement Appeals 87% of appeals did not succeed but two appeals were stopped by the local authority withdrawing the enforcement notices under appeal. Therefore overall 81% of Enforcement Notices subject to appeal were upheld by the Planning Inspectorate.

Table 1: Overview of Appeal decisions 2011-12

	<b>Planning Appeals</b>	<b>%</b>	<b>Planning Enforcement Appeals</b>	<b>%</b>
<b>Received</b>	96	100	43	100
<b>Determined</b>	71	100	32	100
<b>Dismissed</b>	52	73	22	68
<b>Allowed</b>	15 (+1 split decision)	22	4	13
<b>Withdrawn</b>	3	5	4	13
<b>Notice withdrawn</b>	Not applicable	n/a	2	6

- 15.3 Table 2 looks at planning appeals in more detail. Of those received 93% fit into either the planning or householder appeal categories. Only 7% fell into other categories such as appeals against Refusal of Conservation Area Consent (2%), Appeals against refusal to issue Lawful Development Certificates (3%) and only one appeal against refusal to grant works to a Tree subject to a Tree Preservation Order.
- 15.4 Of those appeals determined, the return amongst the householder appeals with 21 out of the 24 appeal dismissed is particular encouraging, as these 'fast tracked' appeals are not supported by the submission of an appeal statement, relying on a questionnaire and the relevant Planning Policies suggesting that the reasons for refusal and the policies quoted in support of these are roundly robust.
- 15.5 Also of interest is that no appeals against Lawful Development Certificates (LDCs) were allowed. The one LDC appeal withdrawn was run concurrently with an Enforcement Appeal issued due to the conversion of a house into flats. The appellants withdrew the appeal and agreed to comply with the enforcement notice within a reasonable timeframe avoiding further delay from an inquiry and awaiting the Inspector's decision letter.

**Table 2: Breakdown of Planning Appeals 2011-12**

	Planning Appeals	%	Householder Appeals	%	Conservation Appeals	%	LDC Appeals	%	Tree Appeals	%	Total
<b>Received</b>	64	67	26	27	2	2	3	3	1	1	100
<b>Determined</b>	40	56	24	34	2	3	4	6	1	1	100
<b>Dismissed</b>	26	65	21	88	1	50	3	75	1	100	n/a
<b>Allowed</b>	12	30	3	12	1	50	0	0	0	0	n/a
<b>Withdrawn</b>	2	5	0	0	0	0	1	25	0	0	n/a
<b>Total</b>	40	100	24	100	2	100	4	100	1	100	n/a

15.6 A dominant feature of appeals against enforcement notices was those lodged for conversions of properties into self-contained flats. Many of these appeals contained grounds of appeal arguing that the use was established and therefore 'immune' from enforcement action. As this usually requires the testing of evidence involving cross examination of witnesses under oath, these are normally determined by public inquiry although the appellant has the option of choosing the written representations procedure.

15.7 Of the 43 appeals lodged in 2011-12 against enforcement notices 10 were to be determined by public inquiry (this compares to 3 out of the planning appeals out of the 96 received). Of the 10 to be determined by public inquiry, one was changed to written representations with the withdrawal of the ground d route of appeal but another was changed to a public inquiry to allow property scrutiny of evidence and cross-examination of witnesses. However two of these appeals were withdrawn one enforcement notice was withdrawn stopping the appeal process. Of the remaining 5, four of these have been determined and four dismissed.

**Table 3: Method of determination of appeals 2011-12**

Appeals lodged	By Written Representations	By Hearing	By Public Inquiry	TOTAL
Planning	93		3	96
Enforcement	34	0	9	43
Appeals determined	By Written Representations	By Hearing	By Public Inquiry	TOTAL
Planning	68	1	2	96
Enforcement	25	0	7	32

### **Costs Awarded in the Appeal Process**

15.8 The award of costs and application for them is set out in the DCLG Circular 03/09 'Costs awarded in Appeals and Other Proceedings' Costs borne in the appeal process are expected to be met by the parties involved however, if behaviour is considered to be unreasonable then an application for costs may be made against a party by the other. The local authority involves the assistance of Legal Services and where appropriate external counsel for appeals determined by public inquiry.

- 15.9 With regard to determined appeals one award of costs has been made against a planning appeal. For enforcement appeals the Council has made successful costs applications for two appeals with cost applications pending with regard to 3 other appeals. With regard to costs applications being made against the local authority there are two pending, one against a notice withdrawn and another for an appeal where the public inquiry has been held but the decision letter has yet to be issued
- 15.10 Minimising costs awarded against the local authority is important as the costs of a public inquiry especially for major planning applications can be considerable.

### **Conclusions**

- 15.11 The above report demonstrates very good appeal returns for the Council year 2011-12.