

WEST OXFORDSHIRE DISTRICT COUNCIL

**UPLANDS SUB COMMITTEE 5TH DECEMBER 2016 AND
LOWLANDS SUB COMMITTEE 12TH DECEMBER 2016**

**REPORT OF THE HEAD OF PLANNING AND STRATEGIC HOUSING ON
PLANNING APPEALS PERFORMANCE AND LESSONS FROM 2016**

(Contact: Phil Shaw, Tel: (01993 861687))

(The decisions on this matter will be resolutions)

1. PURPOSE

To update Members as to the Appeal performance and key planning lessons arising from the appeal decisions determined from 1st January 2016 to 22nd November 2016.

2. RECOMMENDATIONS

That Members note the report.

3. BACKGROUND

3.1 Members will be aware that until recently the Council enjoyed an enviable record of defending planning decisions at appeal. Nationally the success rate for defending appeals rests at approx 2/3 of decisions made locally being supported by the Planning Inspectorate when appealed. Historically this Council has enjoyed a success rate closer to 90%, which reflects both the quality of the initial decision making process and also the rigour with which decisions are subsequently defended. Members will, however, be aware that the success rate has fallen this year with a number of high profile appeal approvals overturning the Council's initial decisions. Largely this stems from the fact that many of the initial decisions were taken when the Council was claiming a 5 year housing land supply but, due to delays in the appeal process, are being determined at a period when the Council cannot currently demonstrate such a supply in advance of the Local Plan Inspector's consideration of the position as part of the examination into the emerging local plan that is currently out to consultation. In such circumstances the so called "tilted balance" in favour of sustainable development set out by way of paragraph 14 of the NPPF applies. This clearly sets the hurdle somewhat higher in defending any decisions, as the adverse impact of development has to be significant and demonstrable before the harms are considered to outweigh the general presumption in favour of sustainable development.

3.2 This report thus seeks to identify the key trends and lessons that the appeal decisions offer, such that they can be reflected in future decision making. Additionally, if more applications are determined favourably at the local level it will enable a greater degree of control over the negotiation of the associated mitigation packages and reduce the current considerable costs associated with defending appeals. That is not of course to state that no applications should be refused, but rather that for so long as we are unable to demonstrate a 5 year housing land supply both Officers and Members need to be mindful of the implications. In addition to the concerns outlined above regarding lack of control over legal agreements and appeals costs, the Government has additionally indicated that the performance of Planning Authorities at appeal when considering applications is one of the measures that they

will be looking at when deciding whether to intervene by placing an Authority in special measures and by which they will lose control over the ability to process and determine such applications. Again that is not an issue for WODC at present but the appeal performance as a proportion of all the applications decided will need to be carefully monitored to ensure that this remains the case.

OVERALL PERFORMANCE

- 3.3 During the course of 2016 we have received 45 decisions and of those 14 have been allowed (31%). This is consistent with national trends. In terms of Major applications 14 were determined at appeal with 7 allowed. (50%) One of the dismissed appeals was a non housing appeal. Interestingly of those major decisions that were dismissed the decision was made by way of the “informal hearing” process in four of those cases whereas the vast majority of the other majors were determined by way of the Public Inquiry process. The major appeals determined and where results are awaited are set out below:

Major housing schemes approved on appeal in 2016 - 737 dwellings in total

Witney Rd, Long Hanborough – 169 dwellings

Newland St, Eynsham – 13 dwellings

High St, Milton – 62 dwellings

Eynsham Nursery and Garden Centre – 77 dwellings

Land at Burford Rd, Witney - 270 dwellings

Land at New Yatt Rd, North Leigh – 76 dwellings

Land east of Nethercote Road, Tackley – 70 dwellings

Major housing schemes Refused on appeal in 2016 - c306 dwellings in total

Land at Station Road Eynsham-49 Houses

Land at Fruitlands Eynsham- 21 Houses

Land at Burford Road/Downs Road Witney-c 50 Houses

Land at Minster Lovell (2 separate appeals) 74 and 68 houses

Astall House, Witney – 44 houses

Major housing appeals not yet determined - 239 dwellings in total

Land west of Shilton Road, Burford – 91 dwellings and care provision

Land south east of Pinsley Farm, Long Hanborough – 120 dwellings

Linden House, Kilkenny Lane, Brize Norton - 28 dwellings

KEY LESSONS

- 3.4 The Council's performance in defending householder applications where there are "real world" harms such as overlooking, overshadowing and highway safety does not appear to differ materially when compared to previous years. Similarly applications for single dwellings are still generally being determined in favour of the Council with the Inspectorate apparently considering that the benefits of a single house when assessed in terms of its contribution to meeting any housing shortfall and with no affordable housing and few other social benefits means that the harms identified do often continue to justify refusal even with the tilted balance in place. However the position/balance changes substantially when a greater number of units is proposed, in that the extent of shortfall that would be addressed is greater and there tend to be greater social and economic benefits that can be attributed to housing provision per se. In those cases where the decision has been successfully defended the key areas relate to the impacts on ecology, landscape, flood risk and heritage (these matters will usually engage footnote 9 of paragraph 14), and where real world harms come into play, such as the quality of residential environment in proximity to an industrial estate, the impact on the economic base of the district etc. Harm in relation to local plan policy alone is clearly not sufficient, as both the adopted and emerging local plans currently carry less than full weight.
- 3.5 In contrast, where appeals have been allowed, even some of these concerns have been insufficient when set against the house building agenda. In Milton-under-Wychwood 62 units were approved in an edge of settlement location in the AONB. The impact on the Conservation Area and setting of listed buildings was not sufficient to justify refusal in Newland St Eynsham or Tackley, but was given weight at Station Road, Eynsham. Landscape impact and the impact on heritage assets coupled with additional traffic through an Air Quality Management Area did not prevent approval of 270 units in Witney, and the overall scale and impact of 169 units upon a relatively small settlement like Long Hanborough or 76 at North Leigh was again insufficient to outweigh the benefits ascribed to housing delivery. Issues of prematurity/ conflict with an emerging plan/conflict with an emerging Neighbourhood Plan and failure to plan comprehensively were not sufficient to justify refusal of 77 units at Eynsham Nursery and indeed were considered unreasonable to the extent that partial costs were awarded against the Council in favour of the developers.
- 3.6 The overall message is that in order to successfully defend a refusal reason for a scheme involving significant numbers of houses the harms have to be significant and demonstrable, preferably either "real world" or footnote 9 based (or both) but that even where that is the case the benefits of housing delivery per se are being given substantial weight by the Inspectorate and that this position is likely to persist until such time as the Council secures a demonstrable 5 year housing land supply by way of the outcome of the examination of the local plan. The Inspector in the recent Tackley appeal summed up the position succinctly as:
- Approximately one third of the district is within a designated area of outstanding natural beauty. Approximately one third of the district remains outside a designated landscape policy area and a smaller proportion of this non-designated area falls within a flood risk area. The Council acknowledge that greenfield land will be required to meet future housing needs. It is evident that some hard choices will have to be made.*

3.7 It is by making those hard choices that a sustainable plan led system based upon the key strategic choices and strategies embodied in the emerging plan can be secured once again and the spectre of unstructured and unsustainable planning by appeal diminished

4. ALTERNATIVES/OPTIONS

Not applicable.

5. FINANCIAL IMPLICATIONS

The costs of defending appeals in terms of consultant and specialist legal representation is likely to exceed £250,000 this financial year.

6. REASONS

Defending the Council's decisions effectively is a key component of an effective Planning Service.

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Background Papers:

Appeal decisions received during 2016 to date