



PLANNING COMMITTEE – 30TH OCTOBER 2013

SUBJECT: APPEAL DECISIONS

REPORT BY: INTERIM CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 The purpose of the report is to update members on the Local Planning Authority's performance at appeal.

2. THE REPORT

- 2.1 A request has been made that a report be made to this Committee about the Local Planning Authority's performance at appeal in view of the number of recent cases where appellants have been successful.

- 2.2 The following table shows the Council's performance at appeal over the past four financial years.

Year	Dismissed	Allowed	Decisions	Refusals	Appeals
2010/11	66%	34%	900	126 (14%)	42 (33%)
2011/12	78%	22%	840	111 (13%)	32 (28%)
2012/13	68%	32%	838	93 (11%)	27 (29%)
2013/14	46%	54%	467	37 (8%)	13 (35%)

The first three years in the table, which are all full years, show the Council winning an average of 70% of the appeals made against its decisions. That compares well with the national average over the same period which is 63%. Seven months into the current year and the Local Planning Authority has won 46% of appeals.

- 2.3 The fourth column in the table shows the total number of planning decisions the Council has made at Committee and under Delegated Powers, which has declined in line with other trends in the economy in general. By extrapolation it is likely that a total of 860-870 decisions will be made by the end of the current financial year showing a small increase on the past two years.
- 2.4 The fifth column shows the number of permissions refused and, in brackets, the figure as a percentage of the number of decisions in total. Fewer applications are being refused as a percentage of overall decisions, which is probably because in the current economic conditions fewer speculative applications are probably being submitted. Developers are only submitting applications where they are reasonably certain that they will get planning permission.
- 2.5 The final column shows the number of appeals each year, and in brackets those figures as a percentage of refusals. The number and percentage of appeals are declining suggesting that developers are also reluctant to submit speculative appeals which may explain why the figures for this year so far show a decline in the percentage of cases won by the Local Planning Authority. Care must be taken however in reading too much into those figures because they are so small. The Council has won six out of thirteen appeals this year, but if it

had won eight out of thirteen, it would have won 60% which would be far closer to the previous national average. The Local Planning Authority must review all of its decisions where it fails to defend them successfully at appeal, but a situation where two or three decisions make a significant difference in terms of performance is not as serious as where a shift of ten or twenty decisions would be required to improve performance.

2.6 The following table provides the figures for October 2012 to October 2013 which has the basis of the request for this report.

Dismissed	Allowed	Decisions	Refusals	Appeals
46%	54%	888	83 (9%)	27 (32%)

Those figures are not significantly different to the ones in the first table; reflect the trends described above, and should be treated with caution due to the small numbers involved.

2.7 The following table contains a summary of the appeals allowed over the past twelve months at the time of the preparation of this report in mid-October 2013.

	Type	Development	Comm/delegated	Comment
October 2012 - March 2013				
1	Certificate of lawful development	Siting of residential caravan	Committee	Decision based on facts which are often difficult to establish
2	Full permission	Anaerobic digester (Gelligaer)	Committee	Significant new development in the countryside
3	Full permission	Waste transfer station (Gelligaer)	Committee	Significant new development in the countryside
4	Advert	Gantry sign (Risca)	Delegated	Officers concerned about adverse visual impact of a proliferation of signs
5	Full permission	Housing (Croespenmaen)	Committee decision contrary to officer recommendation	Members concerned about sewerage, and loss of open space
6	Full permission	Use of coach house as joinery workshop (Ystrad Mynach)	Committee decision contrary to officer recommendation	Members concerned about parking, residential amenity and noise
7	Full permission	Use of shop as hot food takeaway (Blackwood)	Committee	Officers concerned about impact on residential amenity and highway safety
April 2013 - October 2013				
8	Certificate of lawful development	Use of land as garden (Rudry)	Delegated	Decision based on facts which are often difficult to establish

9	Full permission	Use of land as turning head (Pontllanfraith)	Delegated	Refusal based on officers' concerns about congestion in the highway
10	Tree preservation order	Felling of tree (Blackwood)	Delegated	Officers were of the opinion that the tree should be retained and its decline managed
11	Full permission	Use of shop as hot food takeaway (Crosskeys)	Delegated	The refusal reflected officers' concerns about impact on residential amenity although the Head of Public Protection did not object
12	Full permission	Use of front room of house as café (Caerphilly)	Delegated	The refusal reflected officers' concerns about impact on residential amenity; Head of Public Protection objected; site divorced from commercial area, but next to bus station.
13	Full permission	House (Abertysswg)	Delegated	Decision based on dwelling being out of character and its impact on the area.
14	Full permission	Use of land for the display of vehicles for sale (Wattsville)	Delegated	Officers and councillors had experienced considerable congestion associated with this unauthorised use.

2.8 These decisions will contribute to the way officers consider applications in the future, but it is not possible to learn lessons from each and every case. Cases 1 and 8 related to Certificates of Lawful Development where officers considered that the evidence was not compelling enough on the balance of probability, but the inspectors disagreed, and their comments will be helpful in determining similar applications. Cases 2 and 3 involved the introduction of large-scale development into the countryside that officers considered to be inappropriate. These two appeals were combined, and are the only ones on the list where costs were awarded, but that was for a procedural matter rather than on the basis of a failure to defend the case.

- 2.9 In Case 4 officers were concerned about the effect that extra signage would have on visual amenity and were attempting to encourage the occupiers of the commercial units nearby to share signage. Cases 5 and 6 were decisions contrary to officer recommendation. Both occurred in the last financial year, and if permission had not been refused the Council would have won 73% of its cases in that period, which shows the impact small changes can have when dealing with low numbers of appeals. Members are entitled to disagree with officers, but there must be evidence to support their case. An objection to the housing at Croespenmaen on the grounds that the sewerage system was inadequate was not contested at appeal because it could not be justified.
- 2.10 Cases 9 and 14 involved developments that had already been carried out which were causing traffic congestion and potential harm to highway safety, which officers and members had experienced. The inspectors, came to a different conclusion, but there would be compelling reasons for the Council to make similar decisions in the future due to concerns about highway safety.
- 2.11 Case 10 reflected a difference of opinion about how the decline of a tree should be managed: remove it in total now (which the inspector supported) or remove it gradually whilst other trees became established (the Council's view). That decision will clearly influence the Local Planning Authority in the future. Cases 7, 11 and 12 related to hot food takeaways and the Council's concern about their impact on residential amenity. Cases 7 and 11 were finely balanced in that they were within or on the edge of areas where there already is a mixture of commercial and residential uses. Case 12 on the other hand appeared more clear cut to officers in that a café was being introduced at the end of a terrace of houses at the opposite end to the commercial part of Caerphilly. There is a bus station outside the house, but this was not regarded as justification to change the residential character of the terrace and aggravate the impact of non-residential uses on neighbouring dwellings. The inspector disagreed and allowed the appeal, but a number of years ago an inspector refused permission for a hot food use because of the impact on residential amenity in a location that was much closer to a small commercial centre in Penyrheol. Cases 7, 11 and 12 are interesting because the Head of Public Protection objected to one but not the other two indicating that technical support for a decision is not always an indication that a subsequent appeal will be dismissed.
- 2.12 Case 13 is based on design and impact, the appreciation of which will vary from one person to the other, and whilst any similar proposals will take this decision into account, there will always be a degree of subjectivity about any adverse impact.
- 2.13 Members will be aware that whilst many planning decisions are clear-cut, there are many that are finely balanced, and strong and reasonable arguments based on material considerations can be presented to give or refuse permission. Although legislation states that decisions should be made in accordance with the development plan unless material considerations indicate otherwise, there is considerable scope for deciding how much weight to give those considerations.
- 2.14 Fourteen appeal decisions are discussed above, out of a total of only forty decisions that were made in April 2012 to October 2013. It is not possible to discern any trends on the basis of such small numbers either in the approach of The Inspectorate to planning appeals in general, or in terms of the soundness of the Local Planning Authority's decision making.

3. RECOMMENDATION

That Members note the contents of this report.