

ARUN DISTRICT COUNCIL

DEVELOPMENT CONTROL COMMITTEE – 9 MAY 2018

Information Paper

Subject : Planning Appeals Performance & Cost
1 January 2017 – 31 December 2017

Report Date: April 2018

EXECUTIVE SUMMARY

The purpose of this report is to advise Members on how the Council has performed in the calendar years 2017 in respect of planning appeals.

1.0 INTRODUCTION

1.1 The purpose of this report is to advise Members on how the Council has performed in the calendar year of 2017 in respect of planning appeals. The Council has an indicator within the planning departments Business Plan that sets a target of 70% of all appeals being dismissed.

1.2 On 29 March 2017, a report to Committee reported appeal performance for the Calendar years 2015/16. In summary, performance for this period was as follows;

- Overall, the Council was successful in defending 46% in 2015 and 49% in 2016 of planning appeals.
- There was a success rate of 51% (2015) and 50% (2016) for appeals heard by way of written representations; 65% (2015) & 57% (2016) of decisions were made in accordance with the recommendation of officers and 33% (2015) & 25% (2016) in accordance with the decision of Committee i.e. contrary to officers' recommendations.
- There was a success rate of 100% (2015) & 33% (2016) for appeals heard by way of informal hearing; 50% (2015) & 33% (2016) of decisions were made in

accordance with the recommendation of officers and 50% (2015) in accordance with the decision of Committee (contrary to officers' recommendations).

2.0 ALL APPEALS

- 2.1 A total of 25 appeals were determined in 2017, a decrease of 14 over that received in 2016. Of these, 12 were dismissed representing a success rate for the Council of 48% of all appeals dismissed. That equates to a 1% reduction in success rate over 2016.
- 2.2 For the third year in a row, appeals performance has not achieved the required target. In the period 2009 – 2012, performance was 73% and performance in recent years has been declining.

3.0 WRITTEN REPRESENTATIONS

Overall performance

- 3.1 A total of 23 appeals were determined by written representations in 2017, a decrease of 11 appeals over calendar year 2016. Overall, 12 appeals were dismissed, 10 were allowed and 1 was discontinued with no decision made. This equates to a success rate of 52% being dismissed, the same as 2016.

Officer performance

- 3.2 Those appeals made following a refusal in accordance with an officer recommendation (principally under delegated powers) had a success rate of 63% being dismissed. That equates to 12 out of 19 appeals. An increase of 6% in officer performance over the previous year.

Committee performance

- 3.3 There were 4 appeals arising out of a committee decision to refuse permission. 3 of these were allowed and one was dismissed. This equates to a committee performance of 25%, the same as 2016.

4.0 INFORMAL HEARINGS

- 4.1 During 2017, there were no appeals determined by way of informal hearing.

5.0 PUBLIC INQUIRIES

- 5.1 During 2017, there were two appeals determined by way of an Inquiry. One appeal was recovered and one was called in by the Government before the Council was able to make a formal determination.
- 5.3 In both cases planning permission was granted in line with the officer recommendation.

6.0 MAJOR PROPOSALS

6.1 During this period, there were two appeals classified as a 'major' scheme for development outside of the 2003 Local Plan built up area. These were:

- Y/19/16/OUT - Outline application for the development of a maximum of 108 No. residential dwellings, vehicular access from Burndell Road, public open space, ancillary works & associated infrastructure.
- WA/22/15/OUT - Outline application with some matters reserved to provide up to 400 No. new dwellings. Land off of Fontwell Avenue, Aldingbourne.

For each of the above appeals the decision by the Government Minister was to grant permission in line with the officer's proof of evidence submitted to the Public Inquiry that was held to determine the appeal.

7.0 COSTS

7.1 It has become apparent that the planning departments records highlighting the costs associated with these appeals cannot be identified as the records have not been adequately stored. Measures have been introduced to ensure that for future performance reports records will be easily and readily available to report to Members.

7.2 For 2017 enquiries are being made with the Council's finance department to identify the two Inquiries where costs were incurred employing planning witnesses and Counsel. As soon as they have been identified they will be reported to a future meeting of the Development Control Committee.

8.0 SUMMARY OF ISSUES

8.1 A notable feature of appeals determined in 2017 is that there was a marked reduction in the number of appeals determined. The total of 25 appeals determined in 2017 compares with 39 appeals determined in 2016 and 52 appeals determined in 2015. Attached to this report is a summary of all of the appeal decisions received in the 2017 period.

8.2 Generally, those policies that are used in the defence of householder appeals and more minor proposals (GEN7 & DEV19) are afforded significant weight by Inspectors when determining appeals. Similarly for householder appeals where Neighbourhood Plans have been made and policies referred to they too have been given significant weight. This is to be expected as they are policies that are in conformity with good planning principles within the NPPF.

- 8.3 Policies in the Emerging Arun Local Plan have been given weight according to their degree of conformity with the NPPF. As a result policies on design (D SP1 & D DM1) and residential amenity (D DM2) whilst not yet approved have been given some weight.
- 8.4 It can be noted that in line with previous years Inspectors support for Arun's householder policies remains just above 50%. This can possibly be understood to be that a number of different Inspectors have, on a number of occasions, tended to disagree with officers view of what constitutes unacceptable harm to the appearance of a dwelling and that of the area it sits in.
- 8.5 The schedule of appeal summary for all appeals determined in 2017 attached to this report highlights the issues raised by Inspectors when making decisions.
- 8.6 Whilst Inspectors decisions are in more than 60% of appeals in agreement with officer recommendations, the schedule reveals six appeals where the Inspector has disagreed with officer recommendation. The areas of disagreement are as follows:
1. Marketing information being sufficient to reveal that adequate attempts have been made to market residential premises for holiday purposes. To rectify this officers need to clearly state if they are minded to use this as a reason for refusal that they have compelling evidence to indicate otherwise.
 2. Where the location of an appeal property is remote and if officers, as a result, are to use the reason for refusal that it will generate a reliance for car borne transport in conflict with NPPF guidance then it needs to be established why.
 3. In cases where HMO's are considered to be unacceptably concentrated in an area and this is used as a reason for refusal, then the appellant argument that a residential property can change its use to an HMO for up to 6 people without requiring planning permission needs to be taken into account.
 4. Where applicants have sought to overcome previous reasons to refuse Council officers have to be clear as to why the changes have not been sufficient.
 5. In cases where reasons for refusal are based on objections from external consultees officers need to have confirmation that these objections are sufficiently robust to be defended at appeal.
 6. When refusing applications on grounds of unacceptable impact on the areas existing character and appearance a greater examination/understanding of the area is required before using this as a reason for refusal.
- 8.7 In some cases DCC Members resolve to overturn officer recommendations to approve. In 2017 there were 3 cases when this took place and the eventual appeal was allowed. The areas of disagreement are as follows:
1. The Inspector could find no compelling evidence to substantiate Members' view that the proposal would endanger highway traffic. Where members choose to

refuse in such cases they must have the support/evidence of expert professional advice.

2. Where an application is considered to be overdevelopment a careful analysis of the character is required before refusing on such grounds. Inspectors base their decisions on a close examination of what they consider to be the character of the area.

- 8.8 Each time an appeal decision is issued it is disseminated amongst officers and Council members. It is expected that this way officers/members alike will become aware of issues where appeals are being allowed by Inspectors. It is hoped that this way the 1% drop in performance can be reversed in 2018.

9.0 COSTS AWARDS AGAINST THE COUNCIL

- 9.1 One significant element of appeals performance is the quality of decision making and the Council's ability to impose reasons for refusal that are reasonable and can be robustly defended.

- 9.2 During this period, there were two awards of costs. One where the Council had its costs awarded and another where the appellant had its costs met. In the other cost application an application by the appellant for its cost to be met was dismissed. The two cost awards are as follows:

- West Barn, Old Dairy Lane. The Council successfully sought appeal costs for an application that was not very different to a previous application that had similarly been refused. This demonstrates that the Council should seek costs where applications are resubmitted with little new material.
- Greencourt Drive, Bersted. Costs were awarded against the Council because the Council failed to submit a statement of case setting out why a cost application should not be allowed. This award of cost to the appellant could have been avoided if a statement in response to the costs application had been submitted before the deadlines. The Cost incurred was £2,500.

10.0 CONCLUSIONS

- 10.1 When compared to 2016, the above shows a 1% reduction in the overall success rate in terms of the Council's ability to defend appeals. The Council has not met its corporate target of winning 70% of appeals between 2014-2017.

- 10.2 The performance of the Council in defending appeals is set out in the table below.

1 January 2017 – 31 December 2017

	Total dismissed (%)	In accordance with officer recommendation (%)	In accordance with decision made by DC Committee (%)
All appeals	48		
Written Reps	52	63	25
Informal Hearing	–	–	–
Public Inquiry	0	100	–

- 10.3 Overall, written reps appeal decisions in accordance with officer recommendations have increased by 6% from 57% in 2016 to 63% in 2017. In terms of public inquiries there has been a 100% Inspector agreement with officer recommendations.
- 10.4 As explained in section 7 the costs for defending Council decisions over 2017 will be reported to a future Development Control Committee.

Background Papers:

Appendix1 – Appeals figures 014-2017

Appendix 2 – Appeals Summary 2017

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APPENDIX 1

Appeal Figures 2014-2017

	2014	% Dismissed	2015	% Dismissed	2016	% Dismissed	2017	% Dismissed
Total number of appeals	48		52		39		25	
Total dismissed	33	69 %	24	46 %	19	49 %	12	48 %
Written Reqs			47		34		23	
Total dismissed	33	72 %	24	51%	17	50 %	12	52 %
Decision in acc with officer recommendation	31	67%	22	65 %	17	57 %	12	63 %
Decision in acc with DC Committee	1	17 %	1	33 %	1	25 %	1	25 %
Informal Hearing			3		3		0	0
Total dismissed	0	0	3	100 %	1	33 %	-	-
Decision in acc with recommendation	1	100 %	1	50 %	1	33 %	-	-
Decision in acc with DC Committee	0	0	1	50 %	-	-	-	-
Inquiry			2		2		2	
Total dismissed	0	0	0		1	50 %	-	-
Decision in acc with recommendation	0	0	-	-	1	50 %	2	100 %
Decision in acc with DC Committee	-	-	0	0	1	50 %	-	-

APPENDIX 2

Appeals Summary 2017

Site	Proposal	Recommendation/ Decision/Appeal Decision	Issues
Land off Burndell Road Yapton	Outline app for the development of a max of 106 residential dwellings	Approve/ Called In/ Allowed	<ul style="list-style-type: none"> The Secretary of State (SoS) agreed with the Inspectors view that Arun's Objectively Assessed Need (AON) needed to be significantly higher than the 580 that the Yapton Neighbourhood Plan was based on. Whilst the SoS considered that the proposal would conflict with Development Plan policies for the supply of housing he considered these policies to be out of date and gave them limited weight. He considered all other matters (landscaping, design, heritage, agricultural land, drainage and traffic) to be acceptable.
Land to the East of Fontwell Ave, Fontwell	Outline application to provide up to 400 No. new dwellings	Approve/ Called In/ Allowed	<ul style="list-style-type: none"> The SoS like the Burndell Road appeal gave only limited weight to the Development Plan policies due to the significant shortfall of housing land. The SoS saw no other policies that indicated that the proposal should be restricted.
Crab Apple, Russett, Bramley and Pippin Holiday Cottages Highground Orchards	Application for removal of condition no.2 following grant of planning application BN/67/06 relating to holiday use	Refusal (R) – Refused (R) – ALL (Allowed)	<ul style="list-style-type: none"> Sufficient evidence that shows that reasonable attempts have been made to market the ground for business purposes contrary to policies DEV2(i) & GEN3 of the Arun District Council Local Plan (2003), policies H DM3 (4) & TOU DM1 (a) of the Arun Local Plan 2011 - 2031 (Publication Version) The proposal will not result in greater use of the car as this is not a new building. With reference to the NPPF this is a sustainable form of development.
West Barn Old Dairy Lane	Mews of 6 No.2 storey low rise live work studios. Resubmission of AL/79/14/PL. This application is a Departure from the Development plan & affects the character & appearance of Norton Lane, Norton Conservation Area	R – R – DIS (Dismissed)	<ul style="list-style-type: none"> Due to less than 5 year supply of housing land permission should be granted unless doing so would have significant adverse effects. Will cause harm to the character and appearance of this rural area contrary to paragraphs 7, 14 & 17 of the National Planning Policy Framework, Policy GEN7 of the Arun District Local Plan and Policy EH1 of the Aldingbourne Neighbourhood Plan The proposal will be car reliant and this will result in environmental harm contrary to policy GEN7 of the Arun District Local Plan, policies GA1 and EH1 of the Aldingbourne Neighbourhood Plan and paragraphs 7, 14, 17 & 34 of the National Planning Policy Framework. The Council was awarded costs for the unreasonable behaviour of the appellant
23 Manning Road, Littlehampton	Single storey front extension	R – R - DIS	<ul style="list-style-type: none"> Introduces a discordant visual element into what is a terrace with a generally uniform appearance. It is higher than the established flat front canopies and also extends further out from the front of the dwelling than the canopies.

			<ul style="list-style-type: none"> • Has incongruous appearance and in addition its finished appearance is unacceptable. These factors result in the porch not only being detrimental to the appearance of the dwelling but also to detriment to the street scene and a loss of cohesive design appearance to the terrace. • Not a sustainable form of development in conflict with policies GEN7 and DEV19 of the Arun District Local Plan 2003, policies D DM1 and D DM4 in the Emerging Arun Local Plan 2011-2031, Publication Version and the NPPF.
The Marine, Selborne Road, L'ton	Bedsit (resubmission following LU/183/15/PL).	R – R - DIS	<ul style="list-style-type: none"> • Represents over-development which would cause serious harm to the character of the area and the living conditions of existing and future residents. • The proposal would therefore result in an unduly cramped unit of residential accommodation which would be detrimental to the character and amenities of the surrounding residential area. • Contrary to policies AREA2 and GEN7 of the Arun District Local Plan, policy DMM3 of the emerging Local Plan and the Department for Communities, the Local Government Technical Housing Standards - Nationally described Space Standard dated March 2015 and the NPPF.
Land to the rear of 95-99 North Bersted Street	Double garage (revised scheme following BE/133/16/PL). This application affects the setting	R – R - DIS	<ul style="list-style-type: none"> • Will exacerbate the intrusion associated with the adjacent dwelling and would be inappropriate and detrimental to the setting of the North Bersted Conservation Area. It would also represent inappropriate development within the countryside. • Contrary to policies GEN3, AREA2 of the Arun District Local Plan (2003); ES5, ES7 of the Bersted Neighbourhood Development Plan; C SP1, HER-SP1, HER-DM3 of the Arun Local Plan 2011-2031 Publication Version; and paragraph 134 of the National Planning Policy Framework.
44 Ferringham Lane, Ferring	Outline application with some matters reserved for 4 No. 3 bed bungalows (resubmission of FG/196/15/OUT).	AC – R – ALL	<ul style="list-style-type: none"> • The proposed development will not be likely to endanger highway safety in Ferringham Lane in conflict with policy GEN7 of the ADLP and the NPPF.
Tradewinds, 7 Arun Way, Aldwick Bay Estate	Proposed garage replacing demolished water tank & garden room. Resubmission of AW/122/15/HH	R – R - DIS	<ul style="list-style-type: none"> • Would have a significant adverse impact on the street scene, erode the open aspect of this part of the estate and adversely affect the setting of the adjacent Conservation Area • Contrary to GEN7 & AREA2 of the Arun District Local Plan and D DM1 & HER DM3 of the Arun Local Plan 2011 - 2031 (Publication Version).
Lidl Foodstore, Pier Road, L'ton	1 No. internally illuminated totem sign.	R – R - DIS	<ul style="list-style-type: none"> • An unduly prominent and incongruous feature to the detriment of the established character of the locality in conflict with Arun District Council Supplementary Guidance for Advertisements and the National Planning Policy Framework.

Rear of 8-11 South Road Felpham	5 No. dwellings including partial demolition of 10 South Road to allow for access (resubmission following FP/60/16/PL).	AC – R - DIS	<ul style="list-style-type: none"> • Due to less than 5 year supply of housing land permission should be granted unless doing so would have significant adverse effects. • Proposal will appear discordant, unacceptably cramped and not well integrated into the generous suburban grain of the area contrary to Policy GEN7 of the Arun District Local Plan and Policy ESD1 of the Felpham Neighbourhood Plan.
Kingstone Manor, Kingston Lane, Kingston	Application for Listed Building Consent and planning permission for construction of a Detached 6 Bay Barn with Log Store	R – R – DIS	<ul style="list-style-type: none"> • The proposal would not preserve or enhance the listed building and would damage the setting of a Grade 2 Listed Building. • The harm is not outweighed by the public benefits of the scheme.
34 Downview Close, Yapton	Replace 2.7m high hedge with a wooden panel fence 1.8m high.	R – R - DIS	<ul style="list-style-type: none"> • Excessively prominent within the local streetscene and be out of character with the local area. • Contrary to policy GEN7 of the Arun District Local Plan 2003 and policies D DM1 and D SP1 of the Arun Local Plan 2011-2031 (Publication Version).
55 Longford Road	Change of use from single dwelling to house of multi-occupancy for up to seven occupants.	R – R - ALL	<ul style="list-style-type: none"> • Would not harm the character and appearance of the area and comply with policy GEN 7 of the ADLP, policy H SP4 of the emerging plan and the NPPF.
27 Sea Lane, Pagham	Front boundary wall & sliding gate.	R – R - ALL	<ul style="list-style-type: none"> • The fence does not draw the eye as it is not perceived to be an inappropriately high and solid form of enclosure. • Not in conflict with policies GEN7(ii) of the Arun District Local Plan, policies DDM1 & DSP1 of the Emerging Local Plan and Paragraph 64 of the National Planning Policy Framework.
Riverside House, 2 Fitzalan Road, Arundel	Erection of extensions to existing dwelling to form car port, conservatory & rooms in loft space	R – R - ALL	<ul style="list-style-type: none"> • Extensions would not harm the character and appearance of the immediate area nor the setting of the neighbouring Conservation Area. • There would be little risk to protected trees. • The proposal would accord with policies AREA2, GEN7 and GEN28 of the Arun District Local Plan and the National Planning Policy Framework. • An application for cost made by the appellant was dismissed as the Council was not considered to have behaved unreasonably
162 Littlehampton Road, Ferring	Garage to front elevation with bedroom above (resubmission following FG/183/16/HH).	R – R - ALL	<ul style="list-style-type: none"> • It would not appear as a prominent and obtrusive form of development, out of keeping with the locality. • Despite its substantial size the proposed structure would be subservient to the existing dwelling in compliance with policies DEV19 and GEN7 of Arun District Local Plan.
Land adj to 2 North Bersted Street, Bognor	1 No. dwelling. This application affects the setting of a Listed	R – R - DIS	<ul style="list-style-type: none"> • Will inevitably lead to conflict and pressure from future residential occupiers to prune or fell the trees.

	Building.		<ul style="list-style-type: none"> The proposal would therefore be environmentally unsustainable in conflict with policy GEN7 of the Arun District Local Plan, policy ES6 of the Bersted Neighbourhood Development Plan, policy ENV DM4 of the Arun Local Plan 2011-2031 Publication Version showing Modifications and paragraph 17 of the National Planning Policy Framework. The proposed house would not be so substantial to harm the setting of the nearby Listed Building.
Tortington House, Tortington Lane, Arundel	2 bay garage, incorporating open car port & artists studio. Resubmission of AB/85/16/HH	R – R - ALL	<ul style="list-style-type: none"> Despite its substantial size, its location and design means that it would not have an unacceptable impact on the character and appearance of the immediate locality. In accordance with policy GEN7 of the Arun District Local Plan and the National Planning Policy Framework.
3 Southdown Road, Bognor Regis	Outline application with some matters reserved for construction of 2 No. 3-bed dwellings & associated works (resubmission following BR/291/15/OUT.)	AC – R - ALL	<ul style="list-style-type: none"> The proposal would not amount to an overdevelopment and would not have an unacceptable impact on the character and appearance of the area in conflict with policy GEN7 of the ADLP and D DM1 of the emerging plan.
Land to the north of Sunnyside Barn, Yapton Road, Barnham	3 No. dwellings & retention of small B8 storage area. This application is a Departure from the Development Plan.	R – R - DIS	<ul style="list-style-type: none"> The development by reason of its unsustainable location in the countryside, outside a defined built up area boundary, its lack of lit footpath access to bus stops and local shops; the proposal will be car reliant and this will result in environmental harm. Contrary to saved Arun District Local Plan policies GEN2, GEN3 and GEN7, paragraph 7, 14 and 55 of the National Planning Policy Framework and Policies C SP1, SD SP1, SD SP1a and SD SP2 of the emerging Local Plan and Policy H2 of the made Barnham & Eastergate Neighbourhood Development Plan. Considered to be out of character with the open surrounding rural area and fails to integrate with the surroundings or the overall character of the two villages of Barnham and Eastergate. Contrary to saved policy GEN 7, emerging policies D DM1, D SP1 and Barnham & Eastergate Neighbourhood Plan Policies ES6 and H4.
Manor Flats, 100 Felpham Road, Felpham	Fell to ground level 1No. Blue Atlas Cedar	R – R - DIS	<ul style="list-style-type: none"> Would result in significant and unacceptable harm to amenity and to the Conservation Area and the setting of nearby Listed Buildings and it has not been satisfactorily demonstrated by evidence that alternative measures would resolve the alleged root impact nor that structural or drainage damage is taking place. Would therefore not be in accord with advice in National Planning Practice Guidance.

<p>1 Regis House, Richmond Road, Bognor Regis</p>	<p>Replace all windows to Flat 1. This application affects the setting of the Bognor Railway Station Conservation Area & the setting of Listed Buildings.</p>	<p>R – R – Part DIS/Part ALL</p>	<ul style="list-style-type: none"> • The windows on the north west and south east of the building would detract from the character and appearance of Regis House and the Bognor Regis (Railway Station) Conservation Area and the setting of a Grade II listed building in conflict with saved policies GEN7 and AREA 2 of the Arun District Local Plan, HER DM1, HER DM3 and HER SP1 of the emerging Arun District Local Plan, Bognor Regis Neighbourhood Development Plan 2015 Policy 2 and the National Planning Policy Framework. • The windows on the north east elevation would not detract from the character and appearance of Regis House and the Bognor Regis (Railway Station) Conservation Area and the setting of a Grade II listed building.
<p>Land to the rear of 17,19,21 & 23 Greencourt Drive, Bersted</p>	<p>Outline application with all matters reserved for 2 no. dwellings</p>	<p>AC – R - ALL</p>	<ul style="list-style-type: none"> • The proposal would not be an overdevelopment and out of character with the area. It would be barely visible from the street scene and therefore unobtrusive • A full award of cost against the Council for unreasonable behaviour was allowed for failure to provide a statement of case.