

ARUN DISTRICT COUNCIL

REPORT TO AND DECISION OF PLANNING COMMITTEE ON 2 FEBRUARY 2022

SUBJECT: Appeals Performance & Cost 2021

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DATE: January 2022

EXTN: 01903 737839

AREA: Place

EXECUTIVE SUMMARY:

The report outlines the Council's performance at appeal during 2021 and outlines the costs associated with those appeals.

RECOMMENDATIONS:

To note the Appeals Performance & Costs for 2021

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 2021 in respect of appeals. The Council has an indicator within the planning departments Business Plan that aims for 70% of all appeals being dismissed.

1.2 On 3 February 2021, a report to Committee reported appeal performance for the 2020 calendar year. In summary, performance for this period was as follows;

- A total of 50 appeals were determined in 2020, an increase of 7 over that determined in 2019.
- Of these, 24 were dismissed representing a success rate for the Council of 48% of all appeals dismissed. That equated to a 13% increase in success rate over 2019.
- Of all planning appeal decisions, 74% were made in accordance with the recommendation of officers.

1.3 As highlighted by the recent Planning Review, appeals performance is a good indication of the quality decision making at the Council.

2.0 ALL APPEALS

2.1 A total of 41 appeals against decisions to refuse planning permission were determined in 2021, a decrease of 9 over that determined in 2020. Appeals workload nearly doubled between 2019 – 2021. Of these appeals, 27 were dismissed representing a success rate for the Council of **63%** of all appeals dismissed. That equates to a 15% increase in success rate over 2020.

However, it should be noted that this overall performance is affected by appeals decisions against decisions made at Planning Committee contrary to the advice of officers. Performance in accordance with the recommendation of officers shows that **76%** of appeals were determined in accordance with the recommendation. This represents an increase of 2% on 2020.

Some members may be aware that a new process was implemented a few years ago whereby all refusals needed to be agreed by the Group Head of Planning. In 2018, appeal decisions in accordance with the officer recommendation was only 48%. The performance is now at 76% and represents a significant improvement in the quality of decision making. It has improved year on year.

There were 4 appeals arising out of a decision at Planning Committee to refuse permission contrary to the recommendation of officers in 2021 (a decrease from 13 in 2020). All these appeals were allowed. All 13 in 2020 were also allowed.

3.0 WRITTEN REPRESENTATIONS

3.1 A total of 38 appeals were determined by written representations in 2021. Overall, 25 of these appeals were dismissed. This equates to a success rate of 68% being dismissed - an increase in performance of 19% compared to 2020.

3.2 71% of decisions were made in accordance with the recommendation of officers. This represents a decrease of 7% on 2020 performance.

4.0 INFORMAL HEARINGS

4.1 During 2021, there were three appeals determined by way of informal hearing. These were BE/109/19/PL (east of Shripney Road), BE/135/17/PL (Wisteria Heights Caravan Park) and M/80/19/PL (Poultry Farm).

4.2 BE/135/17/PL was recommended for refusal, but the appeal was allowed. BE/109/20/PL & M/80/19/PL were both recommended for approval but were refused at Planning Committee. Consultants were instructed to represent the Council at the

appeal hearings but both appeals were allowed. Both also resulted in costs awards against the Council. This will be discussed in section 10.

5.0 PUBLIC INQUIRIES

5.1 During 2021, there were no appeal decisions received from appeals determined by way of public inquiries.

6.0 PERFORMANCE OF PLANNING COMMITTEE

6.1 The composition of the Planning Committee changed significantly after the May 2019 change in administration. There were further changes to this after May 2021. Last year it was reported that there has been a significant increase in the number of decisions that have been taken contrary to the advice of officers since May 2019. In the municipal year 2018/2019, there were 6 out of 88 applications (7%) that were refused planning permission contrary to the advice of officers. In the year 2019/20, there were 16 out of 81 (20%). These decisions have resulted in substantial additional costs to the Council and resulted in a large number of appeals. 25% of all appeals in 2020 were as a result of decisions at Committee.

6.2 In 2021, there have been only 4 appeals as a result of decisions made at Planning Committee contrary to the advice of officers (10% of total appeals). These appeals were;

1	M/80/19/PL	Poultry Farm, Middleton	Allowed	Costs Awarded against the Council
2	R/197/20/OUT	Croft Works, Rustington	Allowed	Costs Awarded against the Council
3	BE/109/19/OUT	Shripney Road, Shripney	Allowed	Costs Awarded against the Council
4	FG/123/20/PL	McIntire Nursery, Ferring	Allowed	Application for costs refused

6.3 The Council has not managed to successfully defend any of the above decisions made contrary to the recommendation of officers in 2021. Further, three of these decisions resulted in an award of costs against the Council for unreasonable behaviour. The costs associated with these decisions will be set out in section 8.

6.4 The areas of disagreement and conclusions in the decisions on these 4 appeals are as follows:

- Failure to properly consider the 'fall-back' position of a previously approved scheme
- Satisfaction that tree protection measures were adequate
- Lack of impact on the gap between settlements due to the relationship with

adjoining development and consequent lack of impact on the character of the countryside.

- No necessity to extend the public transport services
- Satisfactory impacts on flood risk and surface water
- The need for housing outweighs the harm to agricultural land
- Commercial structure would be surrounded by other existing structures and therefore the impact on the countryside would not be significant.
- Adequate access in accordance with Manual for Streets, especially for only two dwellings.
- No existing restrictions on use of the access
- Emergency service access acceptable in the lack of objection from Fire Service

7.0 MAJOR PROPOSALS

7.1 During 2021, there were 4 appeals classified as a 'major' scheme. Performance at appeal on 'major' applications is important for the reasons set out in section 11 of this report. These appeals were:

- BE/109/19/PL – Outline application for up to 46 No dwellings. Land to the east of Shripney Road. Planning Committee refusal allowed at appeal.
- M/80/19/PL - 66 bed care home. Poultry Farm, Land West of Yapton Road. Planning Committee refusal allowed at appeal.
- BN/128/19/OUT - 70 bed Care Home and 14 Assisted Living bungalows. Adj to Highfield House, Yapton Road. Delegated refusal dismissed at appeal.
- FG/123/20/PL - use of land for Class B8 container self-storage. Former McIntyre Nursery Littlehampton Road Ferring. Planning Committee refusal allowed at appeal.

7.2 Of these 4 appeals, only one was dismissed. However, all were determined in accordance with the recommendation of officers.

8.0 COSTS

8.1 The costs of defending appeals during 2021, where there were costs awards, and consultants used, is set out in the table below. Some of the appeals in the table below are from decisions in 2020 where costs were not known until 2021. It should also be noted that significant officer time is also required for managing appeals workloads (even in instances where consultants are used).

Site	Decision	Costs Awarded (£)	Consultant Costs (£)	Overall Cost (£)
BE/109/19/PL Shripney Rd	Allowed	Yes. No claim submitted.	£8,982	
M/80/19/PL Middleton Nursing Home	Allowed	Yes No claim submitted.	£10,700	
P/58/19/PL Inglenook Hotel	Allowed	Yes. £25,690	£7,000	£32,690
R/197/20/OUT Croft Works	Allowed	£5,700	n/a	£5,700
BR/233/19/PL 77 Aldwick Rd	Allowed	Yes. No claim submitted.	n/a	
Y/20/18/OUT Bonhams, Hoe Lane	Allowed	Yes. Claim submitted. Not yet agreed.	n/a	

TOTAL	£31,390	£26,682	
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8.2 The table above shows that the costs of defending appeals in the calendar year. All but two of the above appeals were submitted following decisions to refuse planning permission contrary to the advice of officers. It is estimated that all of these decisions will result in costs of about £90,000 being incurred by the Council.

8.3 There was one award of costs to the Council (P/1/21/PL) due to the fact that the Inspector concluded there was no prospect of the proposals ever being implemented and that the appeal was clearly an attempt to unreasonably just frustrate the strategic housing strategy. This was a decision taken at Planning Committee in accordance with the recommendation of officers.

8.4 An analysis of the reasons for a costs award against the Council for unreasonable behaviour is set out in section 10.

9.0 **SUMMARY OF ISSUES**

9.1 Attached to this report is a summary of all the appeal decisions received in the 2020 period.

The schedule for all appeals determined in 2021 highlights the issues raised by Inspectors when making decisions. Where the Inspector has disagreed with the Council's decision to refuse and granted permission, the areas of disagreement are as follows:

- In 11 of the cases approved contrary to the decision the Inspector did not agree with the Council's position on character and appearance.
- In 3 of the cases the Inspector did not agree with the Council's position on adverse impact on living conditions of neighbours.
- In 4 of the cases the Inspector did not agree with the Council's position that the adverse impacts of the development significantly and demonstrably outweighed the benefits in accordance with the NPPF.
- In 4 of the cases the Inspector did not agree with the Council on access/location issues.
- In 1 case the Inspector did not agree that the loss of tourism accommodation was harmful.
- In 1 case the Inspector did not agree that there was a requirement for a s106 relating to affordable housing/play provision.
- In 1 case the Inspector did not agree with the Council on flooding issues.
- In 1 case the Inspector did not agree with the Council on health and well-being issues.
- In 1 case the Inspector did not agree with the Council on loss of agricultural land.
- Of the above there were 3 decisions made against officer advice where the Inspector did not agree with the Council on adverse impact on character, 2 on access/transport issues, 1 each on flooding and loss of agricultural land:

10.0 COSTS AWARDS AGAINST THE COUNCIL

- 10.1 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.
- 10.2 In 2021 there were 6 applications for costs. 3 of these were against the Council where costs were awarded and 3 were unsuccessful applications made by the appellant where no costs were awarded (Barton House, Paghams, Spindlewood & McIntyre Nursery).
- 10.3 The following appeals were where costs were awarded against the Council for unreasonable behaviour.

M/80/19/PL	Former Poultry Farm, West of Yapton Road	Allowed
BE/109/19/OUT	Land to the east of Shripney Road	Allowed
R/197/20/OUT	Croft Works, 52 Mill Lane	Allowed

M/80/19/PL - Costs awarded on grounds on unreasonable behaviour due to the only matter of the planning obligation and the costs associated with the preparation thereof. The Inspector did not conclude that a planning obligation was justified.

BE/109/19/OUT - Costs awarded on grounds on unreasonable behaviour due to

reaching an unreasonable conclusion on the Built Up Area Boundary (and what harm would result) and coming to unreasonable conclusions with no evidence on flood risk where other recent development had been approved.

R/197/20/OUT - Costs awarded on grounds on unreasonable behaviour due to being unable to present a case to justify not accepting the views of the Highway Authority.

- 10.4 One very clear conclusion from these decisions is that, if the Committee are seeking to refuse an application, evidence to support this decision must be able to be produced at an appeal. Failure to be able to do this has resulted in costs awards against the Council and significant expense.

11.0 UNDER PERFORMING PLANNING AUTHORITY?

11.1 The Government's document 'Improving Planning Performance (2018)' says that the performance of Local Authorities in deciding applications for planning permission enables development to deliver home ownership, building homes people can afford to buy and supporting economic growth. It also states that a Local Planning Authority can be considered as not fulfilling this role by reference to the criteria in this document and it may be that "the Secretary of State considers that there are respects in which the authority are not adequately performing their function of determining applications".

11.2 The data used in measuring performance by the quality of decisions made by Local Planning Authorities is the proportion of decisions on applications that are subsequently overturned at appeal. If the threshold of 10% is exceeded, the department will be designated as an 'under performing authority' and applications can be submitted direct to the Planning Inspectorate for determination.

11.3 In the case of Arun for the period 01/04/2018 - 31/03/20 (the most up to date evidence published by the Government in Live Table 152a), it records the number of major application decisions as 122 which have resulted in 10 appeals. Of these 5 are categorised as major decisions which have been overturned at appeal. It then goes on to score Arun as 4.1% in terms of quality of decisions. This compares to 1.6% for England as a whole and places Arun 317 out of 352 local authorities in England.

11.4 Other authorities in West Sussex perform as follows;

Worthing	-	0% (1 major appeal)
Adur	-	0% (0 major appeals)
Horsham	-	0% (2 major appeals)
Chichester	-	1.1% (6 major appeals)
Mid Sussex	-	1.6% (6 major appeals)
Arun	-	4.1% (10 major appeals)
Crawley	-	6.7% (4 major appeals)

11.5 Whilst the performance of the Council over this period does not put it at risk of 'special measures' it has to be acknowledged that it is very poor when compared to the national average and the performance of our adjoining authorities who have similar numbers of major appeals.

12.0 CONCLUSIONS

12.1 When compared to 2020, the above shows that there has been a 15% increase in the overall success rate in terms of the Council's ability to defend appeals (though it has to be acknowledged that performance in 2020 was very poor). At a success rate of winning 63% of all appeals the Council has not met its corporate target of winning 70% of appeals for the last 5 years. However, 2021, was the best year for performance in those 5 years.

12.2 Decisions made in accordance with the recommendation of officers has improved again in 2021. There has been a 2% and decisions in accordance with the officer recommendation has exceeded the target for the past two years.

12.3 This report will form the basis of informal discussions between officers and members and these discussions will consider what further training may be required for members and officers.

2. PROPOSAL(S):

To note the performance.

3. OPTIONS:

n/a

4. CONSULTATION:

Has consultation been undertaken with:	YES	NO
Relevant Town/Parish Council		x
Relevant District Ward Councillors		x
Other groups/persons (please specify)		

5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)	YES	NO
Financial	x	
Legal		x
Human Rights/Equality Impact Assessment		x

Community Safety including Section 17 of Crime & Disorder Act		x
Sustainability		x
Asset Management/Property/Land		x
Technology		x
Other (please explain)		

6. IMPLICATIONS:

The financial implications are set out in the report.

7. REASON FOR THE DECISION:

n/a

8. BACKGROUND PAPERS:

Schedule of appeals in 2021

