

<b>Key Decision Required:</b>	<b>No</b>	<b>In the Forward Plan:</b>	<b>No</b>
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**PLANNING COMMITTEE**  
**24<sup>th</sup> September, 2019**

**REPORT OF THE HEAD OF PLANNING**

**PLANNING APPEALS**

**PART 1 – KEY INFORMATION**

**PURPOSE OF THE REPORT**

This report advises Members of the number of appeals that have been received and determined over the past 24 months and analyses the Councils performance in terms of decisions made by the Planning Inspectorate.

**EXECUTIVE SUMMARY**

This report provides Members with statistical data for appeal decisions made within the District over the past two years. A summary of appeal decisions, comparing the number of appeals received and the Councils performance in dealing with appeals is set down under Appendix A.

A total of 78 appeals were determined between September 2017 and August 2018 of which 39% were allowed. A total of 79 appeal decisions were received between September 2018 and August 2019 of which 31% were allowed. The Planning Inspectorate currently allows 28% of appeals on average nationally. The national performance measure, which local authorities are required to meet, requires that no more than 10% of all planning applications determined in the past two years are allowed on appeal. At present during the period April 2016 – March 2018, a total of 5.78% of major application decisions were allowed on appeal within Tendring, well within the 10% target. For non-major applications the figure was 2.21%.

A summary of appeal cost decisions is set out at Appendix B.

**RECOMMENDATIONS**

**That the Committee: Note contents of the report.**

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

It remains essential that the Council continues to determine planning applications in accordance with both the adopted Local Plan and emerging Local Plan as well as the National Planning Policy Framework. Adherence to policy guidance ensures that the Council remains in a robust position to defend planning appeals made against decisions taken by the Council and the planning service remains fully effective.

### RESOURCES AND RISK

**Resources:** TDC Officers and where necessary external consultant and legal support. The cost of external legal and technical support to defend appeals for the two year periods 2017/18 – 2018/19, was £152,647.80 in 2017/18 and £253,956.78 in 2018/19.

**Risks:** The Council will continue to carefully monitor the outcome of all appeal decisions to ensure that the Council's decisions are being defended thoroughly and that appropriate and defensible decisions are being made by Committee and under delegated powers. To do otherwise may result in poor quality or inappropriate development being allowed or costs awards being made against the Council.

### LEGAL

**Legislation:** S78 Town and Country Planning Act 1990.

### OTHER IMPLICATIONS

**Area or Ward affected:** All Wards  
**Consultation/Public Engagement:** None.

## PART 3 – SUPPORTING INFORMATION

### BACKGROUND

This report provides an update in respect of the number of planning appeals received by the Council and assesses the Council's success in defending appeals over the past two years.

Further data is provided in the attached appendices.

When a planning application is refused, the applicant has the right to appeal to the Secretary of State against the decision. Appeals can be made against all types of application including major applications, householder applications, planning conditions and enforcement notices. Appeals can also be lodged against the non-determination of applications which have passed the statutory time for determination.

A total of 78 appeals were determined in the year to 31<sup>st</sup> August 2018 with 39% being allowed. Over the past twelve months to August 2019, 79 appeals were received with 31% being allowed. There is a significant improvement in appeal performance and outcomes in the past 12 months. This is primarily due to an improved position in respect of the Councils housing five year land supply and further progress with the Councils emerging Local Plan. Despite the requirement to abide by the 'Standard Methodology' for calculation of housing land supply, applied under the National Planning Policy Framework, the Council remain in a robust position to defend future appeals. The Council have been particularly successful in defending appeals at Public Inquiry relating to greenfield sites located outside the recognised settlement boundary.

A further breakdown of the figures can be applied to appeals relating to delegated decisions and those taken by the Planning Committee. In the period 2017/18, 40% of appeals against delegated officer decisions were allowed and 75% of committee decisions were allowed on appeal. This contrasts with 2018/19 when 28% of appeals against delegated decisions were allowed and 50% of committee decisions allowed. This again is a reflection of the Council's improving success rates in defending appeals.

The Government impose a national target in respect of local authority performance in defending appeals. If the Government consider that a Local Planning Authority is not adequately performing its function in determining applications it can be designated as underperforming and in extreme cases special measures applied. The measure used to assess quality of decision making is the average percentage of decisions on all applications that have been overturned on appeal. The threshold for inadequate performance by a Local Planning Authority over all applications is reached where more than 10% of all decisions made over the previous two years have been overturned at appeal. The latest national figures are only currently available to March 2018 but for Tendring

show that in dealing with Major applications in the period April 2016 – March 2018, a total of 5.78% of decisions were allowed on appeal, well under the 10% target. For non-major applications the figure was 2.29%. For the period April 2018 to date the figure is 0.84% for Major applications and 0.73% for non-major appeals. This again reflects the Councils improving position in being able to defend appeals successfully.

In some cases costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. This may be in a case where either the Council or Appellant have failed to provide adequate evidence of their case or tried to introduce new evidence during the appeal process.

Costs awarded against the Council are rare – during 2017/18 there were no cost awards against the Council, however a total of £5467.00 was awarded as partial costs awards in three appeal cases in the past 12 months. Costs were awarded specifically for the Councils failure to either justify reasons for refusal and failure to engage with an appellant in respect of ecology evidence. Although costs awards are rare this does highlight the need to be able to fully justify reasons for refusal at application stage.

Appeal performance has continued to improve over the past year and eventual adoption of the Local Plan will place the Council in an even stronger position to resist future appeals.

Performance on appeals will continue to be monitored and Members regularly updated.

As Members will be aware a forthcoming Member training session has been arranged to consider specifically Planning Appeals and Appeal processes. Issues that feature regularly in appeal decisions will also be discussed.

## **APPENDICES**

Appendix 1: Number of Appeals received and performance

Appendix 2: Details of Costs awarded against the Council

## **BACKGROUND DOCUMENTS**

**None**

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