
TITLE: REVIEW OF PLANNING APPEAL DECISIONS

Committee: Regulatory and Support Services Committee

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1.0 ISSUE

1.1 When a decision is made upon a planning application it is possible for an applicant to lodge an appeal with the Planning Inspectorate. This can be against a refusal or against any of the conditions which are imposed on a permission. The purpose of this report is to provide a general analysis of appeal performance over the last 5 years and a more detailed snapshot in relation to the last 2 years.

1.2 The report has been brought to the Regulatory and Support Committee at the request of Members. Officers were specifically asked to provide a breakdown by delegated and Committee decisions. Previously a report has been presented twice yearly to Planning Committee.

2.0 RECOMMENDATION(S)

2.1 It is recommended that Members Note the Contents of the Report.

3.0 BACKGROUND/OPTIONS

3.1 Householder appeals must be lodged within 12 weeks of the date of the decision on the application. Other appeals must be lodged within six months. Appeals can be dealt with under different procedures, such as written representations, informal hearings or public inquiry. In the past the appellant (person lodging the appeal) could choose the appeal method. The Planning Inspectorate now makes this decision.

3.2 Parties are expected to meet their own appeal costs however an Inspector can make an award of costs against either party if that party have acted unreasonably and this has caused the other party to incur unnecessary or wasted expenditure. The usual reason that a cost award is made against a Local Planning Authority is where it has failed to substantiate a reason for refusal.

3.3 Officers have historically had an appeal performance target to achieve a 60% success rate for planning appeals. The Service Plan, which is also on this Agenda, proposes that this target be retained. In addition, however, the Government has included an appeal threshold to determine when it should designate a Local Planning Authority as poorly performing. It is therefore

recommended, in the Service Plan, that the following target should also be included:

Less than 20% of decisions on applications for major development overturned at appeal.

- 3.4 The following table shows that actually very few decisions are appealed and that the percentage of appeals allowed as a proportion of total decisions is low.

Table 1- Planning Decisions Appealed

Year	Decision No	Total Appeal Nos	Appeal Dismissed Nos	% decisions dismissed	Appeal Allowed numbers	% decisions Allowed
2014	387	10	6	1.55 %	4	1.03%
2013	706	18	10	1.42%	8	1.13%
2012	733	17	13	1.77%	4	0.55%
2011	836	13	10	1.20%	3	0.36%
2010	876	19	16	1.82%	3	0.34%

Notes:

- (1) 2014 part year
- (2) Excludes tree appeals

- 3.5 Table 2 shows the proportion of delegated decisions and Committee decisions which are appealed. It is not surprising that the percentage of Committee decisions appealed is higher because the Committee consider the more controversial/finely balanced applications. For Members information the Government recommends that around 90% of decisions should be made under delegated powers.

Table 2 – Delegated/Committee Decisions Appealed

Year	Delegated Decision No's	Committee Decision No's	No of Delegated Decisions Appealed	% Delegated Decisions appealed	No of Committee Decisions Appealed	% of Committee Decisions Appealed
2014	376	11	8	2.1%	2	18%
2013	683	23	17	2.49%	1	4.35%
2012	708	25	14	1.98%	3	12.0%
2011	783	41	9	1.15%	4	9.76%
2010	758	22	14	1.85%	5	22.73%

Notes:

- (1) 2014 part year
- (2) Excludes tree appeals

Table 3 – Appeals Dismissed and Allowed

Year	Total Appeals	Total Appeals Allowed	% of Appeals Allowed	Total Appeals Dismissed	% of Appeals Dismissed
2014	10	4	40%	6	60%
2013	18	8	44%	10	56%
2012	17	4	24%	13	76%
2011	13	3	23%	10	77%
2010	19	3	16%	16	84%

Notes:

- (1) 2014 part year
- (2) Excludes tree appeals

3.6 Table 4 looks at whether there is a difference in outcome for delegated and Committee decisions, however due to the small number of appeals allowed these figures should be treated with caution.

Table 4 – Delegated/Committee Decisions Allowed

Year	Delegated Decisions Appealed	Committee Decisions Appealed	Delegated Decisions Allowed	% Delegated Allowed	Committee Decisions Allowed	% Committee Decisions Allowed
2014	8	2	3	37.5%	1	50%
2013	14	1	7	41.18%	1	100.00%
2012	14	3	4	28.57%	0	0.00%
2011	9	4	2	22.22%	1	25.00%
2010	14	5	2	14.29%	1	20.00%

Notes:

- (1) 2014 part year
- (2) Excludes tree appeals

3.7 The Government's new appeal target only looks at performance in relation to major applications (more than 10 dwellings; floorspace more than 1,000 sq m; more than 1 hectare). The previous 2 years are considered. Over the last 2 years there has only been one major appeal. This was allowed.

3.8 Over the last 5 years there has only been one cost award against the Council. This related to an appeal for 3 gypsy pitches. The appeal was dealt with as an Informal Hearing and the cost award was £6,546.55.

3.9 Appendix 1 includes details of the appeal decisions over the last 2 years. These decisions have been examined to see if any patterns emerge in relation to the specific issues considered at appeal. An analysis of the decisions

shows the importance that the Inspectorate attach to the protection of the rural character of the countryside and also to the setting of listed buildings and the character and appearance of Conservation Areas.

- 3.10 Appendix 2 includes details of outstanding appeals (those where decisions are awaited or where a hearing or Public Inquiry is yet to be held). Of particular significance is the appeal that had been lodged against the refusal of the application for up to 128 dwellings in Witchford (ref 14/00248/OUM). Officers recommended to Planning Committee that planning permission should be granted as the Council was unable to demonstrate a 5 year supply of housing land. The Committee however resolved to refuse the application for a number of technical grounds contrary to the advice of consultees. Before the Committee made its decision the Planning Manager expressed concern and advised that to avoid an award of costs at appeal the reasons for refusal would need to be substantiated. The applicant has advised that an award of costs will be sought. If an award of costs were to be made this could have significant financial implications for the Council. The appellant has submitted a further application in an attempt to avoid the appeal. It is anticipated that this will be considered by the Planning Committee at its meeting on either 5 November or 3 December 2014. A report will also be presented to the Planning Committee which provides a risk assessment for the appealed application.
- 3.11 Similar issues arise in the appeal for up to 100 dwellings in Haddenham (ref 14/00130/OUM) however in this case officers recommended refusal as they considered that the development would have a harmful impact upon the landscape and would be unsustainable.
- 3.12 The Council has taken legal advice and has been advised that, for the purposes of development management, the Council can regard itself as having a 5 year supply of housing land.

4.0 ARGUMENTS/CONCLUSIONS

- 4.1 The appeal performance is satisfactory but due to the implications of reaching wrong decisions it is important to continue to monitor performance. It is therefore proposed to highlight appeal decisions to Planning Committee monthly rather than twice yearly, when the case is fresh in the Committee's mind.

5.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

- 5.1 The cost of defending an appeal can be significant; particularly if it is dealt with by Public Inquiry. Counsel and expert witnesses may need to be instructed. These costs can be even more significant if the Inspector makes an award of costs against the Council.
- 5.2 Equality Impact Assessment (INRA) not required

6.0 APPENDICES

6.1 Appendix 1 – Detailed review of the appeal decisions for 2014 and 2013.

6.2 Appendix 2 – Outstanding Appeals

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
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Planning application files referred to in Appendix 1 and 2	Room 011A The Grange, Ely	Sue Wheatley Planning Manager (01353) 616229 E-mail: Sue.wheatley@eastcambs.gov.uk
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Appendix 1 – Analysis of last 2 years of Appeal Decisions

Decisions in 2014

Reference	Site and proposal details	Appeal decision	Issues and Inspector's conclusion	Delegated/ Committee (note 2)
12/01075/FUL	Two traveller sites, Land adj 4 Long Dolver Drove, Soham	Allowed	Issue – access/highway safety. The Inspector, having regard to the detailed information submitted by the appellant, concluded that the proposal would not significantly reduce highway safety.	Delegated
13/00699/FUL	Wildlife lake, south of 41 and 43 High Street, Wicken	Allowed	Issue – was the wording in the condition, restricting use of the lake to the personal enjoyment of the applicant, too restrictive. The Inspector concluded that the wording was too restrictive however kept the wording in the condition which prevented commercial use of the lake.	Delegated
12/00950/FUL	Dwelling, Rear of 31 Market Place, Ely	Dismissed	Issues – (1) impact on Conservation Area and setting of listed building (2) residential amenity The Inspector concluded that the proposal would give the site a much more built up appearance and that it would be harmful to the setting of the listed building and the character and appearance of the Conservation Area. However, the Inspector concluded that the outdoor amenity space was sufficient.	Delegated
13/00098/FUL	Horse accommodation, Third Land Parcel, East Side of Brinkley Road, Dullingham	Dismissed	Issue – would the proposal be an appropriate and sustainable development, having regard to policy for the location of development in the countryside and the impact upon the character and appearance of the area. The Inspector concluded that whilst the proposal would provide	Delegated

			for the development of a new rural enterprise, it would do so at the expense of harm to the character and appearance of the rural landscape and would not represent a sustainable form of development.	
13/00614/FUL	Pair of Semi-detached Houses 22 Cambridge Road Ely	Dismissed	<p>Issues –(1) impact upon character of area and whether it would preserve or enhance the Conservation Area. (2)residential amenity</p> <p>The Inspector highlighted that nearby properties had large gardens and that the scale and bulk of the dwellings would be disproportionate to the width of the site. He noted that the application site contributed to the spaciousness of the area. He therefore concluded that the proposal would be overdevelopment and would be harmful to the character and appearance of the Conservation Area. He also concluded that the development would be harmful to the residential amenity of Cambridge Court residents, that the driveway would affect the amenity of the occupiers of 20 and 22 Cambridge Road and that the rear gardens of the proposed dwellings would be shaded.</p>	Committee (officer recommendation was refusal but Committee rejected this and imposed their own refusal reason)
13/00849/FUL	Conversion of garage to dwelling, 24 Main Street, Coveney	Dismissed	<p>Issues – (1) impact on the setting of the listed building (2)residential amenity</p> <p>The Inspector noted that the subdivision would require a second access and parking area which would fail to preserve the setting of the listed building. He also concluded that there would be overlooking from the proposed velux windows.</p>	Delegated
13/00117/FUL	Change of use of land for 2 plots for show people(including residential accommodation), North of 198 Whitecross Road, Wilburton	Dismissed	<p>Issues – (1) impact on character and appearance of countryside (2) contribution to the supply of plots for showpeople (3) personal circumstances of appellant</p> <p>The Inspector concluded that the encroachment of development on the north side of Whitecross Road would be a significant departure from the pattern of existing showpeople</p>	Delegated

			development. In reaching this conclusion the Inspector noted that the proposal would meet the needs of the family for a site but that this did not outweigh the harm to the countryside.	
13/00732/FUL	Change of use of paddock to form additional garden and storage building, Brook House Cowlinge Road Kirtling	Dismissed	Issue – the impact upon the character and appearance of the area. The Inspector concluded that the residential character of the building would be at odds with the rural character of the paddock and that the change of use would affect the landscape setting of the paddocks and the unspoilt nature of the area.	Delegated
13/00856/OUT	Erection of up to 4 dwellings, Builders Yard Hod Hall Lane Haddenham	Allowed	Issues – five year supply of housing land and need for gypsy accommodation	Committee (in accordance with officer recommendation)
14/00002/FUL	Fence, Mill House, Mill Lane, Burwell	Allowed	Issue – impact on the character and appearance of the Conservation Area. The Inspector, having regard to the similar fence approved on the adjacent site, concluded that the development would not be harmful to the Conservation Area.	Delegated

Decisions in 2013

Reference	Site and proposal details	Appeal decision	Issues and Inspector's conclusion	Delegated/ Committee (note 2)
11/01025/FUM	Change of use from car showroom to non food retail EMG Ford Angel Drove Ely	allowed	Issues – whether the proposal would prejudice the objectives for the Ely Station Gateway area and its effect on the retail strategy for Ely; traffic, emissions and pollution; transport mode and appearance of the area. The inspector concluded that other sites were more significant to the redevelopment of the station gateway and that due to the uncertainty of when re-development would come forward he	Committee (in accordance with officer recommendation)

			concluded that this site was not pivotal. He also found that the development would not harm to the other issues that he identified.	
12/00362/FUL	Agricultural store, office and farm shop Land adj Westmoor House Wisbech Road Littleport	allowed	<p>Issues – the effect of the farm shop element of the proposal on the character and appearance of the area and; whether the retail and processing elements would result in a sustainable form of development.</p> <p>Having regard to the scale and the appearance of the building the Inspector concluded it would not have a harmful impact upon the character of the area. The inspector also did not accept the argument that the proposal would result in an ancillary agricultural use supporting a retail use but concluded that the farm shop would support an agricultural business which has received a significant level of investment.</p>	Delegated
12/00213/FUL	3 gypsy pitches, Hod Hall Lane, Haddenham	allowed	<p>Issues – the sustainability of the location for a gypsy site having regard to planning policy; other considerations including the accommodation needs and personal circumstances of the appellant; whether any harm arising from the location was outweighed by other considerations.</p> <p>The Inspector concluded that no harm would result from the proposal. He concluded that there would not be a significant detriment to the character and appearance of the countryside and that even if existing vegetation outside the site were to be removed there would be space within the application site to provide screening. He found that there would be no impact upon the social cohesion of the village. He also found that there would be no highway or drainage issues.</p> <p>He therefore concluded that it would be a sustainable location for a gypsy site.</p> <p>He did however agree that, having regard to the work that the Council had done, that there was no quantitative need for additional sites.</p>	Delegated

			<p>He also attached little weight to the personal needs of the appellant.</p> <p>His conclusion was that the balance lay in favour of the proposal.</p> <p>An application for costs was allowed. Two previous applications had been refused due to a lack of need but this wasn't a reason for refusal. Two new reasons had been introduced. Introducing these new grounds was unreasonable behaviour.</p> <p>The costs award was £6,546.55</p>	
12/00762/FUL	Gateway in wall, 6 St Mary's Street, Ely	allowed	<p>Issues – the effect on the listed building and the character and appearance of the Conservation Area and whether the additional vehicular movements would be harmful to highway safety and the free flow of traffic.</p> <p>The Inspector found that the wall itself had little historic merit and that appropriately designed gates would maintain the sense of enclosure. He concluded that, compared to the existing traffic situation, the development would be unlikely to cause any material increase in the likelihood of vehicle conflict.</p>	Delegated
12/00721/LBC	Gateway in wall, 6 St Mary's Street, Ely	allowed	<p>Issue – impact upon listed building</p> <p>Conclusion, as above.</p>	Delegated
12/00700/FUL	3 bedroomed house, 62A, High Street, Sutton	allowed	<p>Issues – whether the proposal preserves or enhances the character and appearance of the Conservation Area and the quality of the living conditions of the occupiers of the proposed dwellings and neighbouring dwellings.</p> <p>The Inspector observed that it would be a simple dwelling in modest surroundings. He concluded that whilst it would not follow the prevailing pattern of development in the Conservation Area it would not detract from its character or</p>	Delegated

			<p>appearance or appear cramped.</p> <p>The Inspector referred to the Council's Design Guide, indicating that it suggested that building plots should be 300 sq metres. He concluded however that the overall size of the plot was of limited value in determining whether it provided adequate living accommodation. He found that there would be sufficient amenity space for the dwelling. He also included that the distances to existing development would be satisfactory.</p>	
13/00184/FUL	<p>Single storey 2 bedroomed dwelling, rear of 95 Stetchworth Road Dullingham</p>	allowed	<p>Issues – character and form of the area; biodiversity; and the living conditions of the occupiers of adjacent residential properties.</p> <p>The Inspector concluded that the proposal would be in keeping with the overall form of the village despite it being backland development. In his view the proposal would have a plot size and density of buildings similar to the row of modern detached properties adjoining to the west.</p>	Delegated
12/00429/FUL	<p>Residential development of 24 dwellings, Land north of 9 to 11 Northumbria Close, Haddenham.</p>	allowed	<p>Issues – whether the proposed development was in a sustainable location having regard to the NPPF and the effect upon highway safety.</p> <p>The Inspector concluded that the site was sufficiently close to the centre of the village to be regarded as sustainable. He noted that the footway was narrow but concluded that it should not be an issue. He found that 2 dropped kerb crossing places on Station Road would be sufficient to facilitate safe crossing of the road. He concluded that the character and setting of the settlement would not be demonstrably harmed. He also concluded that the scheme would help meet the need for affordable housing within the village.</p>	Committee (contrary to officer advice)
12/00289/FUL	<p>New bungalow and garage/carport, Land south east of Willow Farm, Pymoor</p>	Dismissed	<p>Issues - whether the development would constitute sustainable development within the open countryside and the effect of the proposal on the character and appearance of the surrounding area.</p> <p>The inspector concluded that the site was not sustainably</p>	Delegated

			located in relation to services. He also found that the development would be obtrusive in the flat open landscape.	
12/00371/FUL	2 2 bedroomed dwellings, 75 Mill Corner Soham	Dismissed	Issue – impact upon street scene and character of the Soham Conservation Area. The Inspector drew attention to the spacious character of the Conservation Area in the locality of the appeal site and that the proposed development would appear cramped. He was also not happy with the disruption to the building line and the positioning of parking to the front of the dwellings.	Delegated
12/00440/FUL	Two storey dwelling, garage and car port with new access Land off West Drive Soham	Dismissed	Issues – effect on the character and appearance of the Conservation Area and living conditions of nearby residents. The Inspector concluded that the design of the dwelling would be out of keeping with the Conservation Area. He was also concerned about the pressure that the development would put upon the root protection area of trees and the pressure for their future removal. He also expressed concern about the loss of an open space highlighting that the construction of the access over an area of open space would be harmful. He found no impact upon residential amenity.	Delegated
13/00004/FUL	Two storey side extension to form new dwelling, 30 Hempfield place, Littleport	Dismissed	Issues – the effect on the character and appearance of the area and the suitability of the living conditions for the occupants with regard to garden space. The Inspector found that the street scene had a regular pattern of development with well spaced buildings within generous plots. The extension would also protrude forwards. He therefore concluded that the development would appear at odds with the established pattern of development. He also concluded that there would be inadequate garden space.	Delegated
12/01052/FUL	Carport, 39 Alexander Chase, Ely	Dismissed	Issue – effect upon character and appearance of the area. The Inspector found the structure at odds with both the style	Delegated

			and built form of the area.	
12/01027/FUL	Loft conversion, 20A Park lane, Little Downham	Dismissed	Issue – overlooking of neighbouring residential property. The removal of the condition would result in an unneighbourly form of development.	Delegated
12/00752/OUT	Dwelling and garage, 2B Moor Road, Fordham	Dismissed	Issue – effect of the proposed development on the character and appearance of the countryside. The Inspector concluded that the site was outside the settlement boundary and would extend the built up area into the countryside. It would represent an unnecessary urbanisation and would harm the character and appearance of the countryside.	Delegated
13/00433/FUL	Extensions, 76 Isleham Road, Fordham	Dismissed	Issue – The effect of the proposal on the character and appearance of the dwelling and the locality. The Inspector concluded that the original building would not remain legible and that the extension would not appear subservient.	Delegated

Appendix 2 – Outstanding Appeals

Reference	Proposal and site	Appeal method
13/00295/FUM	Change of use of land to mobile home park Land North East Of Rijn, Padnal, Littleport	Informal Hearing
14/00045/OUT	Residential development for 2No. three bedroom semi-detached houses and 2No. one bedroom semi-detached retirement bungalows. Land Rear Of 101 Victoria Street, Littleport	Written Representation
14/00259/FUL	Demolition of existing outbuilding and replacement with new outbuilding. Forge Cottage, Lower Road, Stuntney	Written Representation
14/00292/FUL	Proposed annex to replace existing outbuilding 43 Lower End, Swaffham Prior	Informal Hearing????
14/00248/OUM	Up to 128 dwellings Witchford	Public Inquiry
14/00130/OUM	Up to 100 dwellings Haddenham	Public Inquiry