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Dear Councillor

I am now able to enclose, for consideration at the meeting of the **PLANNING COMMITTEE** on Thursday 13 February 2020 at 6.00 pm, the following report that was unavailable when the agenda was printed.

8 **APPEALS AND INFORMAL HEARINGS** (Pages 2-4)

To receive information relating to Appeals and Informal Hearings, and appoint Members as appropriate.

To consider the attached report.

Yours sincerely



Chief Executive

Report to Planning Committee

Planning Appeals 2019-20 (Q3)

1. There were 9 planning appeals and 1 enforcement appeal determined between October and December 2019. Members have been issued with the full decisions.

2. A breakdown is at section 3 below.

Of the 9 planning appeals, 2 were considered by Planning Committee with the remaining 7 being delegated decisions.

Our results for the year so far show that of those applications that do go to the Inspectorate, 22% were lost. The average loss rate nationally is about 30%.

The National Performance Indicator which assesses the ‘quality of decisions’ measures the percentage of local authority decisions that are then subsequently overturned at appeal. The Government advises that the threshold for designating an authority as ‘underperforming’ includes if 10% of decisions are overturned at Appeal. This is assessed over a retrospective 2-year period and applies the threshold separately to decisions on Major and Non-Major applications. Our performance on appeals for Major applications (at 5%) in the current period is within target, but given the low number of Major applications generally, it won’t take too many allowed appeals to risk reaching the designation threshold. The enforcement appeals are excluded from these statistics.

3. Appeal Data.

3.1 Appeal data for decisions made by Planning Committee

Quarter	Committee Appeals	Appeal Dismissed	Appeal Upheld	% Upheld
1&2	13	9	4	31%
3	2	1	1	50%

3.2 Appeal data for delegated decisions

Quarter	Delegated Appeals	Appeal Dismissed	Appeal Upheld	% Upheld
1&2	23	20	3	13%
3	7	5	2	29%

3.3 Appeal data for all decisions

Year to date	All appeals	Appeals Dismissed	Appeals Upheld	% Upheld
Q1&2	36	29	7	19%
Q3	9	6	3	33%
Total	45	35	10	22%

3.4 Appeal data for Government P.I

This table looks at the percentage of appeals allowed as a % of all applications decided.

	Major Applications Decided	Appeals Upheld		% Upheld
Q1&2	25	2		8%
Q3	16	0		0%
Total	41	2		5%
	Non-Major Apps Decided			
Q1&2	419	5		1%
Q3	240	3		1%
Total	659	8		1%

4. More Detailed Points

There were a limited number of appeal decisions this quarter (9). The most notable outcome related to the decision to allow an appeal and award costs against the Council.

The case in question (DOV/18/00592) concerned the decision taken by Planning Committee to refuse permission for 5 dwellings at land to the rear of Station Road, Walmer. The application was refused on grounds that the restricted space around the existing junctions on Station Road and Mayers Road, combined with the narrow highway width and on-street parking, would mean the proposed access would not be suitable or safe for all users and that the development would also detract from the living conditions of the existing residents.

On the main issue of highway safety and suitable and safe access to the appeal site, the Inspector, having carried out a site visit during peak hours (to observe the use of the roads), and in considering technical evidence (swept path analysis for servicing the site by delivery and other vehicles) and the views of consultees, including KCC Highways, concluded that the site would have a suitable and safe means of access. Having regard to the separation distances between the proposed and existing properties, the discrete nature of the site and the slight increase in traffic along private roads, he was unable to find harm to existing residents.

A noteworthy outcome was the award of costs. By explanation, the application had previously been deferred by Planning Committee (November 2018) following concerns, based on the local knowledge of Members, about the suitability of the access proposals for service and emergency vehicles. Whilst a valid approach, the Inspector found no evidence in the minutes of the subsequent meeting (April 2019) that the Committee had taken into account the additional technical evidence (swept path analysis) which demonstrated the suitability of the access, or the expert advice provided by Kent Highways, Kent Fire and Rescue and DDC Waste services whose comments, raising no objections, were detailed in the officer report. The evidence to the effect that the Committee didn't properly consider/weigh the technical evidence and expert advice in reaching its decision constituted unreasonable behaviour resulting in unnecessary/wasted expense to the applicant.

The case highlights:

- While concerns of members arising from local knowledge of the highways network are legitimate, these need to be balanced against the technical evidence and expert advice provided.
- In reaching a decision which is contrary to the technical evidence and expert advice, a robust rationale for the conclusion will be required which is clearly set out and recorded in the committee minutes.
- The absence of legitimate grounds for going contrary to technical evidence and expert advice could result in an award of costs against the Council at any subsequent appeal.

5. Other matters

A payment has finally been agreed and settled with Abbey Developments following an award of costs against the Council pursuant to the dismissal of an appeal for 133 residential units at Singledge Lane, Whitfield (DOV/16/00136) in November 2017. The basis for the costs award is technical but in summary:

- Part of the Council's refusal case was that the provision of Suitable Alternative Green space (SANG) required to mitigate the development's effect on a nearby Special Area of Conservation, would prevent any future road widening of the A2, as safeguarded by Development Plan policy. The Inspector considered that the Council acted unreasonably by persisting with this objection when, in his view, the applicant had demonstrated that the SANG and widened A2 could co-exist and Highways England had raised no objection to the appeal proposal and advised that an A2 dualling scheme could be implemented without any significant implications for the proposed development. The Council's objection had not been substantiated by any technical evidence and its action had therefore been unreasonable; and
- A ground of refusal relating to insufficient details for surface water drainage should have been withdrawn had the Council undertaken proper consultation with the Lead Local Flood Authority (LLFA) in respect of a revised drainage scheme.

The size of the cost claim by Abbey had originally been in the region of 6 figures but was finally resolved at £46,500.

The case highlights the need for robust evidence to underpin reasons for refusal and the level of costs that can be incurred when such evidence is found to be lacking.

Peter Wallace
Development Management Team Leader

February 2020