

## Planning Appeals: Year 2021/22

1. There were 30 planning appeals determined during the year 2021/22. Members have been issued with the full decisions.

2. A breakdown is at section 3 below.

Of the 30 planning appeal applications, 1 was decided by Planning Committee (in accordance with the officer recommendation) and the remaining 29 were determined under delegated powers.

Our results for 2021/22 show that of those applications that did go the Inspectorate, 23% of our decisions were lost. This compares favourably to the average loss rate nationally for local planning authorities which is currently around 27%.

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 advise 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. With no appeals on major applications during 2021/22, our performance on appeals for Major applications is within target. That said, given the low number of Major applications generally, it would not take many allowed appeals to risk reaching the designation threshold.

### 3. Appeal Data

Appeal data for all decisions

	All appeals	Appeals Dismissed	Appeals Upheld	% Upheld
	12	8	4	33%
	8	5	3	37.5%
	9	9	0	0%
	1	1	0	0%
	<b>30</b>	<b>23</b>	<b>7</b>	<b>23%</b>

#### 3.2 Appeal data for Government P.I

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

2020/21	Major Applications Decided	Appeals Upheld	% Upheld
Q1&2	17	0	0%
Q3&4	20	0	0%
Total	37	0	0%
	<b>Non-Major Apps Decided</b>		
Q1&2	513	7	<1%
Q3&4	522	0	0%

Total	1035	7	<1%
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#### 4. More Detailed Points

Of the 30 cases appealed, 11 related to new residential development:

- None of the residential schemes were allowed on appeal/upheld.
- 5 of these schemes were for small-medium scale residential development within existing settlements/built-up areas where site specific issues such as design, impact on neighbours/living conditions etc. were the main considerations. The remaining 6 dismissed appeals (including a holiday let proposal) were for development outside existing urban areas/settlements, where the harm associated with the impact on the countryside, lack of alternative travel to the car (e.g. a lack of a regular bus service) and an absence of facilities to meet day-to-day needs were judged to outweigh any scheme benefits.
- Of the 7 allowed appeals, these related to a mix of scenarios, where the principal of the development was not in question but rather the suitability of more detailed considerations. As such, these cases included appeals against conditions attached to planning approvals which sought additional controls such as the removal of permitted development rights and retention of features (e.g. a hedge). While aimed at safeguarding the amenity of neighbours etc, these were viewed by the relevant Inspectors as unnecessary.

#### 5. Costs Case

The above analysis does not consider the very limited number of enforcement appeals, however the Committee will wish to know about the following outcome, relating to a lost planning appeal (APP/X2220/C/18/3204618) in respect of enforcement notice served in relation to development at Hollyoak, Marshborough Road, Marshborough, Sandwich. The Inspector made a full award of costs against the Council in favour of the Appellant and the Marshborough Action Group.

Costs were awarded against the Council on the basis that it behaved unreasonably. The appeal process was extremely lengthy (nearly three years) and involved multiple differing legal opinions being submitted to the Inspector by all parties. The Council was considered to have acted unreasonably in refusing a planning permission for the site and then using that as the basis for an enforcement notice to be served. The Inspector found the enforcement notice itself to be a nullity as she considered the allegation in the notice to have been incorrect (development without planning permission as opposed to breach of a condition). The Council and the MAG submitted that the allegation in the notice was correct or, in the alternative, capable of being corrected by the Inspector to rectify the alleged error. The Inspector refused to correct the enforcement notice as she considered this would cause injustice to the parties.

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