



London Borough of Enfield

Report Title	Review of Appeal Performance 2023/24.
Report to:	Planning Committee.
Date of Meeting:	23 rd April 2024
Directors:	Brett Leahy – Director of Planning & Growth
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Ward(s) affected:	All
Classification:	Part I Public

Purpose of Report

1. To advise members of the performance on appeals against planning decisions during 2023/2024

Recommendations

- I. To Note

Reasons For Preferred Option

2. To assist members in the assessment and determination of planning applications.

Relevance to Council Plans and Strategies

3. The determination of planning applications supports good growth and sustainable development. Depending on the nature of planning applications, the proposals can deliver new housing including affordable housing, new employment opportunities, improved public realm and can also help strengthen communities

Appeal Decisions on Planning Applications

Appeal Performance

4. Between the 1st April 2023 and 31st March 2024, the Service received 4,161 planning applications and made 4,071 decisions of which 2,878 were decisions to grant permission, 967 were decisions to refuse permission and 226 applications were withdrawn. There were 163 appeal decisions on planning applications from the Planning Inspectorate.
5. The table below confirms how many appeals were allowed and how many were dismissed. The figures have also been broken down into appeals against decisions made under delegated authority and those made by Planning Committee. Information on appeals against enforcement notices and non-determination have also been included.
6. Details of appeal decisions can be viewed on the Council's [online planning register](#).
7. Appeal Performance – 2023/2024

Total Appeal Decisions	Dismissed	Allowed	Withdrawn*
163	76 (46%)	43 (26%)	44 (26%)
Delegated Decision			
153	68 (44%)	41 (26%)	41 (26%)
Planning Committee Decision			
3	2 (66%)	1 (33%)	0
Appeals against Non-Determination			
7	6 (85%)	1 (15%)	0
Enforcement			
9	4 (44%)	1 (11%)	4 (44%)

**Withdrawn appeals (Invalid by Planning Inspectorate or withdrawn by the appellant) and have been included to demonstrate the significant proportion this year due to the high turnover of legacy cases.*

Performance Regime

8. The Government recognises the important role planning services play in enabling growth. To ensure efficient and effective planning services, it sets performance thresholds that all Local Planning Authorities (LPAs) are expected achieve for quality of decisions. For appeals, the threshold is:
 - no more than 10% of appeals allowed compared to total number of major and non-major applications decided
9. Where these performance thresholds are not met, the LPA may be 'designated' by the Government. Performance is assessed over a rolling 2-year period.
10. For the quality of decisions, on major planning applications, this has been an area of risk in previous periods due to the fewer number of major planning applications the statistics show the overall figure for planning applications determined in the assessment and the consequential effect of a fewer number of decisions can have on overall performance.
11. The Planning Inspectorate publishes rolling 5 year data on appeal decisions (this includes all types of appeals including enforcement appeals) and can be viewed on the [Planning Inspectorate Casework Database](#).
12. The current position, accounting for 24 months prior to the end of June 2023 and subsequent appeal decisions to the end of March 2024 (the quality statistics have a 9 month time lag to ensure all appeal data is included) is that the Council, based on the information available, determined 86 major planning applications of which 7 were refused. There were 4 appeal decisions and of these, 1 was allowed. This equates to a rolling 2 year figures of 1.1% which is below the 10% threshold for major applications.
13. For non-major applications, accounting for 24 months prior to the end of June 2023 and subsequent appeal decisions to the end of March 2024 (the quality statistics have a 9 month time lag to ensure all appeal data is included), there were a total of 11,782 decisions on non-major planning applications. Based on the information available, there were 446 appeal decisions of which 248 were allowed. This represents 2.1% of the total that were allowed and again this is below the threshold for designation.
14. With reference to the performance of Enfield in a national context, the average number of appeals dismissed is 71%. Of all the valid appeals, 63% were dismissed which is below this average position.
15. The Service has completed a review of appeal decisions to inform how we can improve our appeal performance and gain a better understanding of the grounds where we are not supported on appeal. The initial conclusions indicate the following:
 - when weighing up the planning balance of the development, elements of harm should be clearly identified
 - reasons for refusal focusing on transport and flooding impacts require data-based evidence demonstrating harm, as opposed to pursuing a refusal on the basis that the applicant has failed to demonstrate no harm would result

- reasons for refusal focusing on design and impact on the character of an area (not conservation areas) require a quantification of harm, either in isolation to the site, or the wider but defined surroundings
16. We are looking to improve our performance through the current Wellbeing & Improvement project and its focus to reduce legacy cases (applications over 8 weeks old), placing more emphasis on pre applications and improving determination times. We are working with the Planning Inspectorate to ensure regular training/advice for officers to support their role and the planning balance they must apply when assessing the issues before making a decision.

Appeal Decisions – Committee

17. During 2023/24, there were 3 appeal decisions received following a decision of Planning Committee.

	No. of Appeals	Dismissed	Allowed	Withdrawn	%
Against officer recommendation	2	1	1	0	50%
Agree with officer recommendation	1	1	0	0	100%

18. A summary of these cases is included below

Public House 155 Percival Road Enfield EN1 1QT	Ref: 21/01248/FUL
Committee Date: 22.02.22	
Proposal: Demolition of existing public house (sui-generis) and construction of part 3, part 4, part 5 storey residential building (Class C3) with ground floor public house (Use Class E / Sui-generis) and associated cycle and car parking, refuse storage and external landscaping.	
Officer Recommendation	Approve
Committee Decision	Refuse
Reasons: <ul style="list-style-type: none"> • Design (bulk, scale and appearance) • Inadequate Car Parking / Impact on free flow & safety of traffic 	
Appeal Decision	Allowed
Inspector Comments -	
<p><u>The effect of the development on the character and appearance of the area, including landscape character.</u></p> <ul style="list-style-type: none"> • <i>Designing the building with storeys differing from 3 to 5, would reduce the overall massing of the building and enables the proposal to integrate between the different styles and heights of buildings around the site.</i> 	

- *On Percival Road, the elevations would be lower again so that it would be in scale with the adjoining St Mark's Day Centre and the roofs of the terraced housing along this road.*
- *The proposal is considered by objectors to not be in keeping with the surrounding area. Clearly it is different to both the current building and to those in the vicinity, however, the overall effect of the proposal would ensure that it is not a monolithic design, and it would add to the continued development and history of the area. The construction of housing, as well as the public house in this location, would also introduce a new dynamic as a result of more activity from people living on the site.*
- *Development, whilst being sympathetic to the surrounding built environment and landscape setting, should not prevent or discourage appropriate innovation or change, such as increased densities.*

The effect of the development upon highway network;

- *It is clear from the responses to this application that car parking and the movement of vehicles in this area is a considerable concern.*
- *The site does, however, have good transport links being around 10 minutes' walk from an overground station and close to regular bus routes.*
- *There are no Controlled Parking Zones (CPZ) around the site which could allay the concerns of neighbouring residents. The Council has, however, deemed that as part of the development a contribution should be sought for consideration of a CPZ, including appropriate consultation, design and implementation if deemed suitable for a scheme. This could, if implemented, help to relieve the parking issues and concerns within the area.*
- *Notwithstanding the legitimate concerns of local residents regarding a new housing development within their area, which would add to the parking pressures, the LP seeks to reduce the reliance on cars by providing less car parking within new developments. Having regard to the availability of sustainable modes of transport, the level of parking provision would be acceptable.*
- *The proposal would also provide 48 cycle spaces, which is greater than the 35 that Policy T6.1 of the LP requires in new developments*

272 St Marys Road London N9 8NP	Ref: 22/01739/FUL
Committee Date: 22.11.2022	
Proposal: Conversion of roof space to create self-contained unit involving 1 rear dormer.	
Officer Recommendation	Approve
Committee Decision	Refuse
Reasons: <ul style="list-style-type: none"> • Substandard accommodation 	
Appeal Decision	Dismissed
Inspector Comments -	
<u>Provision of satisfactory living conditions for future occupiers with particular regard to living accommodation, outlook and private amenity space:</u>	

- *There would be limited headroom around the perimeter of the new flat due to the sloping roof. While a person of average height or above would be able to comfortably stand within a central corridor running beneath the ridgeline, some space within the bedroom and the lounge, kitchen and dining room would have restricted head height. This arrangement would reduce the amount of useable space in the main habitable rooms of the new flat. The effect of the sloping roof would also make these rooms feel confining and uninviting to users*
- *The outlook from the dormer would be severely restricted for most adults given the low-level position of the window in relation to the floor level of the room. The overall effect of the poor external outlook from the bedroom would exacerbate the unpleasant conditions for future occupiers primarily caused by the sloping roof.*
- *the proposal would not provide satisfactory living conditions for future occupiers, which weighs very heavily against the development sought. Consequently, the adverse impact of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.*

Church Hall Grove Road London N11 1LX	Ref: 22/02415/FUL
Committee Date: 22.11.2022	
Proposal: Redevelopment of site involving demolition of vacant church hall and construction of a part 5 and part 6 storey residential building to provide 4 maisonettes and 20 apartments with associated external works.	
Officer Recommendation	Approve
Committee Decision	Approve
Reasons: <ul style="list-style-type: none"> • Subject to the finalisation of conditions and a Section 106 Agreement to secure the provision of on-site affordable housing, amongst other matters* <p>*This application was reported to Planning Committee and a quantum was agreed, hence the resolution. Post committee, the applicant tried to reduce the quantum of on-site affordable housing and the Council was not supportive, hence the appeal process.</p>	
Appeal Decision	Non-Determination by LPA - Dismissed
Inspector Comments -	
<u>Provision of on-site affordable housing:</u> <ul style="list-style-type: none"> • <i>The planning application has been presented to the Council's Planning Committee where it was resolved to grant planning permission subject to the finalisation of a Section 106 Agreement. A completed Unilateral Undertaking (UU) Under Section 106 of the Act has been provided during the course of this appeal. However, the Council has raised a number of concerns in relation to the wording of the submitted UU, and the focus of dispute between the main parties relates to the provision of on-site affordable housing.</i> 	

- *A financial contribution in lieu of on-site provision is considered to be the most appropriate option to ensure the effective management of new properties. However, this only relates to developments with less than 10 dwellings and does not therefore apply to the appeal proposal.*
- *The application was supported by an Affordable Housing Statement that identified expressions of interest from 2 Registered Social Landlords (RSLs) who would deliver the affordable housing. However, the UU includes a fallback position where if after a 6 month period there remains an absence of interest from RSLs then an equivalent off-site contribution can be made towards off-site affordable housing as an in lieu contribution.*
- *In support of the fallback, the appellant has submitted evidence with the appeal referring to a lack of meaningful interest from RSLs in providing affordable housing on-site, due to factors including the small number of affordable units and a lack of funding. Without this fallback the appellant considers that the scheme would be unviable and undeliverable.*
- *The Council has expressed concern that the appellant's assessment of interest is not robust.*
- *The Council's Head of Regeneration and Growth has confirmed that officers would be willing to work with the developer in potentially brokering a deal with a registered provider or exploring an acquisition.*
- *It would appear the appellant has not fully explored potential support from the Council in identifying an RSL to deliver affordable housing on-site.*
- *The evidence provided by the appellant in respect of interest from RSLs does not represent a robust justification that affordable housing cannot be provided on-site, or that the circumstances of the proposal are of an exceptional nature.*
- *The adverse impact of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, including with regard to the provision of affordable housing. The proposal would not represent sustainable development and the appeal should therefore be dismissed.*

Financial Implications

19. Costs directly relating to planning appeals can be awarded by the Planning Inspectorate for and against the Council.
20. To provide context, between the 1st April 2022 and 31st March 2023, costs awarded against the Council, including all subsequent financial obligations e.g. legal services, was £574,365. To provide an analysis of these costs, £450,000 (78%) of the total figure was attributed to a single application:

Proposal

Address: Car Park Adjacent to Arnos Grove Station Bowes Road London N11 1AN

Description: Erection of 4No buildings between one to seven storeys above ground level, with some elements at lower ground floor level comprising 162 residential units (Class C3) and flexible use ground floor unit (Class A1/A3/A4) together with areas of public realm, hard and soft landscaping, access and servicing arrangements, plant and associated works.

Application ref. – 20/01049/FUL

Officer Recommendation - approval.

Committee Decision: Refused

Appeal Decision – Allowed & full costs awarded

Reasons for Refusal and other Key Considerations

Planning Committee resolved to refuse permission for 3 reasons:

- loss of station car parking,
- the setting of the Grade II* listed Arnos Grove Station
- the housing mix.

21. The appellant made a cost application on the following grounds: vague, generalised or inaccurate assertions about a proposals impact, which are supported by objective analysis; preventing or delaying development which should clearly be permitted; and failure to substantiate each reason for refusal on appeal.
22. The Council was not able to substantiate its grounds for refusal and did not produce any evidence to substantiate its reasons for refusal. In defending the costs appeal, the Council argued 'key changes in circumstances' hence the withdrawal of reasons for refusal.
23. The Inspector concluded that the decision to refuse the application for decisions that were not substantiated, amounted to unreasonable behaviour, delaying a development that should clearly have been permitted causing the appellant to incur unnecessary expense and awarded full costs.
24. The original claim for costs amounted to £651,261. After negotiation by Council officers, the final agreed amount was £450,000.
25. Between the 1st April 2023 and 31st March 2024, all costs awarded against the Council, including all subsequent financial obligations e.g. legal services, was £151,386.89. To provide an analysis of these costs, the total figure relates to multiple application awards, for which none were Planning Committee Decisions.
26. These costs have been contained within the overall planning budget. We are looking however to further improve our performance on this specific matter and are working with the Planning Inspectorate to ensure fewer decisions result in costs awards against the Council.

Legal Implications

27. Planning appeals can impact on legal resourcing through the need for formal legal representation in appeal public inquiries and sometimes appeal hearings. The Council also sometimes has to engage costs advocates to help negotiate unrealistic costs claims.

Equalities Implications

27. None

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Appendices

None

Background Papers

None