



Purpose: For Noting

Committee report

Committee	ISLE OF WIGHT COUNCIL PLANNING COMMITTEE
Date	13 JUNE 2023
Title	22/23 DECISION REVIEW AND MONITORING AND APPEALS PERFORMANCE REPORT
Report of	STRATEGIC MANAGER FOR PLANNING AND INFRASTRUCTURE DELIVERY

EXECUTIVE SUMMARY

1. The Code of Practice for Members and Officers Dealing with Planning Matters requires a report to the Planning Committee providing an analysis of statistics relating to decisions which depart from policy and decisions which are against officers' recommendation for 2022/23. This paper also reports on the Isle of Wight Council's performance on planning appeals, which are an indicator of the quality of its decisions.
2. Within the reporting period there were no decisions that departed from policy and of the 14 applications considered by the Planning Committee ten were determined in line with the Officer recommendation (or with additional conditions required by the Committee), one was determined against Officer recommendation, two were deferred and one ran out of time at the meeting.
3. 54 appeals were received in 22/23 and the Planning Inspectorate issued 37 decisions in the same period. 34 of the 36 decisions related to the refusal of planning permission by officers under delegated authority, with the remaining two appeals being against decisions made at Planning Committee. The overall percentage of planning appeals (against the refusal of planning permission and listed building consent) allowed was 30.6%. This represents an increase against the previous years' figures, although it is noted that due to the relatively low number of decisions issued, the outcome of a small number of decisions can notably affect the overall average.
4. The national level monitoring statistics show that the quality of the Council's decision-making is of a very good standard for non-major and major development, is above the national average and currently comfortably clear of the thresholds for assessing under-performance.
5. This report is for noting and discussion as appropriate.

BACKGROUND

6. The Review and Monitoring section of the Code of Practice for Members and Officers Dealing with Planning Matters requires a report to the Planning Committee providing an analysis of statistics relating to decisions which depart from policy and decision which are against officers' recommendation for 2022/23. This paper also reports on the Isle of Wight Council's performance on planning appeals, which are an indicator of the quality of its decisions.
7. There is a right of appeal against most local authority decisions on planning permission and other planning decisions, such as advertisement consent, listed building consent, prior approval of permitted development rights, and enforcement.
8. Most appeals are determined by Planning Inspectors on behalf of the Secretary of State. However, the Secretary of State has the power to make the decision on an appeal rather than it being made by a Planning Inspector – this is referred to as a 'recovered appeal'.
9. If an application for planning permission is refused by the local planning authority, or if it is granted with conditions, an appeal can be made to the Secretary of State against the decision, or the conditions, under section 78 of the Town and Country Planning Act 1990.
10. Most planning appeals must be received within six months of the date on the decision notice. Where the appeal relates to an application for householder planning consent and is to be determined via the fast track Householder Appeals Service, there are only 12 weeks to make the appeal (see Annex C of the [Planning Inspectorate Procedural Guide](#)). There are different deadlines by which to submit an appeal under the Commercial Appeals Service:
 - Appeals related to shop fronts must be submitted within 12 weeks
 - Advertisement consent appeals must be submitted within 8 weeks.
11. Monitoring performance at appeal is an important tool in understanding the quality of the local planning authority's decision making.

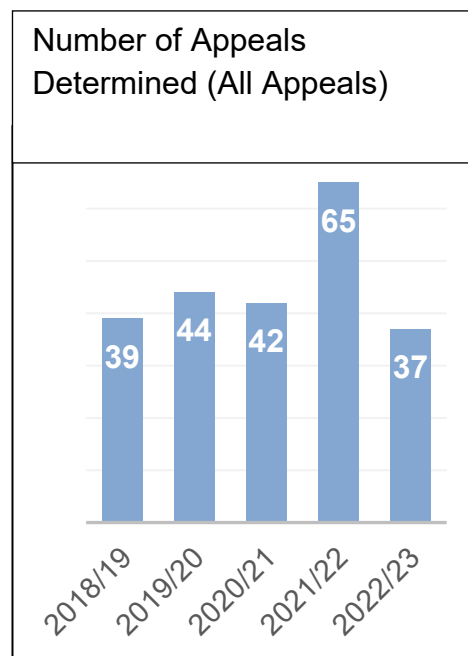
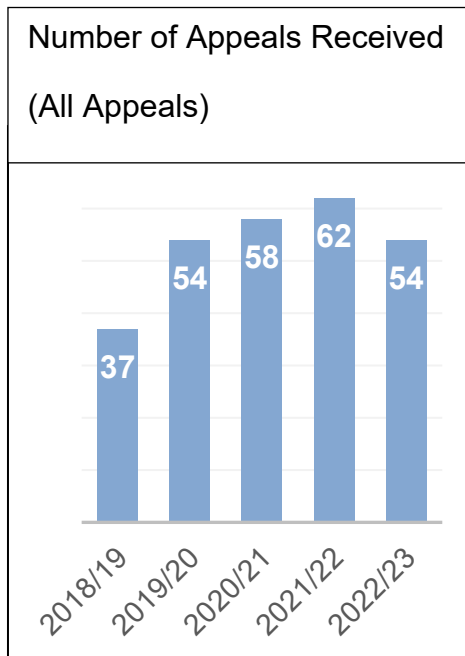
DECISION REVIEW AND MONITORING

12. Within the reporting period there were no decisions that departed from policy.
13. Of the 14 applications considered by the Planning Committee in 2022/23, ten were determined in line with the Officer recommendation (or with additional conditions required by the Committee), one was determined against Officer recommendation, two were deferred and one ran out of time to arrive at a decision in the meeting.

LOCAL LEVEL APPEALS MONITORING

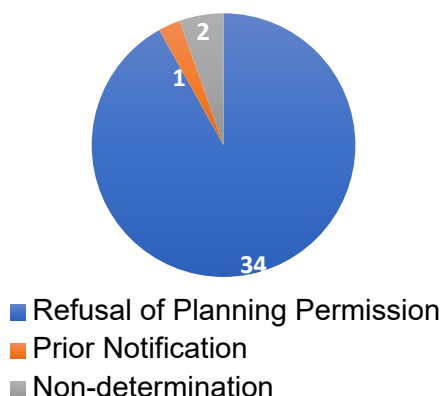
Appeals received and determined

14. During 2022/23 there were 54 appeals received. This is broadly comparable with the previous three years and the annual average since 2018/19 of 53, as seen in the graph below.



15. During 2022/23, 37 appeal decisions were issued by the Planning Inspectorate. This is significantly less than the number of appeal decisions issued in 2021/22 (65) but is broadly comparable to the previous three years prior to 2021/22, in which between 39 and 44 decisions were issued annually.
16. There were significantly fewer decisions issued than there were appeals received during 2022/23, with 54 cases received but only 37 determined. This is a similar situation to 2020/21 (58 received, 42 determined) but during 2021/22, the intervening year, a notably larger number of appeals were determined, and this was comparable to the number of appeals received (62 received, 65 determined).
17. The appeals determined by the Planning Inspectorate in 2022/23 can be broken down as follows:

Breakdown of Appeals Determined in 2022 - 23



Appeal Type	Number and %
Refusal of planning permission	34 (91.9%)
Appeal against prior notification	1 (2.7%)
Appeal against non-determination ¹	2 (5.4%)
Total	37 (100%)

¹ National level monitoring, as referenced in paragraph 30 of this report, sets out that appeals against non-determination should be included within the calculations concerning appeals against a refusal of planning permission.

18. The Planning Inspectorate recognise that they have a backlog of cases and publish monthly statistics on the time taken to issue decisions. Latest statistics published detail, for example, that decisions concerning written representations cases for full appeals issued during February 2023 took an average of 35 weeks to determine² against a target of wholly written representations to be determined within 16-20 weeks. Most appeal decisions issued in 2022/23 relate to refusal of planning permission. Other decisions issued related to appeals against prior-notification (one case) and non-determination (two cases).
19. The three procedures for determining appeals, which are generally based on the scale and complexity of the application involved, are:
 - (i) written representations;
 - (ii) hearing; and
 - (iii) public inquiry
20. There is also a facility for the Planning Inspectorate to implement a hybrid procedure, in which some elements of an appeal are considered under written representations but others, such as that requiring evidence under oath, are determined through a public inquiry. All the appeals determined during 2022/23 followed the written representations procedure.
21. The Planning Inspectorate have reverted to holding hearings and inquiries in person in the first instance (with the ability to join virtually if required), moving away from fully virtual hearings and inquiries which were necessary during Covid-19 restrictions.
22. The fast-track Householder Appeal Service, which falls under the written representations procedure, is intended to simplify and speed up the decision-making process for cases concerning the extension and alteration of existing dwellings. There were a total of 13 householder appeal decisions issued in 2022/23, which is notably lower than 2021/22 during which 28 householder appeal decisions were issued. However, 2021/22 stands out as having an exceptionally high number of householder appeal decisions issued, compared to the years prior, in which eight were issued in 2020/21 and five in 2019/20.
23. The expedited written representations procedure includes appeals against refusal of express consent to display an advertisement and appeals against refusal of planning permission for minor commercial (shop front) development. No such appeals were received or determined in 2022/23.
24. The success rate for each type of appeal, for decisions issued during 2022/23 is shown in the table on the following page.
25. The Council's performance is measured as the percentage of appeals allowed against refusal of planning permission or listed building consent (i.e. excluding enforcement, advert, lawful development certificate, prior approvals etc). The industry recognised threshold, indicating good performance, is a maximum of 30 per cent of such appeals allowed. There is, however, no implication to the local planning authority if this figure is exceeded.

² Measured from confirmation of a valid appeal to issuing of decision.

26. In 2022/23 there were 36 decisions issued relating to appeals against the refusal of planning permission (including householder appeals) and listed building consent. Of these, eleven were allowed, which equates to 30.6 per cent. This is above the threshold of 30 per cent but only minimally so. When taking into account the relatively low number of decisions issued, the outcome of one or two cases can notably affect the overall average.

	A	B	C	D	E
	Refusal of Planning Permission (Householder Appeals only)	Refusal of Planning Permission (excluding Householder Appeals) ³	Refusal of Planning Permission (A+B)	Appeals against Prior Notification	Total (C+D)
Total Number	13	23	36	1	37
Number (and % Dismissed)	8 (61.5%)	17 (73.9%)	25 (69.4%)	0 (0%)	25 (67.6%)
Number (and % Allowed)	5 (38.5%)	6 (26.1%)	11 (30.6%)	1 (100%)	12 (32.4%)

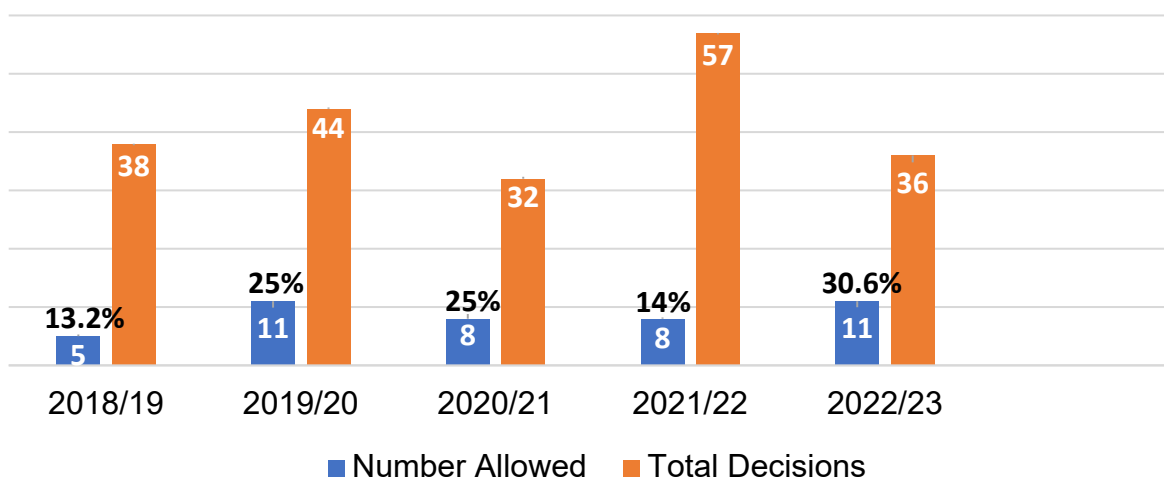
27. The majority (34 of 36) of the appeal decisions relating to the refusal of planning permission issued during 2022/23 concerned applications determined under the delegated procedure. The two remaining decisions issued related to the refusal of permission by the planning committee⁴. In both cases, the applications were recommended for approval but refused contrary to officer recommendation. In both cases, the appeals went on to be allowed, equating to 18.1 per cent (two of 11) of the total allowed appeal cases.
28. The number and percentage of appeals against the refusal of planning permission and listed building consent which were allowed over the past five years are detailed in the following graph.

³ (including appeals against non-determination)

⁴ 20/02026/FUL – Land Adjacent Greenacres, 211 Baring Road, Cowes, PO31 8ER – Proposed 6 detached dwellings, formation of vehicular access, parking and landscaping.

19/00677/OUT – Adjacent 403 Newport Road, Cowes, PO31 8PP – Proposed outline permission for a residential development of 4no. two storey detached dwellings with shared highway access on land to the West of Newport Road.

Performance - Number and Percentage of Appeals Allowed



Enforcement Appeals

29. There were no Enforcement Appeal decisions issued during 2022/23.

Costs

30. There was one application for costs made against the Council during 2022/23⁵. The application was refused.

Conclusions

31. The number of appeals received during 2022/23 was lower than the previous year (54 in total compared to 62 the previous year) but was in line with the five-year average of 53. The number of decisions (37) was significantly lower than the previous year (in which 65 decisions were issued) but was comparable to the three years prior to that, during which between 39 and 44 decisions were issued annually. The total number of decisions issued during 2022/23 (37) was notably less than the number of appeals received (54) which suggests that there is currently a backlog of cases at the Planning Inspectorate.
32. There were fewer householder appeal decisions issued during 2022/23 than the previous year (13 compared to 28). As there were fewer appeal decisions issued, the proportion of appeals against the refusal of planning permission which followed the householder appeal process was 36.1 per cent (13 out of 36).
33. The overall percentage of planning appeals which were allowed during 2022/23 (against the refusal of planning permission and listed building consent – those upon which the LPA's performance is monitored) was 11/36 which equates to 30.6 per cent. This percentage is notably higher than the previous year in which eight out of 57 cases were allowed, equating to 14 per cent.
34. However, during the two years prior to 2021/22, 25 per cent of appeals against refusals of planning permission and listed building consent were allowed. Overall, the percentage of appeals against the refusal of planning permission and listed building consent which were allowed during 2022/23 was slightly over the 30 per cent indicative threshold. However, in the context of a relatively modest number of

⁵ 21/01376/RVC – 1 Thornton Close, Ryde – Removal of occupancy condition to allow building to be occupied as independent residential accommodation

appeal decisions issued, one or two allowed cases can notably affect the overall percentage.

35. There were no appeals against Enforcement Notices determined in 2021/22 and there was one application for costs made against or by the Council which was refused.

NATIONAL LEVEL APPEAL MONITORING

36. The performance of local planning authorities in determining major and non-major development is assessed by the Government on two measures: speed and quality. Further information on the criteria can be found at [Improving planning performance: Criteria for designation \(updated 2022\) \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/107222/improving_planning_performance_criteria_for_designation_updated_2022.pdf)
37. The quality of decision making is measured by the proportion of major and non-major decisions on applications that are subsequently overturned at appeal. This is measured quarterly over a rolling two-year period. The threshold for designation on applications for both major and non-major development, above which a local planning authority is eligible for designation, is 10 per cent of an authority's total number of decisions on applications made during the assessment period being overturned at appeal. Should a local planning authority fall below the expected thresholds on either measure they can be designated as 'under-performing', then applicants would be able to submit planning applications direct to the Planning Inspectorate.
38. The current two-year period covers the 24 months to the end of June 2021 (published 21 July 2022), set out in [Live tables on planning application statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/live-tables-on-planning-application-statistics)
39. In the reporting period the council determined 57 major applications, none of which were appealed. As none of the council's decisions on major application were overturned, this represents an improvement from the previous reporting period, in which 1.8 per cent of the council's major decisions were overturned. It is also below the national average of 2.2 per cent of decisions on major applications overturned.
40. There were no 'county matters' (those relating to minerals and waste, as defined by Schedule 1 of the Town and Country Planning Act 1990 and: Town and Country Planning (Prescription of County Matters) (England) Regulations 2003) applications or appeals in the reporting period.
41. For non-major applications there were 2,098 decisions in the two-year period and of these 81 were appealed. Of these 81 appeals, 19 of the council's decisions were overturned. The percentage of decisions overturned at appeal is therefore 0.9 per cent. This is below the national average of 1 per cent.
42. The council's performance at appeal is comfortably below the Government's 10 per cent designation threshold for the quality of decisions on both major and non-major applications.

EVALUATION

43. In measuring appeals performance, the percentage of appeals against the refusal of planning permission and listed building consent was 30.6 per cent which is higher than the previous three years. However, when taking account of the relatively low number of appeal decisions issued, this does not equate to a disproportionately high number of allowed appeals, with 11 such decisions issued. This is consistent with the previous three years, in which between eight and 11 appeals against the refusal of planning permission were allowed each year.
44. Furthermore, if discounting the two cases which related to applications which were refused by the planning committee, the percentage of allowed cases would be reduced to 26.5 per cent (nine cases). Of the remaining nine cases which were allowed, there are some notable and consistent themes in the issues and size of the proposals.
45. Seven of the nine cases were for relatively minor alterations and extensions to single existing residential dwellings, and five out of those seven cases followed the householder appeal process. Proposals included relatively minor works such as roof gardens and balconies, a first-floor extension, a garden shed and vehicular access, replacement windows and, in one case, the use of an outbuilding as an independent dwelling. The remaining two allowed cases concerned small scale infill development of one or two residential dwellings.
46. In all of the allowed appeals, it is considered that the issues concerned related to the more subjective matters of the effect on the character and appearance of the area; and / or the living conditions of occupiers and neighbouring occupiers. There was only one instance of the planning inspectorate disagreeing on a more technical matter (highway safety).
47. It is notable from the themes within the allowed appeals that the local planning authority is more stringent and critical on matters relating to both design / impact on the character and appearance and living conditions (of existing and new residents) than the Planning Inspectorate. This approach is very much considered to be the right one and it is not proposed that officers change the approach of setting the bar high on these matters, with a view to achieving the best possible planning outcomes for the island.
48. This position, however, will be kept under continual review, should the LPA's appeal performance worsen and increase the potential for meeting the thresholds for being assessed as under-performing under section 62B of the Town and Country Planning Act 1990.
49. There will be a further session for officers and members of the Planning Committee with more detailed analysis of specific appeals to allow for any learning outcomes to shape the future decision-making of the LPA.
50. The statistics set out in this report show that the quality of the Council's decision-making is of a very good standard for non-major and major development, is above the national average and comfortably clear of the thresholds for assessing under-performance under section 62B of the Town and Country Planning Act 1990.

51. Benchmarking the Council's performance, it is slightly better than the national averages for the two measures. The Council's performance on the quality of its decisions remains well clear of the national threshold of 10 per cent for under-performing.
52. It is considered that in the light of these statistics there should be a great level of confidence in the quality of the decision-making of the local planning authority.

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