

Committee Report

ISLE OF WIGHT COUNCIL

Meeting	PLANNING COMMITTEE
Date	16 APRIL 2024
Title	2023/24 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 2023/24. 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 was one decision that departed from policy, and of the 13 applications considered by the Planning Committee 12 were determined in line with the Officer recommendation (or with additional conditions required by the Committee) and one was determined against Officer recommendation.
3. A total of 49 appeals were received in 2023/24 and the Planning Inspectorate issued 58 decisions in the same period. Of the 58 decisions, 57 related to the refusal of planning permission by officers under delegated authority, with one appeal being against a decision made at Planning Committee in line with officer recommendation. The overall percentage of planning appeals (against the refusal of planning permission and listed building consent) allowed was 34.9 per cent. 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. There were 24 allowed appeals in 2023/24, which represents 41.4 per cent of the 58 decisions issued by the Planning Inspectorate. This percentage is significantly higher than the performance of previous years but can be explained by a reasonably high number of finely balanced decisions where the character and appearance of a development in relation to the local area and the impact on the

living conditions of neighbouring occupiers were key considerations and the Inspectors simply took a different view to the LPA.

5. There were also 8 successful appeals relating to the refusal of prior approval on one site, which has significantly impacted the final totals and percentages.
6. Notwithstanding this, benchmarking the Council's performance it is noticeably better than the national average for quality of decisions for major applications and the same as the national average for non-majors. Therefore, the Council's performance on the quality of its decisions remains well clear of the national threshold of 10 per cent for under-performing.
7. This report is for noting and discussion as appropriate.

Background

8. 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 2023/24. 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.
9. 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.
10. 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'.
11. 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.
12. 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.
13. Monitoring performance at appeal is an important tool in understanding the quality of the local planning authority's decision making.

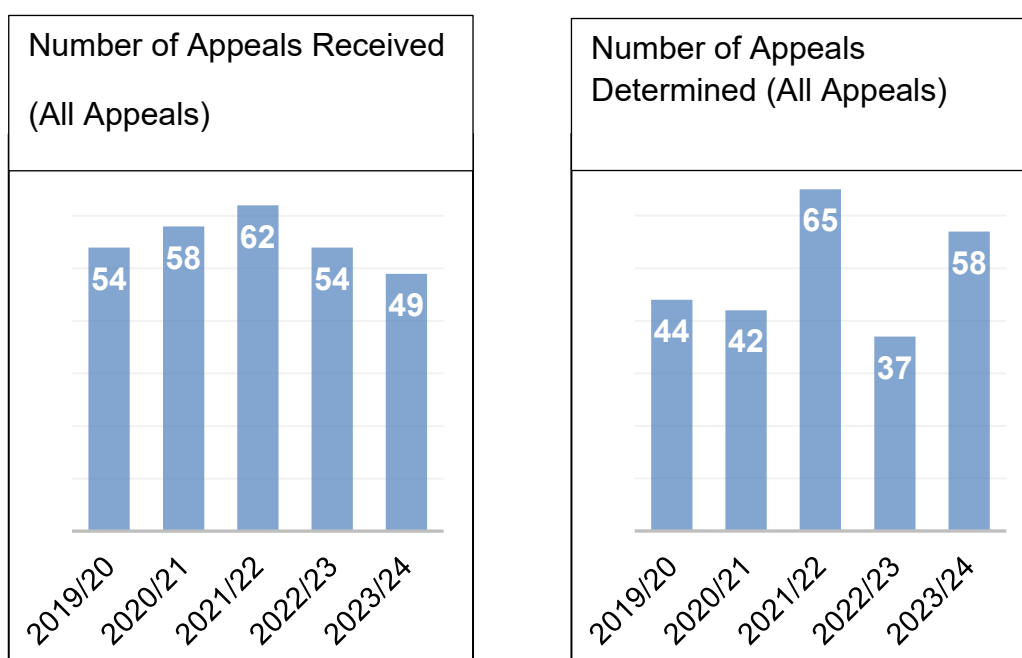
Decision Review and Monitoring

14. Within the reporting period there was one decision that departed from policy and of the 13 applications considered by the Planning Committee twelve were determined in line with the Officer recommendation (or with additional conditions required by the Committee) and one was determined against Officer recommendation.

Local Level Monitoring

Appeals received and determined

15. During 2023/24 there were 49 appeals lodged. This is slightly below the numbers received in the previous four years, as seen in the graph below.

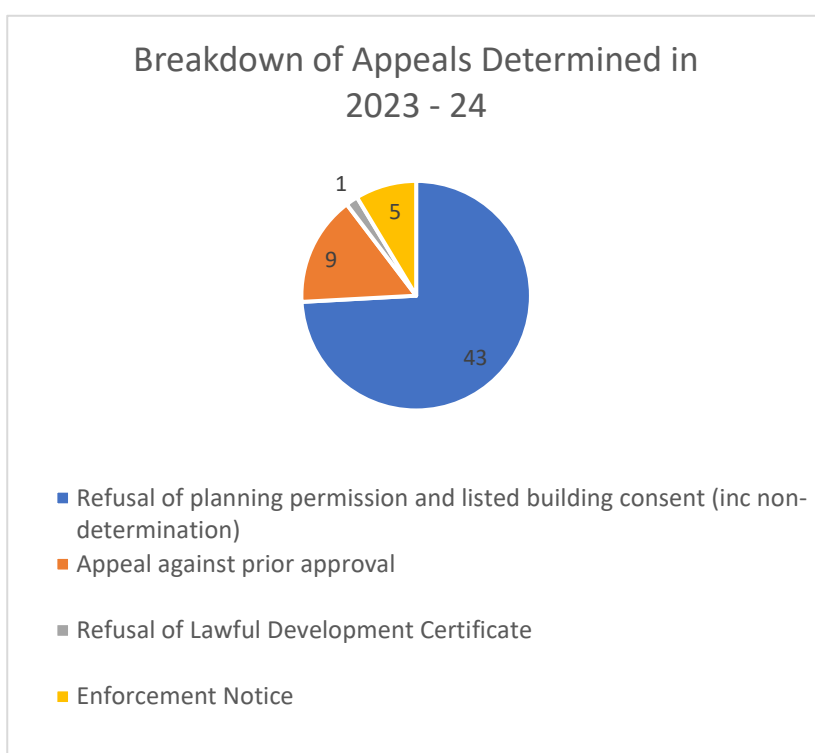


16. During 2023/24, 58 appeal decisions were issued by the Planning Inspectorate. This is notably higher than 2022/23 (37) but less than the number of appeal decisions issued in 2021/22 (65). However, 2021/22 stands out as having an unusually high number of appeal decisions issued, with an average of 49 decisions issued annually over a five-year period.
17. There were slightly more appeal decisions issued than cases received during 2023/24, with 49 cases received and 58 determined. This suggests that the delay in the Planning Inspectorate determining cases that was present throughout and after the pandemic may be reducing. However, the Inspectorate's monthly statistics on the time taken to issue decisions indicate that written representations cases issued during January 2024 (the latest available figures) took an average of 34 weeks to determine¹ for full appeals and 21 weeks for cases following the householder

¹ Measured from confirmation of a valid appeal to issuing of decision.

appeal process. This is comparable with the same time last year (February 2023), in which cases took 35 weeks and 21 weeks to determine respectively.

18. The appeals determined in 2023/24 are broken down on the following graph and table.
19. The majority of appeal decisions issued in 2023/24 relate to refusal of planning permission (including appeals against non-determination) and listed building consent. Whilst there was an unusually high number of appeal decisions issued relating to appeals against the refusal of prior-approval (nine cases), the majority of these (eight out of nine) related to separate telecommunications infrastructure at the same site². Other decisions issued related to appeals against Enforcement Notices (five cases) and one appeal against the refusal of an application for a Lawful Development Certificate.



Appeal Type	Number and %
Refusal of planning permission and listed building consent (inc non-determination)	43 (74.1%)
Appeal against prior approval	9 (15.5%)
Refusal of Lawful Development Certificate	1 (1.7%)
Enforcement Notice	5 (8.6%)
Total	58 (100%)

20. The three procedures for determining appeals are:
 - (i) written representations;
 - (ii) hearing; and
 - (iii) public inquiry
21. 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 of the appeals determined during 2023/24 followed the written representations procedure.

² Thorness Bay Holiday Park, Cowes

22. There were no decisions relating to appeals determined via hearing and public inquiry in 2023/24.
23. The fast-track Householder Appeal Service, which falls under the written representation procedure, is intended to simplify and speed up the decision-making process for cases concerning the extension and alteration of existing dwellings. There was a total of nine householder appeal decisions issued in 2023/24, which is lower than 2022/23 (13) and notably lower than 2021/22 (28). However, 2021/22 stands out as having an exceptionally high number of householder appeal decisions issued, compared to a five-year average (from 2019-24) of 12.6 decisions issued annually.
24. The expedited written representation 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 2023/24.
25. The success rate for each type of appeal, for decisions issued during 2023/24 is shown on the following page.
26. The Council's performance is measured as the percentage of appeals allowed against refusal of planning permission (including non-determination of applications) and listed building consent. Other appeals such as those relating to enforcement notices, advert consent, lawful development certificate, prior notification etc are excluded from this performance figure.
27. In 2023/24 there were 43 decisions issued relating to appeals against the refusal of planning permission (including householder and non-determination appeals) and listed building consent (see column C of the table above). Of these, 15 were allowed, which equates to 34.9 per cent.

	A	B	C	D	E	F	G
	Refusal of Planning Permission (Householder Appeals only)	Refusal of Planning Permission (excluding)	Refusal of Planning Permission (A+B)	Appeals against Prior Notification	Appeals Against an Enforcement Notice	Refusal of Lawful Development	Total (C+D+E+F)
Total Number	9	34	43	9	5	1	58
Number (and %) <u>Dismissed</u>⁴	4 (44.5%)	24 (70.6%)	28 (65.1%)	1 (11.1%)	4 (80%)	1 (100%)	34 (58.6%)
Number (and %) <u>Allowed</u>	5 (55.6%)	10 (29.4%)	15 (34.9%)	8 (89.9%)	1 (20%)	0 (0%)	24 (41.4%)

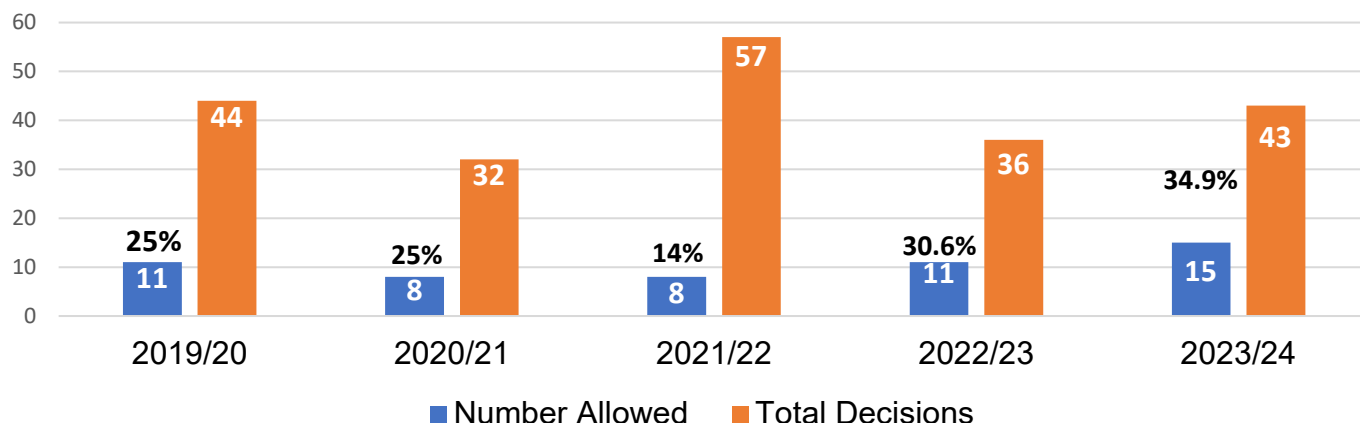
³ (including appeals against non-determination)

⁴ Figures include 1 split decision which, in line with National criteria detailed in paragraph 32, is treated as if the local planning authority's decision has not been overturned

28. It is notable that five of the allowed appeals relate to cases following the householder process, in which 55.6 per cent of cases (five out of nine) were allowed. In previous years, there has been the luxury of ‘testing’ some refusals at appeal due to the Council’s figures being well above the Government targets (and accompanying sanctions). However, the Council’s performance over the last two years (30.6 per cent in 2022/23 and 34.9 per cent in 2023/24) will start to impact on its figures over the Government’s two-year reporting cycle. The consequences of this approach need to be considered going forward as it is clear that when taking into account the relatively low number of decisions issued, the outcome of a small number of cases relating to development of a relatively minor nature can notably affect the overall average and increase the risk of Government sanctions.
29. Officers have reviewed the allowed appeals for common themes and found that the majority (13 out of 15) concern small developments of a single dwelling, householder extensions and alterations and minor alterations to commercial properties. A common theme (10 out of 15) within the allowed appeals is the issue of character and appearance of a development in relation to the local area and/or host property. The impact on the living conditions of neighbouring occupiers was also a main issue for four of the allowed appeals.
30. The character and appearance of new development, along with the impacts on neighbours are highly important considerations due to the impacts on an area and the existing residents. These matters are, however, also subjective and officers have consistently applied a higher bar than the Planning Inspectorate have. In light of the national thresholds and sanctions, the LPA will need to factor the appeal performance position into its decision-making for such applications in 24/25.
31. There were also nine appeals against decisions relating to Prior Notifications, of which eight were overturned. All eight were for electronic communication infrastructure (metal poles of six to eight metres high for Wi-Fi provision) at a holiday camp located within the National Landscape (formerly the AONB) and the Heritage Coast. The Inspector considered that the potential harm identified would be outweighed by the need for the installations to be sited as proposed, taking into account that no suitable alternatives existed.
32. The majority (97.7 per cent) of the appeal decisions relating to the refusal of planning permission and listed building consent issued during 2023/24 concerned applications determined under the delegated procedure (or applications which were not determined and appealed against non-determination). The one remaining decision issued related to the refusal of permission by the planning committee⁵ which was refused in line with the officer recommendation.
33. The number and percentage of appeals against the refusal of planning permission (including appeals against non-determination) and listed building consent which were allowed over the past five years are detailed in the graph below.

⁵ P/00670/18 – Guildford Park, Guildford Road, St Helens, PO33 1UH – Outline for proposed construction of 57 dwellings. This appeal was received in April 2020 but held in a prolonged period of abeyance whilst the Courts considered whether or not Guildford Road was a ‘road’ for the purposes of the Road Traffic Regulation Act 1984 (RTA).

Performance - Number and Percentage of Appeals Allowed
(refusal of planning permission, listed building & conservation area consent)



Enforcement Appeals

34. There were five Enforcement Appeal decisions issued during 2023/24, relating to three separate sites. Enforcement decisions are reported as ‘upheld’, ‘varied’ or ‘quashed’, which equates to ‘dismissed’, ‘part-allowed’ and ‘allowed’ respectively. There were two allowed cases (relating to the same site), two part-allowed cases (relating to the same site) and one allowed case. Details of the individual cases can be provided if required.

Costs

35. There were no applications for costs made against or by the Council during 2023/24.

Conclusions

36. The number of appeals received during 2023/24 was lower than the previous two years (49 in total compared to 54 in 2022/23 and 62 in 2021/22) but was slightly below the five-year average of 55.4 annually. The number of decisions issued (58) was notably higher than the previous year (37) but lower than the year prior to that in which 65 decisions were issued. The total number of decisions issued during 2023/24 (58) was slightly above the 5-year average (from 2019-24) of 49 decisions issued annually.
37. There were fewer householder appeal decisions issued during 2023/24 than in the previous two years (nine compared to 13 in 2022/23 and 28 in 2021/22). As a proportion of all appeal decisions issued, householder cases fell from 13 out of 37 decisions issued in 2022/23 (36.1 per cent) to nine out of 58 decisions issued in 2023/24 (15.8 per cent).
38. The overall percentage of planning appeals that were allowed during 2023/24 (against the refusal and non-determination of applications for planning permission and listed building consent – those upon which the LPA’s performance is

monitored) was 15 out of 43 (which equates to 34.9 per cent). This percentage is higher than the previous year (2022/23), in which 30.6 per cent of such cases were allowed. In the three years prior to 2022/23 the percentage of appeals against refusal and non-determination of planning permission and listed building consent was significantly lower, ranging from 14 per cent to 25 per cent. It is clear that in the context of a relatively modest number of appeal decisions issued, one or two allowed cases can notably affect the overall percentage.

39. There were five appeals against Enforcement Notices determined in 2023/24 with the notices being upheld or varied in four out of the cases.

National Level Monitoring

40. 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/102444/improving_planning_performance_criteria_for_designation_updated_2022.pdf).
41. 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.
42. The current two-year period covers the 24 months to the end of March 2023, 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).
43. In the reporting period the council determined 61 major applications, three of which were appealed and of these only one was overturned at appeal. This equates to 1.6 per cent of the council's major decisions in the reporting period being overturned. Whilst this represents an increase on the previous year (where there were no decisions overturned), it is still well below the national average of 2.4 per cent.
44. There were two '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. Neither of these were overturned at appeal.
45. For non-major applications in the reporting period of 24 months to end of September 2022, the council issued 2,098 decisions and of these 70 were appealed. Of these 70 appeals, 20 of the council's decisions were overturned. The percentage of decisions overturned at appeal is therefore 1 per cent, which is exactly the same as the national average of 1 per cent.
46. 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

47. The 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 comfortably clear of the thresholds for assessing under-performance under section 62B of the Town and Country Planning Act 1990.
48. Benchmarking the Council's performance, it is noticeably better than the national average for quality of decisions for major applications and the same as the national average for non-majors. Therefore, the Council's performance on the quality of its decisions remains well clear of the national threshold of 10 per cent for under-performing.
49. 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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