



Purpose: For Noting / Discussion

# Committee report

Committee	<b>ISLE OF WIGHT COUNCIL PLANNING COMMITTEE</b>
Date	<b>21 JUNE 2021</b>
Title	<b>2020/21 APPEALS PERFORMANCE REPORT</b>
Report of	Strategic Manager for Planning & Infrastructure Delivery

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## EXECUTIVE SUMMARY

1. The Isle of Wight Council's performance on planning appeals is an indicator of the quality of its decisions. This report provides information collected by Planning Services for the period 20/21 and also the Government's figures over a rolling two-year period (currently October 2017 to September 2019), which was published 20 May 2021.
2. The statistics show that the council performs strongly at appeals and is well below the national thresholds for any Government intervention.
3. This report is for noting and discussion.

## BACKGROUND

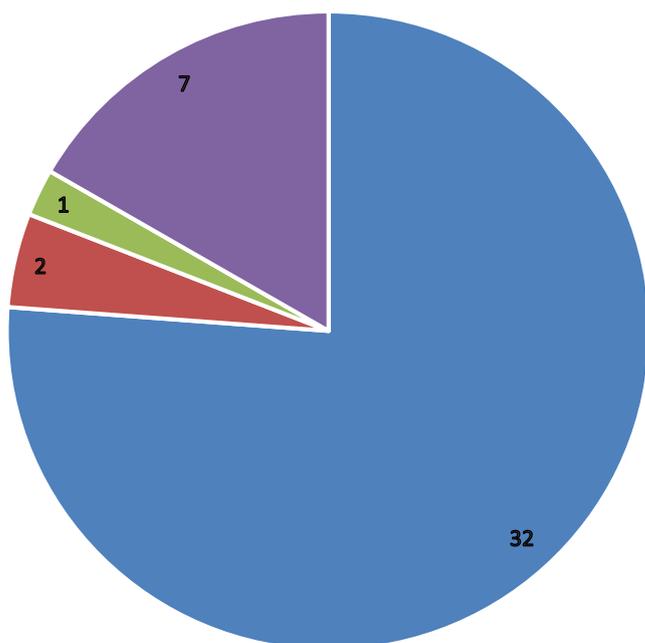
4. There is a right of appeal against most local authority decisions on planning permission and other planning decisions, such as advertisement consent, listed building consent, prior approval of permitted development rights, and enforcement.
5. Most appeals are determined by Planning Inspectors on behalf 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'.
6. 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](#).

7. Most planning appeals must be received within 6 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.
8. Monitoring performance at appeal is an important tool in understanding the quality of the local planning authority's decision making.

### LOCAL LEVEL MONITORING

#### Appeals received and determined

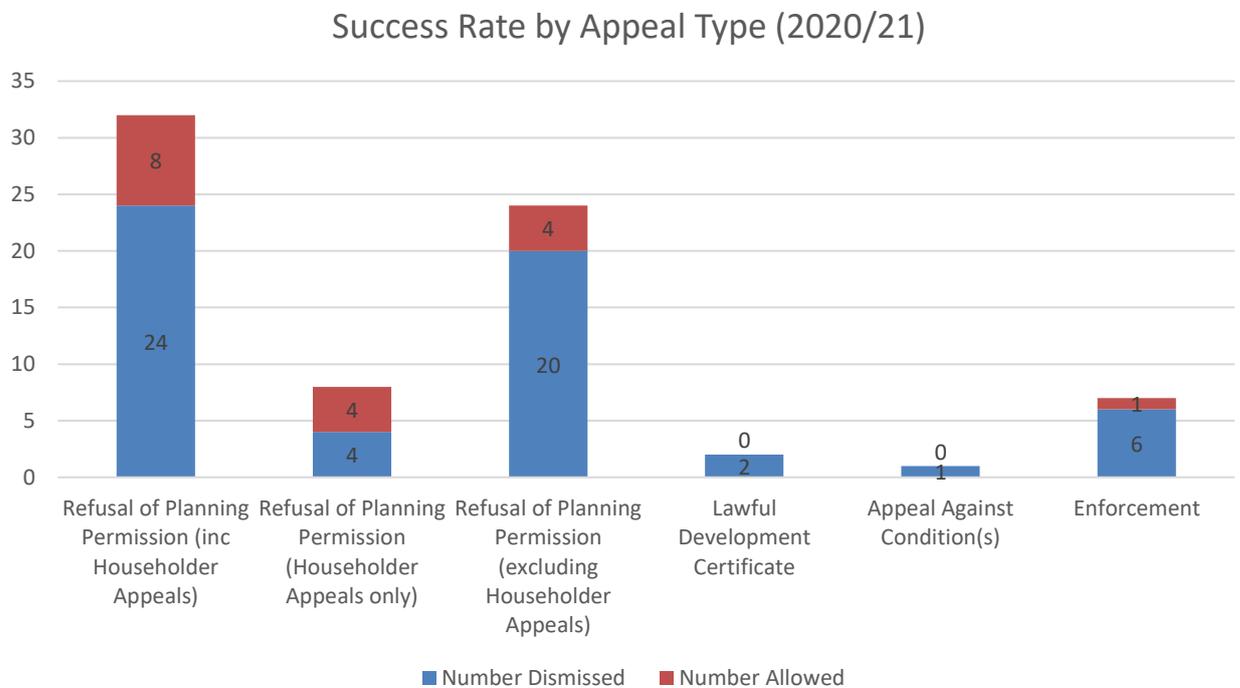
9. During 2020/21 there were 58 appeals lodged. This is slightly higher than in recent years, in which there was an average of 48 appeals lodged over a five-year period. In the same period 42 appeal decisions were issued by the Planning Inspectorate.
10. Although the number of appeals received in 2020/21 was relatively high, there were notably fewer appeals determined than received. This is likely to be attributed to delays in the Planning Inspectorate being able to process appeals as a result of the pandemic and the consequent backlog of new cases. Inspector's site visits could not take place for part of the year and hearings and inquiries were delayed until processes were put in place for these events to be carried out virtually.
11. The appeals determined in 20/21 can be broken down as follows



Appeal Type	Number and %
Refusal of planning permission	32 (76.2%)
Appeal against a condition	1 (2.4%)
Lawful development certificate	2 (4.8%)
Enforcement Notice	7 (16.7%)

■ Refusal of planning permission ■ LDC ■ Conditions ■ Enforcement

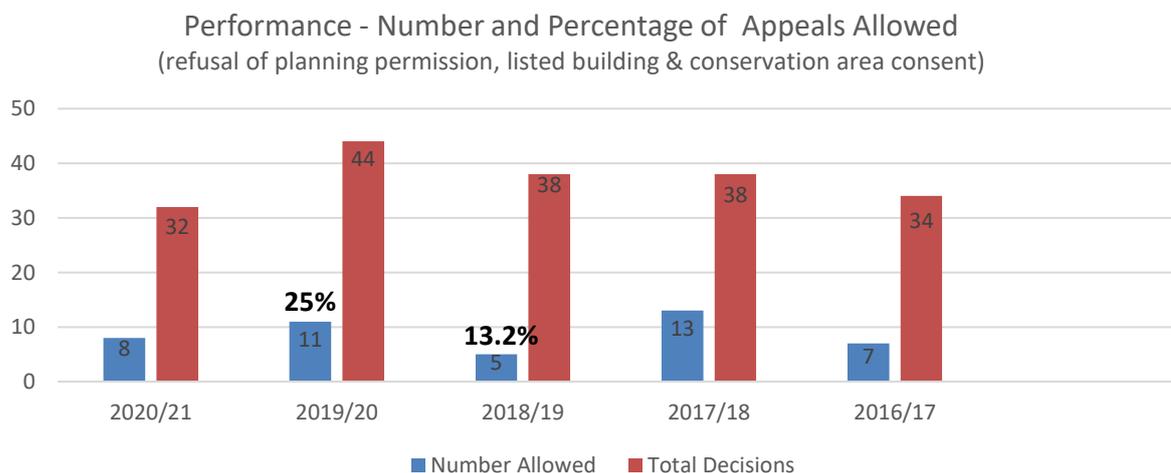
12. The three procedures for determining appeals are:
- (i) written representations;
  - (ii) hearing; and
  - (iii) public inquiry
13. The Planning Inspectorate can also implement a hybrid procedure, in which some elements of an appeal are considered under written representations but others, such as that requiring evidence under oath, are determined through a public inquiry. All appeals determined during 2020/21 followed the written representations procedure which is consistent with the past few years<sup>1</sup> and also a result of the pandemic, in which hearing and inquiry appeals were delayed until procedures were put in place for virtual events.
14. The fast track Householder Appeal Service, which falls under the written representations procedure, was introduced in April 2009 to simplify and speed up the decision-making process for cases concerning the extension and alteration of existing dwellings. There were a total of eight householder appeal service decisions issued during 2020/21. The Planning Inspectorate extended the expedited written representations procedure to (i) appeals against refusal of express consent to display an advertisement and (ii) appeals against refusal of planning permission for minor commercial (shop front) development in October 2013, although no such appeals were received or determined in 2020/21.
15. The success rate for each type of appeal, for decisions issued during 2020/21 is shown in the following graph.



<sup>1</sup> The latest appeal decision relating to a hearing / inquiry was issued in 2017/18.

	Refusal of Planning Permission (including Householder Appeals)	Refusal of Planning Permission (Householder Appeals only)	Refusal of Planning Permission (excluding Householder Appeals)	Lawful Development Certificate	Appeals against condition(s)	Appeals against Enforcement Notice
<b>Total Number</b>	32	8	24	2	1	7
<b>Number and % Dismissed</b>	24 (75%)	4 (50%)	20 (83.3%)	2 (100%)	1 (100%)	6 (85.7%)
<b>Number and % Allowed</b>	8 (25%)	4 (50%)	4 (16.7%)	0 (0%)	0 (0%)	1 (14.3%)

16. The council's performance is measured as the percentage of appeals allowed against refusal of planning permission, listed building consent and conservation area consent (i.e. excluding enforcement, advert, appeals against conditions<sup>2</sup>, non-determination, lawful development certificate etc). The target, indicating good performance, is a maximum of 30% of such appeals allowed.
17. In 2020/21 there were 32 decisions issued relating to appeals against the refusal of planning permission, listed building consent and conservation area consent. Of these, 8 were allowed, which equates to **25%**. The number and percentage of such appeals which were allowed over the past five years are detailed below.



<sup>2</sup> Performance figures exclude direct appeals against condition(s) following conditional planning approval but include appeals arising from a refused application to vary condition(s).

18. It is worth highlighting that all appeal decisions issued during 2020/21 concerned applications determined under the delegated procedure. There were no appeal decisions issued which related to decisions made at planning committee.

### Enforcement Appeals

19. There were seven Enforcement Appeal decisions issued during 2020/21, relating to four separate sites. Enforcement appeal decisions are reported as 'upheld', 'varied' or 'quashed', which equates to 'dismissed', 'part-allowed' and 'allowed' respectively. Of the seven decisions issued, in three cases the notices were upheld without variation, in two cases the notice was upheld with a variation and in one case the notice was quashed. It should be noted that the variation to two of the enforcement notices related solely to a six-month extension to the compliance period as a result of the pandemic. As such, six out of the seven enforcement appeal decisions (85.7%) issued fully upheld the requirements of the notices. Details of the individual cases can be provided if required.

### Costs

20. There were three costs decisions relating to planning and enforcement appeals issued during 2020/21. All concerned costs applications made by appellants against the council. Two claims for costs were refused, however in one case costs were awarded against the council.
21. The costs award related to an enforcement notice that had been served in relation to land at Whitefield Woods, Brading Road, Ryde. The case related to the use of land for residential purposes, without planning permission. The council served an enforcement notice due to a lack of evidence that the residential use was lawful due to the passage of time.
22. The landowner appealed the enforcement notice, but three weeks prior to that, the landowner's solicitor provided information to show that the residential use had become lawful and requested withdrawal of the notice. The council agreed but advised that a lawful development should be applied for first. This resulted in three-week delay and in that time, the landowner submitted the appeal. The Planning Inspector considered this three-week delay to be unreasonable behaviour and therefore awarded costs against the council. The landowner's costs were £7,238.40.

### Conclusions

23. The number of appeals received during 2020/21 was slightly higher than in previous years (58 in total, compared with a five-year average of 48). The number of decisions issued, however, was comparatively less than the number of appeals received, at 42. The current backlog of cases with the Planning Inspectorate is likely to be linked to difficulties in processing appeals during the pandemic.
24. The overall percentage of planning appeals which were allowed during 2020/21 (against the refusal of planning permission and listed building consent – those upon which the LPA's performance is monitored) was 8/32 which equates to 25%. This is consistent with the percentage allowed in the previous year, 2019/20 (in which 11/44 such appeals were allowed) and remains within the target maximum of 30% allowed.

25. Performance in relation to appeals against Enforcement Notices was strong, with 85.7% of this type of appeal being upheld without any variation or with a minor variation relating to an extension of the compliance period due to the pandemic.
26. There were three applications for costs made against the Council in 2020/21, one of which was awarded.

### NATIONAL LEVEL MONITORING

27. 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 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/improving-planning-performance-criteria-for-designation).
28. 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. Should a local planning authority fall below the expected thresholds on either measure they can be designated as 'under-performing', then applicants will be able to submit planning applications direct to the Planning Inspectorate.
29. The current 2-year period covers October 2017 to September 2019 and was published 20 May 2021 and are set out in [Table P152: district and 'county matters' planning authorities performance - quality of major development decisions](#) and [Table P154: district planning authorities performance - quality of non-major decisions](#).
30. In the reporting period the council determined 65 major applications and of these four were appealed. Two of the council's decisions were overturned, which equates to 3.1% of the council's major decisions. This is slightly above the national average, which was 2.1%. This places the council at 271 out of 343 local planning authorities on this measure.
31. 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.
32. For non-major applications there were 2,119 decisions in the two-year period and of these 70 were appealed. Of these 70 appeals, 14 of the council's decisions were overturned. The percentage of decisions overturned at appeal is therefore 0.7%. This is below the national average of 1.1% and ranks the council at 112 out of 343 local planning authorities.
33. The council's performance at appeal is comfortably below the Government's 10% designation threshold for the quality of decisions on both major and non-major applications.

### EVALUATION

34. The statistics show that the quality of the council's decision-making is of a very good standard for non-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.

35. Whilst the performance in relation to major applications is 1% above the national average, it is still well clear of the national threshold of 10% for under-performing. Further analysis of the overturned appeal decisions could be undertaken if required

**RECOMMENDATION**

36. That the content of this paper is noted and discussed by the Planning Committee as appropriate.

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