



Committee report

Committee	PLANNING COMMITTEE
Date	26 APRIL 2022
Title	2021/22 APPEALS PERFORMANCE REPORT
Report of	STRATEGIC MANAGER FOR PLANNING & INFRASTRUCTURE DELIVERY

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 21/22 and also the Government's figures over a rolling two-year period (currently October 2018 to September 2020).
2. The statistics show that the council performs well at appeals (at on or better than the national averages for the measures) and is well below the national thresholds for any Government intervention.
3. This report is for noting and discussion as appropriate.

BACKGROUND

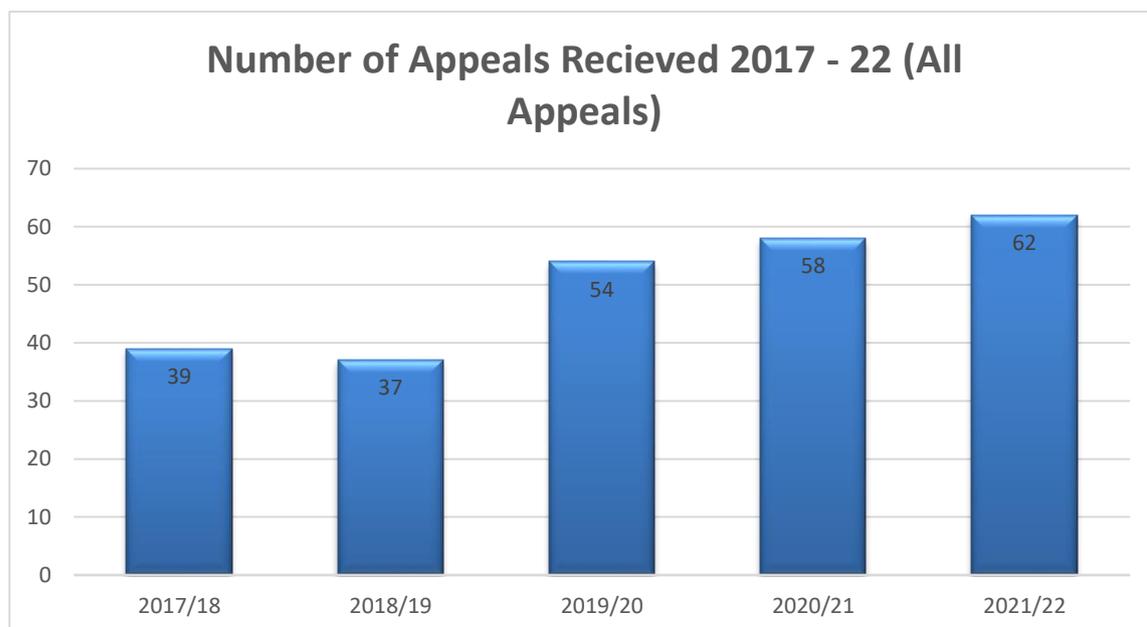
4. There is a right of appeal against most local authority decisions on planning permission and other planning decisions, such as advertisement consent, listed building consent, prior approval of permitted development rights, and enforcement.
5. Most appeals are determined by Planning Inspectors on behalf 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 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.
8. Monitoring performance at appeal is an important tool in understanding the quality of the local planning authority's decision making.

LOCAL LEVEL MONITORING

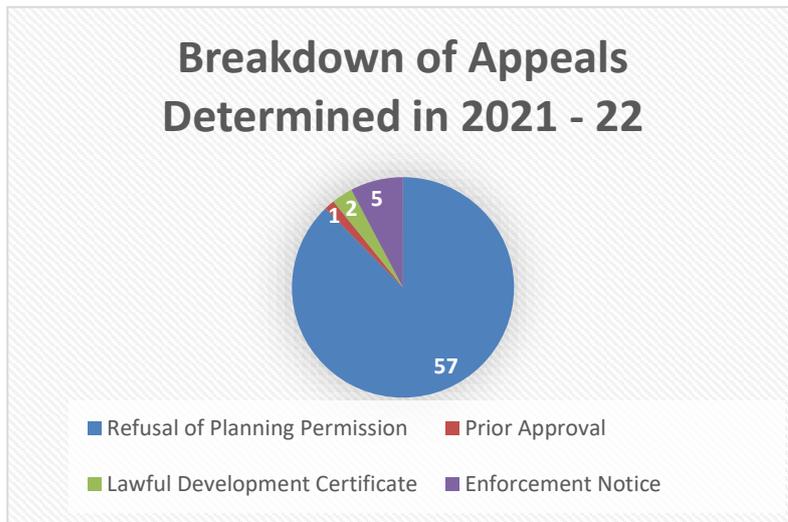
Appeals received and determined

9. During 2021/22 there were 62 appeals lodged. This continues the trend of a gradual rise over the previous three years, as seen in the graph below.



10. During 2021/22, 65 appeal decisions were issued by the Planning Inspectorate. This is an increase of around 50 per cent against the Planning Inspectorate's performance over the last 5 years, where around 40 decisions were issued annually.
11. There were a similar number of appeals determined as received during 2021/22. This follows two years where there were notably fewer appeals determined than received which was attributed to delays in the Planning Inspectorate being able to process appeals as a result of the pandemic. Although cases are currently still subject to delays of several weeks or months prior to being started by the Planning Inspectorate, the increased number of appeal decisions issued is encouraging and suggests an improvement in processing times.

12. The appeals determined in 21/22 can be broken down as follows:



Appeal Type	Number and %
Refusal of planning permission	57 (87.7%)
Appeal against prior approval	1 (1.6%)
Lawful Development Certificate	2 (3%)
Enforcement Notice	5 (7.7%)
Total	65 (100%)

13. The vast majority of appeal decisions issued in 2021/22 relate to refusal of planning permission. Other appeal decisions issued related to Enforcement Notices, refusal of Lawful Development Certificates and refusal of Prior Approval for the change of use from commercial to residential accommodation.

14. The three procedures for determining appeals are:

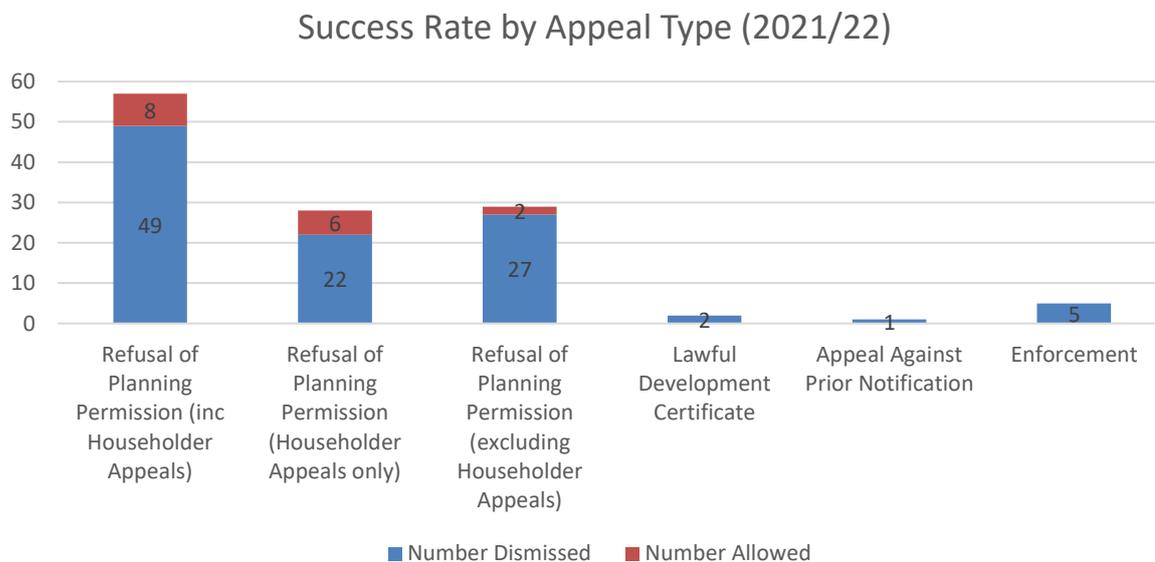
- (i) written representations;
- (ii) hearing; and
- (iii) public inquiry

15. 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. The vast majority (59/62) of the appeals determined during 2021/22 followed the written representations procedure with the remaining three cases determined via the hearing procedure.

16. There were no decisions relating to appeals determined via public inquiry in 2021/22. 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.

17. 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 was a total of 28 householder appeal decisions issued during 2021/22, which was significantly higher than 2020/21 in which 8 householder appeal decisions were issued and 2019/20 in which 5 were issued. Whilst there were over 50 per cent more appeal decisions issued overall in 2021/22 (65, compared to 42 in 2021/21), this does not account for such a significant (350 per cent) increase in householder appeal decisions from the previous year.

18. 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 2021/22.
19. The success rate for each type of appeal, for decisions issued during 21/22 is shown in the following graph:

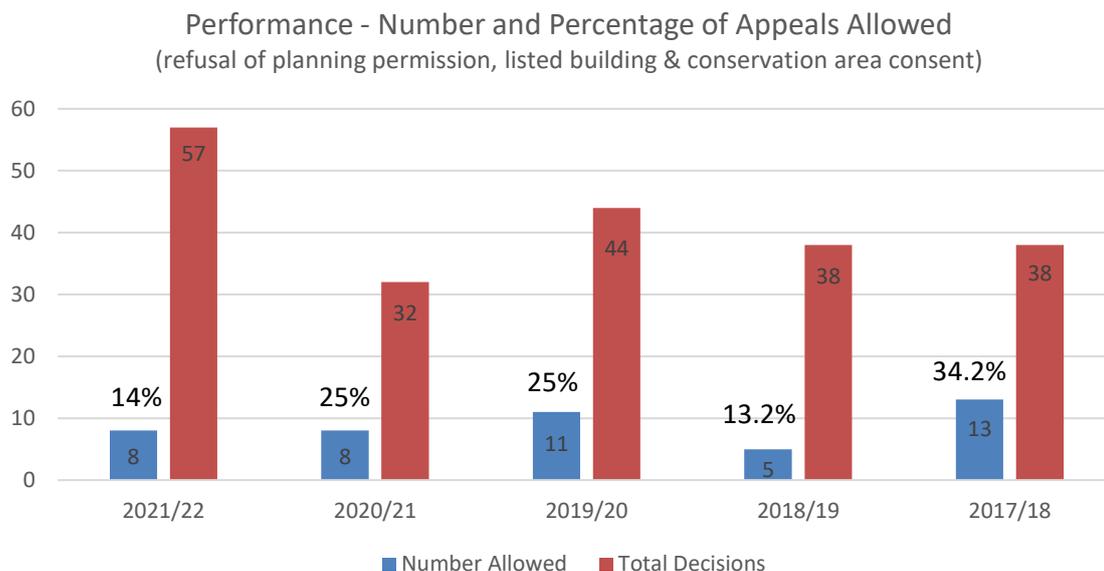


	Refusal of Planning Permission (including Householder Appeals)	Refusal of Planning Permission (Householder Appeals only)	Refusal of Planning Permission (excluding Householder Appeals)	Lawful Development Certificate	Appeals against Prior Notification	Appeals against Enforcement Notice
Total Number	57	28	29	2	1	5
Number and % Dismissed	49 (86%)	22 (78.6%)	27 (93.1%)	2 (100%)	1 (100%)	5 (100%)
Number and % Allowed	8 (14%)	6 (21.4%)	2 (6.9%)	0 (0%)	0 (0%)	0 (0%)

20. 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 conditions¹, non-determination, lawful development certificate, prior approvals etc). The target, indicating good performance, is a maximum of 30 per cent of such appeals allowed.
21. In 2021/22 there were 57 decisions issued relating to appeals against the refusal of planning permission (including householder appeals), listed building consent and conservation area consent. Of these, eight were allowed, which equates to **14 per**

¹ Performance figures exclude direct appeals against condition(s) following conditional planning approval but include appeals arising from a refused application to vary condition(s).

cent. The number and percentage of such appeals which were allowed over the past five years are detailed in the graph below.



22. Almost all (64/65) of the appeal decisions issued during 2021/22 concerned applications determined under the delegated procedure. There was one decision issued which related to the refusal of permission by the planning committee, contrary to officer recommendation for approval².

Enforcement Appeals

23. There were five Enforcement Appeal decision issued during 2021/22, relating to four separate sites. Enforcement appeal decisions are reported as 'upheld', 'varied' or 'quashed', which equates to 'dismissed', 'part-allowed' and 'allowed' respectively. In all of the enforcement appeal cases, the notices were upheld (dismissed) with variations which were minor and didn't undermine the requirements of the notices. In some instances, the variation related to additional compliance time due to the ongoing pandemic. Details of the individual cases can be provided if required.

Costs

24. There were four costs decisions relating to planning and enforcement appeals issued during 2021/22. Three concerns applications made by appellants against the Council, and one concerned an application made by the Council against an appellant. Of the three against the council two were dismissed and one partially upheld. Of the one for the Council, we were awarded partial costs. Whilst the principle of the cost award against the Council has been issued, the Council has not yet been invoiced. Likewise, the Council has not yet invoiced for its costs. Officers anticipate that it is likely that the costs awards will be cost neutral to the Council.

² 20/01535/FUL – 31 and land rear of 21-31 Ventnor Road, Apse Heath, Sandown
Demolition of attached garage and construction of garage (no. 31); formation of new vehicular access; construction of 7 dwellings with garaging, parking and associated landscaping (revised scheme)

Conclusions

25. The number of appeals received during 2021/22 was notably higher than in previous years (62 in total, compared with a five-year average of 50). The number of decisions (65) was significantly higher than the previous four years, each of which had between 39 and 44 appeal decisions issued. The number of decisions issued in 2021/22 was comparable to the number of appeals received, suggesting a move towards recovery of the backlog of cases at the Planning Inspectorate as a result of difficulties in processing appeals during the pandemic.
26. There was a significant increase in the number of householder appeals, with 28 determined in 2021/22, rising from eight in 2020/21 and five in 2019/20.
27. The overall percentage of planning appeals which were allowed during 2021/22 (against the refusal of planning permission and listed building consent – those upon which the LPA's performance is monitored) was 8/57 which equates to 14 per cent. This percentage is significantly lower than that allowed in the previous two years, in which 25 per cent of such appeals were allowed. This represents an improvement in performance and remains well within the target maximum of 30 per cent allowed.
28. There were five appeals against Enforcement Notices determined in 2020/21, all of which were upheld with minor corrections and/or variations.
29. There were three applications for costs made against the Council in 2020/21, one of which was awarded in part. There was one costs application made by the Council, which was awarded in part.

NATIONAL LEVEL MONITORING

30. 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).
31. 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 would be able to submit planning applications direct to the Planning Inspectorate.
32. The current 2-year period covers the 24 months to the end of September 2020 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](#).
33. In reporting period the council determined 57 major applications and of these three were appealed. One of the council's decisions was overturned, which equates to 1.8 per cent of the council's major decisions. This is exactly the same as the national average of this measure and represents a slight improvement on the performance of the previous reporting period.

34. 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.
35. For non-major applications there were 2,008 decisions in the two-year period and of these 69 were appealed. Of these 69 appeals, 16 of the council's decisions were overturned. The percentage of decisions overturned at appeal is therefore 0.8 per cent. This is below the national average of 1 per cent.
36. 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

37. 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.
38. Benchmarking the Council's performance, it is slightly better or the same as 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.

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