

Report to Area Plans Sub-Committee South, East and West



**Epping Forest
District Council**

Date of meeting: East – 10 June 2009

Subject: Probity in Planning – Appeal Decisions, October 2008 to March 2009.

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Democratic Services Officer:**

Recommendation:

That the Planning Appeal Decisions be noted.

Report Detail:

Background

1. (Director of Planning & Economic Development) In compliance with the recommendation of the District Auditor, this report advises the decision-making committees of the results of all successful appeals, particularly those refused by committee contrary to officer recommendation. The purpose is to inform the committee of the consequences of their decisions in this respect and, in cases where the refusal is found to be unsupportable on planning grounds, an award of costs may be made against the Council.

2. To set the context, a Best Value Performance Indicator was for district councils to aim to have less than 40% of their decisions overturned on appeal. The latest figure for the national average for District Councils is 30.9%. That BVPI was scrapped but replaced by one which records planning appeals only (not advertisement, listed buildings, enforcements, telecommunications or tree related appeals). That too has been dropped as a National Indicator but the Council has created a Local Performance Indicator with a target of 25% of allowed decisions. In recent years the Council had been more successful than the national average with only 18% in 2003/04, 29% in 2004/05, 22% in 2005/06, 30% in 2006/07 and 29% in 2007/08.

Performance

3. Over the six-month period between October 2008 and March 2009, the Council received 75 decisions on appeals – 71 planning and related appeals and 4 enforcement appeals. Of the 71 planning and related appeals, 35 were allowed (49.2%) but none of the 4 enforcement appeals – a combined total of 46.6% of the Council's decisions being overturned during this period.

4. For the year 2008/09 as a whole: a total of 153 decisions were received – 146 planning appeals and 7 enforcement appeals. Of the 146 planning appeals 59 were allowed and 2 of the 7 enforcement appeals – a total of 39.8% of the Council's decisions being overturned.

5. For LPI 45, which only considers appeals against the refusal of planning permission (so does not include advertisement, listed building, enforcement, CLD's, telecommunications or tree-related appeals, nor appeals against conditions), the 6-month performance figure is 50.7% allowed. For the full year the figure is 40.3%.

Planning Appeals

6. The proportion of appeals that arose from decisions of the committees to refuse contrary to the recommendation of officers during the 6-month period was 24% - almost 1 in 4 appeals derived from committee decisions to refuse contrary to recommendation and of the 17 decisions that this percentage represents, the Council was successful in sustaining its objection in only 2 of them. The remaining 15 (88%) were lost:

EPF/0820/08 – Increased roof height of front apartment block at 1, Albert Road, Buckhurst Hill (Area Plans South)

EPF/0688/08 – Extensions and alterations at Belmont Lodge, Fencepiece Road, Chigwell (Area Plans South)

EPF/2279/07 – Single storey side and rear extension at 27 Hycliffe Gardens, Chigwell (Area Plans South)

EPF/0168/08 – Block of 8 one-bedroomed flats at 89, High Road, Loughton (Area Plans South)

EPF/2146/07 – Alterations and change of use to restaurant at Units 1 & 2, 258, High Road, Loughton (Area Plans South)

EPF/0178/08 – Elevational changes and decking at Bar 195, High Road, Epping (Area Plans East)

EPF/1167/08 – Replacement dwelling and development of 4 new dwellings at rear at 11, Sunnyside Road, Epping (Area Plans East)

EPF/1300/08 – Detached dwelling on land at 24, Bower Vale, Epping (Area Plans East)

EPF/0027/08 – Separation of the barn to be used as a separate dwelling at Maltings Barn, Matching Green (Area Plans East)

EPF/0313/08 – Detached garage with space for biomass boiler at The Rosaries, Harlow Common, Hastingwood (Area Plans East)

EPF/2188/07 – Conversion of outbuilding to separate dwelling at 162-164, High Street, Ongar (Area Plans East)

EPF/2189/07 – Balcony to rear flat roof and erection of entrance gates at 162-164, High Street, Ongar (Area Plans East)

EPF/0655/08 – Two storey side extension and detached garage at 64, Morgan Crescent, Theydon Bois (Area Plans East) (*This appeal was part allowed with the side extension being granted and the garage being refused.*)

EPF/2198/07 – Two storey side and rear extension and loft conversion at 7, Green View, The Green, Theydon Bois (Area Plans East)

EPF/0365/07 – Use as lorry park at Skillet Hill Farm, Honey Lane, Waltham Abbey (Area Plans West)

7. The 2 committee refusals that were sustained were:

EPF/0354/08 – Erection of 13 flats with underground parking at 51, Epping New Road, Buckhurst Hill (Area Plans South)

EPF/1517/08 – Erection of replacement dwelling at The Old Rectory, Mount Road, Theydon Mount (Area Plans East).

8. Therefore, the committees are urged to continue to heed the advice that if they are considering setting aside the officer's recommendation it should only be in cases

where members are certain they are acting in the wider public interest and where the committee officer can give a good indication of some success at defending the decision.

9. It will be noted that 5 of the cases allowed directly involved the erection of new dwellings and 2 others indirectly and it is understood that the Inspectorate have been charged to allow appeals for new dwellings whenever possible in order to assist in meeting housing need. Refusals based upon density factors or overdevelopment are therefore unlikely to succeed unless real harm to the surroundings or adjacent properties can be shown, or poor design can be identified. It would seem that only the very worst are being dismissed at appeal.

10. However, this period also saw an unusually high number of officer decisions taken under delegated powers overturned at appeal. A total of 19 out of 53 cases were allowed (36%). Whilst 3 of these involved the creation of new dwellings, the majority – 13 – were householder applications for extensions and alterations, as indeed were 5 of the allowed appeals resulting from committee decisions. This may indicate that the Council may be over-concerned with householder proposals at a time when the Government has increased permitted development rights so that more alterations can be carried out without the need to even apply for permission. It may also indicate that the Council is too willing to concede to third party objections rather than look objectively at the planning merits of such proposals as a Planning Inspector is more able to do.

11. However, it would not be wise to draw too many firm conclusions from one 6-month set of results.

Costs

12. During this period, there were no awards of costs made for or against the Council.

New Appeal Procedures

13. New appeal procedures were introduced from 6 April 2009. These concern two main issues:

- (a) for householder applications made after 6 April 2009, that is applications for extensions or alterations to single dwellings or works within the curtilage of a single dwelling, applicants will only have 12 weeks (instead of 6 months) from the decision in which to appeal. Once an appeal has been received, the Council has to provide the Inspectorate with the officer's report under delegated powers or to committee, minutes of the committee meeting, a copy of the reasons for refusal and notification of the relevant policies. The Council is not able to make any further statement. Objectors will also not be able to make further comment but copies of letters of objection received at the application stage will be passed on the Inspectorate as at present; and
- (b) appellants (and the Council) will in future be able to make an application for costs for appeals dealt with by written representations, which is, by far, the most common method of considering an appeal. Until now costs have only been possible to claim for Hearings and Inquiries. The Council has been protected from accusations that it has acted unreasonably in the majority of cases because the appeals have been dealt with by written representations. That will no longer be the case and so there is added responsibility upon all decision-makers, whether the committee or officers, to act responsibly and make decisions on planning merits alone.

Conclusions

14. The Council's performance for this 6-month period has been the worst for many years. There has been continuing support for Green Belt policies and the support for the Council's decisions to take enforcement action is particularly encouraging but overall the results have been poor.

15. A full list of decisions over this six month period appears below.

Appeal Decisions April to September 2007

Planning Appeals Allowed:

Buckhurst Hill

1. EPF/0114/08 – ground and first floor extensions at 24, Russell Road
2. EPF/0820/08 – variation to roof height of front apartment block at 1, Albert Road
3. EPF/1986/07 – loft conversion at 5, Birch Close

Chigwell

4. EPF/0688/08 – extension and alterations at Belmont Lodge, 392, Fencepiece Road
5. EPF/2279/07 – single storey rear and side extension at 27, Hycliffe Gardens

Epping

6. EPF/0030/08 – single storey rear extension at Eppingdene, Ivy Chimneys
7. EPF/0178/08 – elevational changes, rendering and construction of patio at Bar 195, High Street
8. EPF/1167/08 – replacement dwelling and 4 dwellings at rear at 11, Sunnyside Road
9. EPF/1300/08 – two bedroomed detached house at 24, Bower Vale

Loughton

10. EPF/0168/08 – erection of block of 8 flats at 89, High Road
11. EPF/0260/08 – basement excavation and remodelling of upper level at 25, Albion Hill
12. EPF/0318/08 – first floor rear and side extension at 67, Roundmead Avenue
13. EPF/1409/08 – erection of detached house at land rear of 33-35, Spring Grove
14. EPF/2146/07 – use of office to rear of unit 1 as restaurant extension, new shop front to unit 2 and installation of air-conditioning at units 1 and 2, 258, High Road
15. EPF/2395/07 – loft conversion at 60, Sedley Rise
16. EPF/2399/07 – new roof with rooms in roof and porch and bay windows at 88, The Lindens (*only the porch and bay windows were allowed in line with Council's objection*)
17. EPF/0214/08 – telecommunications installation with 12m high mast on land adj Oakview School, Borders Lane

Matching

18. EPF/0027/08 – separation of barn as separate dwelling at Malting Barn, Matching Green

Nazeing

19. EPF/0175/08 – garage conversion and erection of new garage at 32a, Pecks Hill
20. EPF/0899/07 – use of mushroom sheds for B1 and B8 uses at Mushroom Farm, Laundry Lane
21. EPF/1210/08 – erection of bungalow and garage at land rear of 63/65, North Street

North Weald

22. EPF/0313/08 – double garage and space for biomass boiler at The Rosaries, Harlow Common
23. EPF/0680/08 – two storey side and rear extension, single storey rear extension and front porch at 23, High Road
24. EPF/2388/07 – Use as pre-school nursery at 3, Willow Place

Ongar

25. EPF/2188/07 – conversion of outbuilding to dwelling at 162-164, High Street
26. EPF/2189/07 – balcony at rear and erection of entrance gates at 162-164, High Street

Roydon

27. EPF/2414/07 – rear conservatory at 22, Hansells Mead

Sheering

28. EPF/0143/08 – loft conversion at 135, Sheering Road

Stanford Rivers

29. EPF/0753/08 – rear conservatory at Mitchell Hall, Toot Hill Road

Theydon Bois

30. EPF/0655/08 – two storey side extension and detached garage at 64 Morgan Crescent (*only the two storey side extension was allowed*)
31. EPF/1649/08 – first floor side and rear extensions at 12, The Weind
32. EPF/2198/07 – two storey side and rear extension and loft conversion at 7, Green View, The Green

Waltham Abbey

33. EPF/0365/07 – use as lorry park, use of house for drivers' facilities and alteration to access at Skillet Hill Farm, Honey Lane
34. EPF/1105/08 – new entrance gates at Parima, Sewardstone Road
35. EPF/2408/07 – erection of agricultural dwelling at Hannah Nursery, Sewardstone Road

Planning Appeals Dismissed

Buckhurst Hill

36. EPF/0224/08 – first floor side extension at 101, Rous Road
37. EPF/0354/08 – erection of 13 flats with underground parking at 51, Epping New Road
38. EPF/2080/07 – erection of 14 flats with underground parking at 51, Epping New Road
39. EPF/0391/08 – erection of 10 flats at 2, Westbury Road
40. EPF/0435/08 – retention of rear dormer window at 13 Beatrice Court, Albert Road
41. EPF/2350/07 – new dwelling in rear garden of 15, Albert Terrace
42. EPF/1134/08 – internally illuminated fascia sign at 179, Queens Road

Chigwell

43. EPF/0471/08 – new chalet bungalow at land rear of 4, Doves Cottages, Gravel Lane
44. EPF/1011/08 – two storey side extension at 2, Pudding Lane
45. EPF/2714/07 – two storey side extension at 2, Pudding Lane
46. EPF/1385/08 – two storey and single storey rear and side extension, loft conversion and alterations at 34, Oak Lodge Avenue
47. EPF/2025/08 – loft conversion and two storey front extension at 37, Meadow Way
48. EPF/2373/07 – hip to gable roof extension, rear balcony, rear dormers, front dormers and new front windows at 39, Stradbroke Drive
49. EPF/2620/07 – porch extension at 85, Manor Road

Epping

50. EPF/0516/08 – erection of replacement dwelling with development of 5 dwellings at the rear at 11, Sunnyside Road
51. EPF/1292/08 – new dwelling at first floor above car ports and ground floor extensions at Creeds Farm, Bury Lane

Epping Upland

52. EPF/2364/07 – rear extension, new front dormer and alterations at Plashetts, Pump Lane, Epping Green

Loughton

53. EPF/2340/07 – loft conversion at 75, Roundmead Avenue
54. EPF/2702/07 – detached house at land adjoining 35, Albion Hill
55. EPF/0470/08 – details of detached dwelling at Beechlands, 42, Alderton Hill

Nazeing

56. EPF/0613/08 – replacement of existing dwelling with two maisonettes at Wilbank, Nursery Road
57. EPF/1691/07 – erection of replacement bungalow at Dene, Nursery Road

North Weald

58. EPF/0078/08 – two storey side extension and front porch at 5, Blacksmiths Cottages, Hastingwood Road, Hastingwood

Roydon

59. EPF/0762/08 – use of land for storage of 3 vehicles in connection with vehicle recovery business at Lowershott Nursery, Sedge Green
60. EPF/0995/08 – single storey side extension and roof extension at Cranalyn, Barn Hill

Sheering

61. EPF/0160/08 – retention of front wall at 75, Sheering Lower Road

Stapleford Abbots

62. EPF/2113/07 – replacement dwelling at The Haven, Stapleford Road

Theydon Bois

63. EPF/0119/08 – replacement of hutment with eco house at St Leonard, Theydon Park Road
64. EPF/1684/07 – outline application for erection of two, 4-bedroomed house at land rear of Rozel and Branscombe, Loughton Lane and 17, Avenue Road

Theydon Mount

65. EPF/1517/08 - demolition of existing and erection of replacement house with garage block at The Old Rectory, Mount Road

Waltham Abbey

66. EPF/0548/08 – two storey side extension at 12, Mott Street, High Beach
67. EPF/0676/08 – replacement agricultural building at Felicia Nursery, Avey Lane
68. EPF/0735/08 – single storey rear and side extension, front porch and roof conversion at Oakview, 2, Claverhambury Road
69. EPF/2261/07 – use of site for storage and parking and erection of steel palisade fence at land on n.e. side of Pick Hill
70. EPF/0878/08 LB – listed building application for refurbishment works to windows and internal works at 18, Sun Street
71. EPF/2025/07 TEL – telecommunications installation of 12m high monopole and ancillary works at Shell Service Station, Wake Arms Roundabout

Enforcement Appeals Dismissed

1. Use of land as a works depot at Harlow Park Nursery, London Road, Hastingwood
2. Siting and use of a residential caravan at Barkers Farm, Mount End, Theydon Mount
3. Erection of a dwellinghouse at Maynards Farm, Cobbins End Road, Upshire

4. Use as B1, B2 and B8 and as depots at Mushroom Farm, Laundry Lane, Nazeing