

Report to Area Plans Sub-Committee

Date of meeting: 7 December 2011



**Epping Forest
District Council**

Subject: Probity in Planning – Appeal Decisions, April 2011 to September 2011

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Recommendation:

That the Planning Appeal Decisions be noted.

Report:

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 previous Best Value Performance Indicator (BVPI) for district councils was to aim to have less than 40% of their decisions overturned on appeal. The last available figure for the national average for District Councils was 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 was dropped as a National Indicator but the Council instead created a Local Performance Indicator (LPI 45). In previous years, this target has been to not exceed 25% of allowed decisions. In recent years the Council performance has been 18% in 2003/04, 29% in 2004/05, 22% in 2005/06, 30% in 2006/07, 29% in 2007/08, 40.3% for 2008/09, 30.9% in 2009/10 and 36.6% in 2010/11.

3. For 2011/12, there are now two local indicators, one of which measures planning application appeals as a result of committee reversals of officer recommendations (KPI 55) and the other which measures the performance of officer recommendations and delegated decisions (KPI 54).

Performance

4. Over the six-month period between April 2011 and September 2011, the Council received 50 decisions on appeals (41 of which were planning related appeals – including 1 tree related appeal and 9 were enforcement related). Of these, 17 were allowed (34%).

5. For KPI 54 and KPI 55, which only consider appeals against the refusal of planning related permission (so does not include enforcement, tree-related appeals, nor appeals against conditions), the 6-month performance figure in total is 30% allowed (12 of 40 appeals).

Planning Appeals

6. Out of the 13 planning appeals that arose from decisions of the committees to refuse contrary to the recommendation put to them by officers during the 6-month period, 6 were allowed and 7 dismissed. 46.15% of appeals resulting from committee reversals were therefore not allowed on appeal. The Council was not successful in sustaining the committee's objection in the following 6 cases:

Area Cttee South (4 Allowed):

EPF/1689/10	Demolition of existing dwelling and erection of a replacement detached dwelling house.	Hedgeside 132 High Road Chigwell
EPF/1796/10	Replacement dwelling and relocation of garage. (Amended application from EPF/1832/07 including alterations comprising the inclusion of a balcony, replacement and rear dormers with rooflights and modifications to the garage roof - resubmitted application)	22 Albion Hill Loughton Essex IG10 4RD
EPF/2125/10	Change of use of land for a Golf Teaching Practice Facility. (D1/D2.) Revised application.	Land adjoining Clays Lane/ Junction of Englands Lane Loughton
EPF/0031/11	Erection of double storey rear extension from lower ground floor (basement), front car parking canopy and alteration of roof by removal of existing dormer and insertion of roof light windows.	Broom House Little Plucketts Way Buckhurst Hill

Area Cttee East (1 Allowed):

EPF/1097/10	Removal of agricultural occupancy condition.	Oaklee Farm Manor Road Lambourne End
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Area Cttee West (1 Allowed):

EPF/1452/10	Change of use of building to single dwellinghouse and release from S106. agreement	Greenacres Tatsfield Avenue Nazeing
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7. 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. This is now highlighted as a separate performance target (KPI 55) and therefore comes under more scrutiny. However, at this 6 month point, the performance (46.15%) is being achieved in that the target of 50% is not being exceeded.

8. In respect of KPI 54, of the 27 planning application decisions made by the Director of Planning & Economic Development under delegated powers or recommended to the Committee for refusal, 6 were allowed (22.22%), slightly in excess of the target of 20%.

9. Out of 9 enforcement notice appeals decided, 4 were allowed and one part allowed/part dismissed as follows:

Allowed:

ENF/0652/08 – Mixed use as agriculture and residential by stationing of mobile homes and caravans – Rose Farm, Hamlet Hill, Roydon.

ENF/0010/10 – Two portacabins as ancillary use to Class B8 use of site – Gallmans End Farm, Manor Road, Lambourne.

ENF/0025/10 – Balcony at the rear second floor and rooflights on the rear roof – 22 Albion Hill, Loughton.

ENF/0677/10 – Caravan and Mobile Homes, fencing, hardstanding and use of land for residential purposes (5 year permission) – Auburnville, Carthegena Estate, Nazeing.

Part Allowed/ Part Dismissed:

ENF/0294/09 – L-shaped stable block (Dismissed), Log Store (Allowed) – Red Cottage, New Farm Drive, Abridge.

Costs

10. During this period, there were 3 successful finalised award of costs made against the council. Circular 03/2009 *Costs Awarded in Appeals and Other Planning Proceedings* advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

11. In the case of Hedgeside, 132 High Road, Chigwell (EPF/1689/10), the Planning Inspector awarded costs on the grounds of lack of realistic and specific evidence about the consequences of the proposed development in the Council's statement. This was a committee reversal case, where the committee had been quite specific over the harm, but this had not been as specific in the officer's written representation appeal statement. The lesson to be learned from this case is that officers are now confirming their statement with the committee presenting planning officer and watching the webcast

before sending off their appeal statement justifying the decision. The cost in this case amounted to £3,179.40.

12. In respect of Oaklee Farm, Manor Road, Lambourne End (EPF/1097/10), also a committee reversal, Members had included a particular reason that the agricultural dwelling had not been sufficiently marketed, (which would have justified the agricultural occupancy condition being removed), which relied on a disagreement about the asking price that should have been set. The Inspector after the hearing concluded that the appellant though had unnecessarily carried out a further period of marketing to support their appeal despite the appellants marketing already adhering to the requirements of the Local Plan. This was unnecessary and he therefore ordered the Council to pay a partial award of costs for this part of work in relation to the second reason for refusal. The costs came to £6,783.49.

13. The Planning Inspectorate's quashing of an enforcement appeal resulted in an award of costs of £1711.98 against the Council in respect of Land South of Canes Lane and North of Weald Hall Lane, North Weald, after failing to follow the appeal procedure. This coincided with a sudden absence from work of a staff member responsible for this procedure and deadlines were missed. The appellant had already prepared their appeal and Circular 03/2009 sets out a number of examples of unreasonable behaviour in regard to award of costs, one of which is the failure to provide relevant information within statutory time limits. It is the additional work carried out by the appellant as a result of the failure to comply in time that has incurred the cost of £1711.98.

Conclusions

14. Whilst performance in defending appeals has improved, particularly in respect of committee reversals, Members are reminded that in refusing planning permission there needs to be justified reasons that in each case, must be relevant, necessary, but also sound and defensible. If Members are to disagree with submitted evidence, as in the Oaklee Farm case, it needs to be substantiated and clear before a decision on the planning application is made and additional reasons beyond a similar previous refusal, where circumstances have not changed, may be seen by the Inspector, as in this case, as being spurious.

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

Appeal Decisions April 2011 to September 2011

Planning Appeals Allowed:

Buckhurst Hill

1	EPF/0031/11	Erection of double storey rear extension from lower ground floor (basement), front car parking canopy and alteration of roof by removal of existing dormer and insertion of roof light windows.	Broom House Little Plucketts Way Buckhurst Hill
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Chigwell

2	EPF/0326/11	Part single storey ground floor rear extension.	9 Lodge Close Chigwell
3	EPF/1027/11	Single storey front and rear extensions to	39 Bracken

4	EPF/1689/10	existing bungalow and roof alterations with front and rear dormers. Demolition of existing dwelling and erection of a replacement detached dwelling house.	Drive Chigwell Hedgeside 132 High Road Chigwell
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Lambourne

5	EPF/1097/10	Removal of agricultural occupancy condition.	Oaklee Farm Manor Road Lambourne End
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Loughton

6	EPF/0529/11	Ground and first floor rear extension. (Revised application to EPF/2090/10)	27 Algers Road Loughton
7	EPF/1796/10	Replacement dwelling and relocation of garage. (Amended application from EPF/1832/07 including alterations comprising the inclusion of a balcony, replacement and rear dormers with rooflights and modifications to the garage roof - resubmitted application)	22 Albion Hill Loughton Essex IG10 4RD
8	EPF/2125/10	Change of use of land for a Golf Teaching Practice Facility. (D1/D2.) Revised application.	Land adjoining Clays Lane/ Junction of Englands Lane Loughton

Nazeing

9	EPF/1452/10	Change of use of building to single dwellinghouse and release from S106 agreement.	Greenacres Tatsfield Avenue Nazeing
10	EPF/1510/10	Removal of 1.83 m brick wall and erection of 1.83 m boundary. (Retrospective application)	2 Rochford Avenue Waltham Abbey
11	EPF/2493/10	Variation of condition 2 'timescale' on planning permission EPF/1204/10 (Alteration and retention of existing unauthorised building with reduced floor level and change of pitched roof to flat roof) to allow 12 months for completion.	20 Godwin Close Sewardstone Road Waltham Abbey

Planning Appeals Part Allowed/Part Dismissed

Epping Upland

12	EPF/2152/10	Retention of three sets of gates and pillars and new roadway.	Griffins Wood House Copped Hall
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Estate
High Road
Epping

Planning Appeals Dismissed

Buckhurst Hill

- 13 EPF/1690/10 Demolition of existing garages and erection of a detached one bedroom residential dwelling. (Revised application) Land Rear of 11a Loughton Way Buckhurst Hill

Chigwell

- 14 EPF/0206/11 Two storey side extension and front entrance porch. 45 Coolgardie Avenue Chigwell
- 15 EPF/1406/10 Conversion of Grange Court, Chigwell School from a boarding house to a Pre-Prep School, including a new single storey extension, internal and external refurbishment and associated landscaping works. (Revised application) Grange Court High Road Chigwell
- 16 EPF/1408/10 Grade II* listed building application for the conversion of Grange Court, Chigwell School from a boarding house to a Pre-Prep School, including a new single storey extension, internal and external refurbishment and associated landscaping works. (Revised application) Grange Court High Road Chigwell

Epping

- 17 EPF/0001/11 Demolition of existing ambulance station and garage. Erection of new two storey station with ambulance shelter. Ambulance Station The Plain Epping
- 18 EPF/2310/10 Two storey rear extension to provide retail storage. 178 High Street Epping
- 19 EPF/2667/10 First floor rear extension, loft conversion and elevation improvements. 10 Lower Bury Lane Epping

High Ongar

- 20 EPF/0267/11 Single storey front extension. (Revised application) 4 Norton Mandeville Norton Lane High Ongar

Lambourne

- 21 EPF/1786/10 Retrospective application for placing of two portakabin buildings on land for staff facilities ancillary to the use of buildings G2, G3 and Gallmans End Farm Manor Road

22	EPF/2647/10	G4 for class B8 use. (Revised application) Conversion of existing building at rear of site to residential house ancillary to Woodgrange, including erection of new first floor within mansard roof.	Lambourne Woodgrange 52 Ongar Road Lambourne
Loughton			
23	EPF/0797/11	Single storey front detached garage. (Revised application)	37 Upper Park Loughton
24	EPF/1429/10	Erection of proposed 3 bed, two storey dwelling with walk out basement level to the rear. (Revised application)	12 -18 Pump Hill Loughton
25	EPF/1794/10	Change of use from A1 use class (Retail) to A2 use class (Professional and financial).	Hype Menswear 251 High Road Loughton
26	EPF/1814/10	Erection of single storey house on land to rear.	50 Hanson Drive Loughton
27	EPF/2330/10	TPO/EPF/15/06 T1 - Ginkgo biloba - Fell to ground level and treat stump with herbicide	Dryads Hall Woodbury Hill Loughton
Matching			
28	EPF/0220/11	Conversion of garage and sub-division of existing dwelling to form two, separate, dwellings. (Revised application)	Wyse's Barn Hobbs Cross Road Matching
29	EPF/1994/10	Proposed subdivision of site into 3 separate dwellings, including part demolition and conversion of Threshers House into two dwellings, extension and alterations together with further sub division of cottage. Part demolition of garage, erection of two replacement garages, realignment of drives and boundaries.	Threshers Threshers Bush Nr The Lavers
Moreton, Bobbingworth and the Lavers			
30	EPF/1700/10	Erection of a single dwelling.	Wood Farm Moreton Road Moreton
Nazeing			
31	EPF/1857/09	Change of use of land to a residential gypsy caravan site for 10 pitches and creation of new access, hardstanding and turning head.	Land at The Meadows Carters Mead Waltham Road Nazeing
32	EPF/2289/10	Proposed two storey side extension to provide granny annexe.	CWS Nursery Hoe Lane

			Nazeing
33	EPF/2644/10	Demolition of existing dwelling and erection of replacement 4 bed dwelling.	6 The Mead Nazeing New Road Nazeing

North Weald Bassett

34	EPF/0531/11	Erection of garage in the style of a cart lodge.	Popps Mead Harlow Common
35	EPF/1123/10	Retention of permanent residential mobile home site for gypsy and traveller use.	Carisbrook Farm Kiln Road North Weald
36	EPF/1428/10	First floor side extension.	33 Hampden Close North Weald
37	EPF/1428/10	Retrospective application for change of use of buildings to B1, B2, B8 and car repairers.	Chase Farm Vicarage Lane North Weald

Theydon Bois

38	EPF/1357/10	Demolition of existing dwelling and garage and erection of a detached chalet style dwelling with integral garage.	Auchinleck Theydon Park Theydon Bois
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Waltham Abbey

39	EPF/0084/11	Erection of a detached garage with a studio within the roof space	113 Monkswood Avenue, Waltham Abbey
40	EPF/0212/11	Proposed front and rear dormer windows. (Duplicate application)	Dahmoi Sewardstone Road Waltham Abbey

Enforcement Appeals Allowed

ENF/0652/08 – Mixed use as agriculture and residential by stationing of mobile homes and caravans – Rose Farm, Hamlet Hill, Roydon.

ENF/0010/10 – Two portacabins as ancillary use to Class B8 use of site – Gallmans End Farm, Manor Road, Lambourne.

ENF/0025/10 – Balcony at the rear second floor and rooflights on the rear roof – 22 Albion Hill, Loughton.

ENF/0677/10 – Caravan and Mobile Homes, fencing, hardstanding and use of land for residential purposes (5 year permission) – Auburnville, Carthegena Estate, Nazeing.

Enforcement Appeals Part Allowed/ Part Dismissed:

ENF/0294/09 – L-shaped stable block (Dismissed), Log Store (Allowed) – Red Cottage, New Farm Drive, Abridge.

Enforcement Appeals Dismissed

ENF/0042/08 – Roof alterations and additions, 2-storey and single storey extensions, conservatory and porch at Crumps Farm, Tawney Common, Theydon Mount.

ENF/0453/08 – Hard surface wet weather horse exercise area – Rose Farm, Hamlet Hill, Roydon.

ENF/0606/10 – Change of use from A1 retail shop to sui generis fish pedicure and spa – 169 High Road, Loughton.

ENF/0757/10 – Erection of fence adjacent highway – 210 Nine Ashes Road, High Ongar.