

Report to Area Plans Sub-Committee

Date of meeting:

East – 28 November 2012

West – 5 December 2012

South – 12 December 2012



**Epping Forest
District Council**

Subject: Probity in Planning – Appeal Decisions, 1 April 2012 to 30 September 2012

**Officer contact for further information: Nigel Richardson (01992 564110).
Democratic Services Officer: Mark Jenkins (01992 564607)**

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 (i.e. those , 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. 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. Since 2011/12, there have been two local indicators, one of which measures all planning application type 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 2012 and September 2012, the Council received 56 decisions on appeals (43 of which were planning related appeals, the other 13 were enforcement related).
5. KPI 54 and 55 measure planning application decisions and in total, out of this 43, 8 were allowed (18.6%). Broken down further, KPI 54 performance was 2 out of 28 allowed (7.14%) and KPI 55 performance was 6 out of 15 (40%).

Planning Appeals

6. Out of the 15 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, the Council was not successful in sustaining the committee's objection in the following 6 cases:

EPF/0207/11	Outline planning application for the redevelopment (in 3 phases) of Fyfield Business Park comprising the removal of all existing buildings except 2 no. office buildings, a Grade II stable block and a creche building and existing hardcourt recreation area and changing facilities. Erection of 12 no. one and two storey office buildings equating to a gross external area of 17,071m ² . Construction of new site access, including a roundabout off Fyfield Road. Provision of a new cricket pitch and additional amenity space. Comprehensive landscaping scheme including new trees, shrubs and hedges. Provision of a total of 521 car parking spaces and 234 cycle parking spaces.	Fyfield Business And Research Park Fyfield Road Ongar
EPF/1407/11	Change of use and conversion of former stables building to provide a two bedroom dwelling.	Former Moor Hall Stables Moor Hall Road North Matching
EPF/1589/11	Proposed new three bedroom dwelling. (Amended application)	Land adj 38 Onslow Gardens Ongar
EPF/2538/11	Demolition of buildings and redevelopment of site to provide a mixed use development comprising A3 restaurants and 8 residential units. (Revised application)	208 - 212 High Street
EPF/2539/11	Conservation area consent for the demolition of buildings and redevelopment of site to provide a mixed use development comprising A3 restaurants and 8 residential units. (Revised application)	208 - 212 High Street Epping
EPF/1686/11	Retention of two rear dormer windows.	9 Field Close, Buckhurst

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. As this is now highlighted as a separate performance target (KPI 55) it therefore potentially comes under more scrutiny. Evenso, 40% represents a good performance against the local performance target of 50%.

8. Out of 13 enforcement notice appeals decided, 3 were allowed and 1 part allowed/part dismissed. These are as follows:

Allowed:

ENF/0475/07	Erection of buildings known as units 31 & 34. Erection of two new buildings used as offices. Change of use of agricultural buildings to B1, B2 B8 and Sui Generis	Weald Hall Lane Industrial Estate Weald Hall Lane
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	purpose with agricultural and use of the land for open storage and parking of vehicles	North Weald Bassett
ENF/0478/07	Without planning permission the change of use of agricultural buildings to a mixed use of industrial B1, B2 B8 and sui generis purposes and agricultural	Weald Hall Lane Industrial Estate Weald Hall Lane North Weald Bassett
ENF/0778/10	Without planning permission the erection of an extension on the North flank of the building	West London Lodges Crown Hill Waltham Abbey
<u>Part Allowed/ Part Dismissed:</u>		
ENF/0476/07	Use of the land for open storage and parking of motor vehicles	Weald Hall Lane Industrial Estate Weald Hall Lane North Weald Bassett

Cost

9. 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. The costs were as follows:-

- 38 Roydon Lodge Chalet Estate, Roydon: Appeal against an Enforcement Notice in respect of a *change of use of the site to permanent residential use* – The Inspector concluded that the Notice was technically defective and did not make clear what was necessary to comply. It was therefore quashed. The issue was specifically how long can the appellant use the caravan for residential use in a calendar year. The Council did not withdraw the notice at the Inquiry and given the Inspectors conclusions, awarded costs, which have amounted to £12,868. The second enforcement notice for removal of hardstanding, gates, fence and sheds was partially upheld in respect of the hardstanding and sheds. No costs were awarded against this.
- 208-212 High Street, Epping: Appeal against refusal of planning permission for *Demolition of buildings and redevelopment of site to provide a mixed use development comprising A3 restaurants and 8 residential units (revised Application)*. The Planning Inspector concluded that there was inadequate evidence to demonstrate harm, given the applicant had produced robustness of a marketing exercise for the planning application. He awarded costs, which have resulted in payment of £9,952.
- Weald Hall Lane Industrial Estate, Weald Hall Lane, North Weald: Appeal against an Enforcement Notice in respect of *change of use of agricultural buildings to a mixed use of industrial B1, B2, B8 and sui generis*. The Planning Inspector concluded that there had been inadequate prior investigation by the Council Officers despite officers having chased up on a number of occasions for the submission of a planning application to assess its merits without the owner providing adequate evidence relating to its use. The cost award resulted in a significant fee because the appellant had used three specialist consultants to defend his appeal, resulting in a cost of £24,995, which was reduced from its original claim.

10. Members have enquired why costs are very rarely rewarded in favour of the Council. The difficulty is proving that the appellant has behaved unreasonably in appealing the Council's decision. They have a right of appeal and costs are not awarded just because they have lodged

an appeal. There would have to be enough evidence that the cost incurred by the Council in defending an appeal have been wasted, i.e. the Inspector had recently dismissed an appeal for the same or very similar development, on the same land, nothing had changed since and there was *clearly* no prospect of the further appeal being successful. Or the appeal may be one which is clearly contrary to national planning policies or the appeal was withdrawn at a late stage.

Conclusions

11. Whilst performance in defending appeals has improved, 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 so as to avoid paying costs. Whilst there is clearly pressure on Members to refuse in cases where there are objections from local residents, these views (and only when they are related to the planning issues of the case) are one of a number of the relevant issues to balance out in order to understand the merits of the particular development being applied for.

12. Finally, at the request of the Planning Services Scrutiny Standing Panel, appended to this report are the 6 appeal decision letters that were allowed despite Members reversing the planning officer's recommendation (and therefore refusing planning permission) at planning committees, along with their respective refusal decision notices.

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

Appeal Decisions April to September 2012

Allowed With Conditions

Epping

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|---|-------------|---|-----------------------|
| 1 | EPF/2539/11 | Conservation area consent for the demolition of buildings and redevelopment of site to provide a mixed use development comprising A3 restaurants and 8 residential units. (Revised application) | 208 - 212 High Street |
| 2 | EPF/2538/11 | Demolition of buildings and redevelopment of site to provide a mixed use development comprising A3 restaurants and 8 residential units. (Revised application) | 208 - 212 High Street |

Matching

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|---|-------------|--|--|
| 3 | EPF/1407/11 | Change of use and conversion of former stables building to provide a two bedroom dwelling. | Former Moor Hall Stables
Moor Hall Road North |
|---|-------------|--|--|

Ongar

- | | | | |
|---|-------------|---|---|
| 4 | EPF/1589/11 | Proposed new three bedroom dwelling. (Amended application) | Land adj
38 Onslow Gardens |
| 5 | EPF/0207/11 | Outline planning application for the redevelopment (in 3 phases) of Fyfield Business Park comprising the removal of all existing buildings except 2 no. office buildings, a Grade II stable block and a creche building and existing hardcourt recreation area and changing facilities. Erection of 12 no. one and two storey office buildings equating to a gross external area of 17,071m ² . Construction of new site access, including | Fyfield Business And
Research Park
Fyfield Road |

a roundabout off Fyfield Road. Provision of a new cricket pitch and additional amenity space. Comprehensive landscaping scheme including new trees, shrubs and hedges. Provision of a total of 521 car parking spaces and 234 cycle parking spaces.

Theydon Bois

6 EPF/2389/11	Alteration to existing front pitch roof and installation of velux roof light to bathroom at first floor.	81 Theydon Park Road
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Allowed Without Conditions

Buckhurst Hill

7 EPF/1686/11	Retention of two rear dormer windows.	9 Field Close
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High Ongar

8 EPF/1124/11	Certificate of lawful development for existing use of land as domestic garden.	Greenlees 186 Nine Ashes Road Paslow Common
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Dismissed

Buckhurst Hill

9 EPF/2342/11	Retention of the erection/installation of palisade fencing and gated entrance/exit to Football pitch area	Buckhurst Hill Football Club Roding Lane
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10 EPF/1741/11	Demolish existing double garage, erection of new build dwelling, new parking spaces and vehicle crossovers and perimeter walls to garden space. (Revised application)	30 Starling Close
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Chigwell

11 EPF/2432/11	Extension to the Pool House Building, in the curtilage of Hainault Hall, including provision of accommodation at first floor level.	Hainault Hall Lambourne Road
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12 EPF/2169/11	Two storey rear extension with a pair of gable end roofs to provide rooms in roof Two new paired double dormers to be constructed in the front and rear roof slope of the existing detached garage	Olantigh Pudding Lane
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13 EPF/2424/11	Outline consent for construction of a bungalow with accommodation in the roof space, to the west of the site with access from Orchard Way.	7 Whitehall Close
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14 EPF/2569/11	Retrospective Planning Application to retain loft conversion involving increase to the ridge of the roof, and construction of three front dormers and a rear dormer.	225 Lambourne Road
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High Ongar

15 EPF/0032/12	First floor extension over existing ground floor extension.	1 Paslow Hall Cottages King Street
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Lambourne

16 EPF/0406/10	Proposed erection of a new cattle barn construction of access way incorporating existing partially constructed access way and retention of one vehicular access off	Land to the rear of 40 - 42 Hoe Lane
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	Hoe Lane.	
17 EPF/1098/11	Proposed erection of a new cattle barn and associated hardstanding.	Land to the rear of 40 - 42 Hoe Lane
Loughton		
18 EPF/2365/11	Removal of condition 1 of planning permission granted under EPF/1186/07 (Retention of 0.3m of pitched roof to outbuilding and retention of existing garden wall) prohibiting use as separate dwelling or for habitable use.	4 Ripley View
19 EPF/2527/11	Retrospective application for the retention of a conservatory to the rear.	23 Alderton Way
20 EPF/1997/11	Erection of two storey, two bedroom semi-detached dwelling. (Revised application)	6 Willingale Close
21 EPF/2321/11	Ground and first floor front extensions.	19 High Road
22 EPF/0187/12	Certificate of lawful development for existing use of land as part of the residential curtilage of 4 Ripley View, Loughton as an accessway.	4 Ripley View
23 EPF/2509/11	New dwelling. (Revised application)	Land adjacent to 16 Grasmere Close
Moreton, Bobbingworth and the Lavers		
24 EPF/2442/11	Demolition of a double garage and replacement with three bay cart shed/garage with ancillary living accommodation above.	Greenways Moreton Bridge
Nazeing		
25 EPF/1181/11	Construction of 87,119m ² glasshouse, 4514m ² ancillary warehouse area, 238m ² of associated office space and 194m ² of welfare facility space, together with habitat enhancement and landscaping.	Valley Grown Nurseries Paynes Lane
26 EPF/1978/11	New two storey end of terrace dwelling. (Revised application)	Land adj 18 Crownfield
27 EPF/0186/12	Demolition of the existing bungalow and construction of a new dwelling with associated works.	26 Old Nazeing Road
North Weald Bassett		
28 EPF/1933/11	Retention of building on site of former agricultural buildings for small scale storage(Units 15A-D) (Units 16A-G) and as a workshop(Unit 15E) (B8 storage and B1 light industrial uses only).	Chase Farm Vicarage Lane
29 EPF/0197/12	Erection of new detached garage and conversion of existing attached garage into living accommodation with first floor extension over. North Weald	2 Grove Cottages High Road Thornwood
Ongar		
30 EPF/2417/11	Demolition of existing bungalow and erection of 3 no replacement detached three storey houses	47 Moreton Road Ongar

including formation of new vehicular access,

Roydon

31 EPF/0755/11 New vehicular access to haulage depot.
(Resubmitted application) Stoneshott
Sedge Green

Sheering

32 EPF/2530/11 New two storey 3/4 bedroom house adjacent to
the existing house with a shared access drive. Debden Lodge
Church Lane

33 EPF/1975/11 Alteration of existing bungalow to form 2 no. two
storey semi-detached cottages and construction
of a single two storey detached cottage 3 Crown Close

Stapleford Abbots

34 EPF/0164/11 Retention of mobile home for agricultural worker.
Top View Farm
Curtis Mill Lane

Stapleford Tawney

35 EPF/1624/11 Erection of a single storey, 15 bed extension with
associated facilities to an existing Mental Health
Hospital with 14 new car parking spaces, provision
of, provision of right turn lane and landscaping.
(Revised application to EPF/1038/10) Suttons Manor Clinic
London Road

Theydon Bois

36 EPF/0157/12 Loft conversion with increased ridge height and
incorporating second floor extension and rear dormer
with balcony. (Revised application EPF/0450/10) 83 Theydon Park Road

37 EPF/0146/12 Two storey side extension. (Revised application) 41 Dukes Avenue

38 EPF/0424/12 Demolish detached garage and rear attached
single storey extension, erect two storey rear
extension, front porch and two storey (part
stepped roof) side extension. 4 Heath Drive

39 EPF/0389/12 Proposed front, side and rear extension part two
storey, part single storey. 78 Forest Drive

40 EPF/2246/10 Erection of single and two storey buildings and
retention of existing buildings in new locations on site
in connection with the proposed use of the site for
training and leisure purposes for children in foster care
and carers. Former Old Foresters
Sports Ground
Abridge Road

Theydon Mount

41 EPF/1925/11 First floor extension over existing ground floor
garage and utility room. Birchfield
Mount Road

42 EPF/1164/11 Change of use of pasture land to horse keeping,
erection of post and wire boundary fencing.
Erection of private stables with ancillary hard-
standing, accessed from existing road servicing
North Farm and neighbouring properties.
(Revised application) OS 3528
Land at North Farm
Mount Road

Waltham Abbey

43 EPF/0072/12 Detached double garage to front of property. 1 Park Cottages

Enforcement Appeals Allowed

ENF/0475/07 Erection of buildings known as units 31 & 34. Erection of two new buildings used as offices. Change of use of agricultural buildings to B1, B2 B8 and Sui Generis purpose with agricultural and use of the land for open storage and parking of vehicles Weald Hall Lane Industrial Estate Weald Hall Lane North Weald Bassett

ENF/0478/07 Without planning permission the change of use of agricultural buildings to a mixed use of industrial B1, B2 B8 and sui generis purposes and agricultural Weald Hall Lane Industrial Estate Weald Hall Lane North Weald Bassett

ENF/0778/10 Without planning permission the erection of an extension on the North flank of the building West London Lodges Crown Hill Waltham Abbey

Enforcement Appeals Part Allowed/ Part Dismissed:

ENF/0476/07 Use of the land for open storage and parking of motor vehicles Weald Hall Lane Industrial Estate Weald Hall Lane North Weald Bassett

Enforcement Appeals Dismissed

ENF/0027/11 Without planning permission the erection of a building The Acres Bournebridge Lane Stapleford Abbots

ENF/0238/10 A material change of use of a single residence into four self contained flats 66A Bower Hill Epping

ENF/0371/11 Without planning permission the erection of a wooden built outbuilding in the rear garden close to the boundary with Normead. Haylands Bournebridge Lane Stapleford Abbots

ENF/0384/11 Construction of house not in accordance with approved plans 42 Hoe Lane Abridge

ENF/0509/11 Change of use of site Commercial vehicle on site Roadside House Avenue Road Roydon

ENF/0579/11 Without planning permission the change of use of residential land to a mixed use of residential and storage (Containers) 4 Ripley View Loughton

ENF/0621/11 Without permission the use of an outbuilding as a separate dwelling in breach of condition 1 attached to planning permission EPF/186/07 4 Ripley View, Loughton

ENF/0778/10 Without Listed Building consent the erection of an extension on the North flank of the building West London Lodges Crown Hill Waltham Abbey

Enforcement Appeal - Invalid, Notice Quashed

ENF/0721/10 Without planning permission the material change of use Plot 38

of the land from sui generis leisure use to use for permanent residential occupation

Roydon Lodge Chalet
Estate, High Street
Roydon