

Report to Area Plans Sub-Committee

Date of meeting: East – 22 May 2013
West – 5 June 2013
South – 12 June 2013

Subject: Probity in Planning – Appeal Decisions, 1 October 2012 to 31 March 2013

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, 36.6% in 2010/11, 28.8% in 2011/12 and 27.7% in 2012/13.
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 October 2012 and March 2013, the Council received 43 decisions on appeals (40 of which were planning related appeals, the other 3 were enforcement related).
5. KPI 54 and 55 measure planning application decisions and in total, out of this 40, 15 were allowed (37.5%). Broken down further, KPI 54 performance was 6 out of 25 allowed (24%) and KPI 55 performance was 9 out of 15 (60%).

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 8 cases:

Area Committee South

EPF/0131/12	Outline Planning Application for two semi detached two storey dwelling houses.	Land to rear of 74-78 Walnut Way, B Hill
EPF/0334/12	Demolish existing dwelling, pool building and detached garage and erect replacement two and a half storey detached dwelling and a detached single storey garage block.	Willow Park Farm Millers Lane, Chigwell
EPF/2371/11	Change of use of former tool shop (A1 retail shop) to A3 (restaurant/café) use - amended proposal now showing details of refuse store and extraction duct.	22 Forest Road Loughton
EPF/2103/11	Variation of condition 7 ' no windows other than any shown' of planning approval EPF/2003/10 (Minor material amendment on EPF/0485/09 (detached house), numerous alterations including addition of basement level)	Beagles Hut Retreat Way, Chigwell
EPF/1045/12	Two storey side and rear extension.	82 Princes Road, B Hill

Area Committee East

EPF/0843/12	Extensions, alterations and change of use of commercial premises to four flats, including ancillary works. (Revised application)	Electron House 17A Hemnall Street, Epping
EPF/0369/12	Demolition of existing garage and store shed and construction of four storey side extension. (Revised application)	Treetops Care Home Station Road, Epping
EPF/0001/12	Change of use of premises from A1 (Retail) use to a shared use A3 (Restaurant and Cafe) and A5 (Hot Food Takeaway)	74-76 High Street, Epping
EPF/1153/12	Replacement of New House Cottages with a single dwelling house and provision of a new access. (Amended application to EPF//0988/10 to include an orangery to rear)	New House Cottages Little Laver Rd, Moreton

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. Whilst 60% is the wrong side of the target for KPI55, Members may be more satisfied to know that for the year end, the target of 50% has been achieved.

8. Out of 3 enforcement notice appeals decided, 1 was allowed and 2 were dismissed. These are as follows:

Allowed:

ENF/0402/06	The material change of use of the land to a private travellers/gypsy site.	Holmsfield Nursery Meadgate Road, Nazeing
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Dismissed

ENF/0796/10	Erection of a boundary wall, gates and piers in excess of 1m high adjacent to a highway	Olivers Daws Hill Waltham Abbey
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ENF/0408/11	Without planning permission the change of agricultural land to (D2) Assembly and Leisure use facilitated by the erection of a marquee in the position and laying of a hard standing surrounded by block paving.	Mulberry House Chelmsford Road High Ongar
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Costs

9. During this period, there were 4 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. Costs therefore are rarely awarded against the appellant. The costs were as follows:-

- *Beagles Hut, Retreat Way, Chigwell*: Appeal against a minor material amendment to a planning permission, concerning the insertion of a small stairway window and a variation of another approved window, which was refused at Area Plans Committee South. This was always going to be a difficult appeal to defend because the impact was so minimal, despite the officers best efforts to make a case. The Inspector concluded that the decision had been unreasonable and resulted in unnecessary cost to the appellant, which was settled at £7,912.
- *Land Adjacent Horseshoes Farm, London Road, North Weald*: Appeal against refusal of planning permission for an additional grain store. (The decision was reported in the previous April to September 2012 report – the cost claim was not finalised until afterwards). The Inspector considered the Council had been unreasonable in respect of the second reason for refusal regarding potential increase in traffic movements and resultant impact on neighbouring property from noise and disturbance. The inspector concluded that a restriction on the use of the grain store by condition would have overcome this concern. He therefore concluded a partial award of costs against the Council, which was settled at £4,340.
- *The Mulberries, Hamlet Hill, Roydon*: The appeal for cost was successful against the Council's withdrawal of an enforcement notice after it emerged that the notice did not cover all the unauthorised uses taking place on the site. The Inspector considered it was

not therefore expedient for the Council to have issued it in the first place and awarded costs which amounted to £5,389.

- *74-76 High Street, Epping*: Change of use from A1 shop to shared use of A3 (restaurant and cafes) and A5 (hot food takeaways). Both reasons for refusal in respect of firstly, the impact on the proliferation of Class A3 and A5 uses on the health of the town centre and secondly, harm to residential amenity were not in the opinion of the Planning Inspector substantiated in the Council's defence and therefore judged to be unreasonable behaviour. The full award of costs against the Council amounted to £4,146.

10. Members attention is brought to the fact that the three planning application refusals that resulted in costs against the Council were, in this case, committee reversal decisions.

Conclusions

11. Whilst performance in defending appeals has improved during the last couple of years, 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 previous request of the Planning Services Scrutiny Standing Panel, appended to this report are the 9 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 October 2012 to March 2013

Allowed With Conditions

Buckhurst Hill

1	EPF/0950/12	Loft conversion including dormers to front, back and sides of property.	6 Fernside
2	EPF/1045/12	Two storey side and rear extension.	82 Princes Road
3	EPF/0131/12	Outline Planning Application for two semi detached two storey dwelling houses.	Land to rear of 74-78 Walnut Way

Chigwell

4	EPF/2103/11	Variation of condition 7 'no windows other than any shown' of planning approval EPF/2003/10 (Minor material amendment on EPF/0485/09 (detached house), numerous alterations including addition of basement level)	Beagles Hut Retreat Way
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Epping

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| 5 | EPF/0843/12 | Extensions, alterations and change of use of commercial premises to four flats, including ancillary works. (Revised application) | Electron House
17A Hemnall Street |
| 6 | EPF/0369/12 | Demolition of existing garage and store shed and construction of four storey side extension. (Revised application) | Treetops Care Home
Station Road |
| 7 | EPF/0001/12 | Change of use of premises from A1 (Retail) use to a shared use A3 (Restaurant and Cafe) and A5 (Hot Food Takeaway) | 74 - 76 High Street |

Loughton

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| 8 | EPF/1431/12 | Loft conversion, including change of hipped roof to hipped gable and rear dormer. | 61 Tycehurst Hill |
| 9 | EPF/0746/12 | Two storey side extension, demolition and replacement of garage into habitable room. (Revised application) | 50 York Hill |
| 10 | EPF/2371/11 | Change of use of former tool shop (A1 retail shop) to A3 (restaurant/café) use - amended proposal now showing details of refuse store and extraction duct. | 22 Forest Road |

Moreton, Bobbingworth and the Lavers

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| 11 | EPF/1153/12 | Replacement of New House Cottages with a single dwelling house and provision of a new access. (Amended application to EPF//0988/10 to include an orangery to rear) | New House Cottages
Little Laver Road |
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Waltham Abbey

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| 12 | EPF/1007/12 | Change of use of land for the stationing of a mobile home (log cabin) for residential use in connection with existing stable use. | Horizon Oaks
Church Road |
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Allowed Without Conditions

Buckhurst Hill

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| 13 | EPF/1512/12 | Proposed two storey side and rear extension. | 82 Princes Road |
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Chigwell

14	EPF/0334/12	Demolish existing dwelling, pool building and detached garage and erect replacement two and a half storey detached dwelling and a detached single storey garage block.	Willow Park Farm Millers Lane
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Theydon Bois

15	EPF/1435/12	Erection of a garage.	Beechwood Forest Side
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Dismissed

Buckhurst Hill

16	EPF/1254/12	Loft conversion with front dormer window, together with permitted development rear dormer windows.	10 Russell Road
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Chigwell

17	EPF/0392/12	Continuation of use of buildings A, B, C, E, F & G and land within the application site for the purposes of storage with ancillary office (Use Class B8).	Willow Park Farm Millers Lane
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18	EPF/1120/12	Erection of single storey rear extension with swimming pool. (To house under construction)	36 Stradbroke Drive
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Epping

19	EPF/1679/12	Single storey side and rear extensions, roof alterations including raising the ridge level to allow for first floor accommodation with front and rear dormer windows.	51 Bower Hill
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Loughton

20	EPF/0485/12	Erection of two bedroom one and a half storey detached dwelling with one off street car parking space. (Revised Application)	Land to rear of 92 and 94 Roding Road
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21	EPF/1737/12	Addition of electric front gate across existing parking space, in connection with alterations to front area to create two more parking spaces.	17 Station Road
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22	EPF/0919/12	Demolition of existing single storey rear extension and erection of two storey rear extension. (Previously approved in 1998)	91 York Hill
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Nazeing

23	EPF/2160/11	Variation of condition 3 on planning	Holmsfield Nursery
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		permission EPF/0849/10 to allow for hard standing to be installed on area of land to overcome land contamination issues. (Retention of use of site for eight private gypsy plots to replace previous temporary consent.)	Meadgate Road
24	EPF/0083/12	Demolition of existing glass houses and vehicle workshops and erection of a replacement building to provide modern vehicle workshops and storage units.	Burleigh Nursery Hoe Lane
25	EPF/0304/12	Certificate of lawful development for proposed side and rear extensions and alterations.	Dene Nursery Road
26	EPF/0186/12	Demolition of the existing bungalow and construction of a new dwelling with associated works.	26 Old Nazeing Road
North Weald Bassett			
27	EPF/2547/11	Extension to existing grain storage facilities.	Land adj Horseshoe Farm London Road
28	EPF/0729/12	Replacement of existing garage and replacement with a new two-storey residential two bed annex.	158 High Road
29	EPF/0999/12	Part ground floor and two storey rear extension and conservatory to rear.	Willow Cottage Hastingwood Road
Roydon			
30	EPF/0678/12	Subdivision of existing property into two.	Derwent Cottage Epping Road
31	EPF/2167/12	Loft conversion and associated works.	17 Barn Hill
Sheering			
32	EPF/2536/11	Retrospective Grade II listed building consent for alterations to lean-to on the western side of the coach house courtyard, to form a new lean-to structure.	Durrington House Sheering Lower Road
Theydon Mount			
33	EPF/2185/11	Change of use of land and the erection of stables on a concrete slab base.	Land Bordered by Mount End/ Mount Road
Waltham Abbey			
34	EPF/2416/11	Development of solar park together with inverter building and security fencing. (Resubmitted application)	Netherhouse Farm Sewardstone Road

35	EPF/1882/12	Extensions and alterations to provide granny annexe and family accommodation in the roof space. Raising the existing wall plate 1050mm above first floor level.	152 Crooked Mile
36	EPF/1796/12	First floor side and two storey/single storey rear extensions	75 Honey Lane
37	EPF/0912/12	Rear first floor extension. (Revised application)	Oakdale 3 Woodgreen Road
38	EPF/2447/11	Outline application for the erection of a new block containing two retail units at ground floor with four flats at first and second floor, to the rear of no 54 Sun Street.	Land Rear of 54 Sun Street
39	EPF/1364/12	Formation of 3 building plots in garden of existing house and erection of 3 no. three bedroom houses.	214 Upshire Road
40	EPF/0246/12	Conversion and extension of redundant pub into a mixed use development comprising A1 retail at ground floor and 4 residential units above.	11 Sun Street

Enforcement Appeals Allowed: With Conditions

1	ENF/0402/06	The material change of use of the land to a private travellers/gypsy site.	Holmsfield Nursery Meadgate Road, Nazeing
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Enforcement Appeals Dismissed

2	ENF/0796/10	Erection of a boundary wall, gates and piers in excess of 1m high adjacent to a highway	Olivers Daws Hill Waltham Abbey
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Enforcement Appeal: Dismissed, but Varied

3	ENF/0408/11	Without planning permission the change of agricultural land to (D2) Assembly and Leisure use facilitated by the erection of a marquee in the position and laying of a hard standing surrounded by block paving.	Mulberry House Chelmsford Road High Ongar Ongar Essex
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