

Report To: Planning Committee
Date of Meeting: 16th March 2016
Report By: Head of Planning and Public Protection
Report Author: Development Manager
Title: Planning Appeal Analysis 2015/16

1. What is the report about?

The report provides a detailed analysis of all the planning appeal decisions which have been made from April 2015 to date.

2. What is the reason for making this report?

To provide information regarding the performance of the Local Planning Authority in planning appeals so that Members can scrutinise the individual cases.

3. What are the Recommendations?

That Member's note the contents of the report and raise any issues on particular cases with the Officers outside of Planning Committee.

4. Report details.

Background

A Planning appeal can be lodged as a result of Denbighshire County Council, as Local Planning Authority, refusing a planning application. Such a refusal decision can be made by Planning Committee or by Officers under the provisions of our adopted Scheme of Delegation. The current Scheme of Delegation is attached at **Appendix 1**.

Planning appeals can be heard using one of three methods. These are set out below:-

- **Written Representation** – Exchange of statements between the Council and appellant through the Planning Inspectorate. Usually straightforward and quick with minimal cost involved to either party.
- **Informal Hearing** – Exchange of statements between the Council and appellant with a round table discussion with the Planning Inspector arranged over 1 day. Both sides may apply for costs and involves added Officer/ Member time of attending a day long hearing.
- **Public Inquiry** – Exchange of statements and proofs of evidence between the Council and appellants with a formal Inquiry arranged by the Planning Inspectorate. Legal representation is required for Inquiries as cross-examination of evidence takes place. Can be costly due to legal involvement and the fact the appeals can run into 3 or 4 days.

In relation to Householder Appeals, the **Householder Appeal Service** operates. This process was set up to speed up dealing with more simple household extension type appeal cases. There is no exchange of statements in this process but the Inspectorate make a determination based on the submitted planning application and any other relevant documents such as our Committee or Delegated Officer report.

Clearly the Council would seek to defend any refusal decision it gives and hope that the Planning Inspectorate **dismiss** the appellants appeal. Sometimes however, for a variety of reasons, the Planning Inspectorate **allow** an appeal. It is important, therefore, that we are able to analyse these appeal decisions to see whether there are any lessons to be learnt by Officers, Members and other key parties such as Town and Community Council's in the appeal process.

The Council cannot predict how many planning appeals will be lodged over the course of a year as the decision whether to appeal always lies with the applicant.

The Council should always try to ensure that any refusal decision it makes on a planning application is robust and evidence based. To this end attempts have been made to minimise the risk for possible perverse decisions being made by the Council. Better Officer/Member communication during the planning application process, planning related training for Members and a co-ordinated Planning Appeals process have served the Council well in avoiding the risks of costs being awarded against the Council. However, within a democratic process there is always some risk that decisions are made by the Planning Inspectorate contrary to the views of the Council.

Appeals Analysis 2015/16.

Appendix 2 to the document gives a breakdown of all of the 10 no. planning appeal decisions and 1 no. enforcement appeals the Council has had since April 2015 to date. Some key figures from that analysis are bullet pointed below the table.

The information contained in the appendix merely points out the relevant data but does not analyse the decisions. Officers will always try to bring specific reports back to Planning Committee should an appeal decision be received which highlights some key Policy areas of interest. In addition Officers will periodically provide Member training events which analyse appeal decisions, Policy interpretations and trends in more detail.

Cases to Note

43/2014/0790/PF - Conversion of redundant outbuilding and extension to rear to form 1 no. dwelling at Outbuilding at 41, Gronant Road, Prestatyn. APPEAL ALLOWED.

The main planning issues in relation to this particular appeal were the effect of the development on the character and appearance of the site and its surroundings and on the living conditions of residents with respect to outlook and disturbance. The Planning Inspector concluded that these effects were acceptable however in her decision **also gave considerable weight to the Council being unable to demonstrate a 5 year supply of housing land.**

The Planning Inspector referred to the Council being unable to demonstrate a 5 year supply of housing land and that the current supply falls significantly short of this figure, the appeal decision referred to paragraph 6.2 of Technical Advice Note 1: Joint Housing Land Availability Studies which states that “*the need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with development plan and national planning policies*”.

45/2014/1327/PS - Removal of Condition no's 2 & 3 of pp ref 45/2014/0746 relating to the provision of open space & affordable housing in connection with change of use of offices to form 6 residential apartments at Fronfraith, 1 Broughton Ave, Rhyl. APPEAL ALLOWED.

Planning permission was granted by the Planning Committee in September 2014 for the change of use of offices to form 6 no. residential apartments. This was subject to planning conditions which required the developer to agree to make relevant contributions to affordable housing and open space in accordance with adopted LDP policies (Conditions 2 and 3).

In November 2014, an application was submitted which sought the deletion of conditions 2 & 3 which was refused planning permission under delegated powers, as it was considered that there were no material planning considerations relevant to justify removal of the conditions.

In respect of the appeal decision, the Planning Inspector noted and concluded the following:-

In relation to Open Space:

As regards policy BSC11, it states *where appropriate*, developers are expected to make a financial contribution, however the Inspector considered that little explanation had been given by the Council as to when a contribution would be required based on the scale of development, how that commuted sum is calculated, and how the development would materially affect existing public open space provision. **In the absence of such evidence, the requirement for a commuted sum payment towards off site open space mitigation had not been justified.** The Inspector considered that there is a lack of evidence to properly demonstrate the impact future occupants of this development would have on existing open space provision in the area, whether this would be an adverse impact, and the consequences of such an effect, or minimal impact, where the effect would be neutral. The scale of the development of 6 flats would in all likelihood be the latter, as not all future occupants are likely to avail themselves of the facilities in the area. I therefore consider that the size of the contribution has not adequately demonstrated it is proportionate to the scale of the development.

In conclusion it was considered that such a contribution through condition No. 2 is neither necessary nor reasonable.

In relation to Affordable Housing:

Policy BSC4 is the principle policy within the LDP in relation to the provision of affordable housing. The Council's adopted Affordable Housing Supplementary Planning Guidance (SPG1) sets out further detailed advice and guidance on how affordable housing is to be delivered on new residential schemes and supplements policy BSC4.

The appellant's submitted financial viability assessment confirms the scheme is not viable if it must provide contributions in respect of affordable housing, in addition to the public open space provision.

In conclusion, the scheme was considered to be clearly unviable when commuted sum payments related to affordable housing and public open space are factored in.

A point also raised by the Planning Inspector was in relation to the housing land supply. Irrespective of whether or not the site constitutes a 'windfall' development in relation to the provision of housing, the fact of the matter is that Denbighshire currently has a substantial short fall in the provision of a 5 year land supply. **The lack of a 5 year supply of housing land weighs heavily in favour of permitting the proposed development without complying with condition No.3.**

45/2015/0298/PF - Change of use from builders merchants to motor vehicle body shop and spray booth and associated alterations including installation of vent chimney at 140 Vale Road, Rhyl. APPEAL DISMISSED.

The main issue with this appeal was the effect of the development on residents' living conditions with particular regard to noise and odour.

The Planning Inspector concluded that due to the very close proximity of residential properties to the appeal site that any noise arising from the proposed activities would cause considerable harm to the occupiers' quiet enjoyment of their homes and would result in an unacceptable level of disturbance. It was considered that it would be highly likely that the proposed use would give rise to significant levels of noise and in the absence of any evidence in relation to the arising noise levels it is not possible to conclude that there would not be harm to residents' living conditions as a result of noise.

The Inspector acknowledges the suggestion that conditions could be imposed in line with advice in Technical Advice Note 11: Noise (TAN 11). However, TAN 11 requires noise generating development to not cause an unacceptable degree of disturbance. In the absence of any detailed information in relation to noise and odour the possibility for effective mitigation measures to be provided under conditions cannot be assessed. **The Inspector considered that it is fundamental that these matters are addressed prior to any decision as they are material considerations in assessing the acceptability of the proposal.**

