

# Scrutiny Report



Report of Head of Planning

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Wards affected: All

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To: SCRUTINY

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## Planning Appeals Performance Update

### Recommendation

(a) that Councillors consider the content of the report and feedback their observations to the Cabinet Member for Planning

### Purpose of Report

1. To inform Members of the latest performance information in relation to planning appeals for the period 1 January 2020 to 30 June 2021 to assist quality of decision making.
2. The report references the latest national published appeals performance criteria and outlines any trends and common themes in the Planning Inspectorate decisions, together with lessons learnt from those decisions.

### Corporate Objectives

3. The processing of planning appeals supports the Corporate Plan, 2020 - 2024, themes of 'Providing the Homes People Need' and "Building Healthy Communities".

### Background

4. Planning applicants enjoy the right of appeal against the refusal of planning permission<sup>1</sup>, the imposition of planning conditions and cases where the council has failed to issue a decision within the relevant statutory time period (referred to as non-determination appeals). Only the person(s) who made the application can

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<sup>1</sup> Various time constraints apply following refusal of planning permission or failure to determine an application see <https://www.gov.uk/appeal-planning-decision> for more details.

appeal but interested parties can comment on the appeal. There is no right of appeal for third parties.

5. The Planning Inspectorate for England and Wales (PINS) is an executive agency of the Department of Levelling Up, Housing and Communities (DLUHC) (was Ministry of Housing, Communities and Local Government - MHCLG) with responsibility to make decisions and provide recommendations and advice on a range of land use planning-related issues. PINs deal with planning appeals, nationally significant infrastructure projects, examinations of Local Plans/Neighbourhood Plans and other planning-related and specialist casework.
6. For the purposes of this report, planning appeals are conducted under three methods in accordance with S78 of the Town and Country Planning Act 1990 (as amended):
  - A) Local Inquiry (Public Inquiry) – a formal meeting with legal representation and the cross-examination of witnesses
  - B) Hearings – a more informal round table discussion with questions from the Inspector
  - C) Written Representations – the exchange of written statements.
7. The onset of the Covid-19 pandemic saw PINS introduce virtual public inquiries and hearings in the late summer/autumn of 2020. PINS ran these events and all those involved were invited to attend through a specific MS Teams invite. Two public inquiries<sup>2</sup> and four hearings have taken place via this new process to date for our council. Generally, the council's barristers have remained in their chambers whilst officers involved have given evidence remotely. Any consultants appointed by the Council have also given evidence remotely.
8. However, with effect from 13 September 2021 PINS have confirmed that all inquiries and hearings will revert to in-person events. We have to provide suitable venues at our cost.
9. The virtual process has been beneficial to the council in terms of the saving of venue and printing costs and also travel time which is particularly helpful when evidence is being given. Similarly, we have not been incurring barristers and consultants travel and subsistence costs.
10. All appeals are determined by an appointed Inspector working for the Planning Inspectorate on behalf of the Secretary of State. There is no fee to make an appeal and parties are expected to meet their own costs. However, an Inspector can award cost for unreasonable behaviour by parties. Examples can include delays in the process and the inability to provide robust evidence. Currently appeals can take between 3 months to over a year to determine by the Inspectorate.
11. Where a planning officer recommends the refusal of planning permission under delegated powers that officer will usually deal with the appeal if made.
12. Our joint Principal Appeals Officer (PAO) usually deals with appeals relating to cases where the Planning Committee has refused permission contrary to the officers'

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<sup>2</sup> [P15/V2933/O](#) Sutton Courtenay and [P18/V0259/O](#) The Steeds

recommendation. In addition, the role includes preparing and presenting expert evidence at public inquiries and hearings.

13. The PAO provides general planning evidence and when required more specific evidence such as a housing land supply case. The latter is usually undertaken with the support of officers from the policy team, but on occasions other officers are key witnesses. The PAO will, where appropriate, appoint consultants to act as expert witnesses for the council where technical refusal reasons are being defended such as the impact of noise, landscape harm and financial viability issues. In addition, the PAO will prepare S106/CIL statements and defend planning conditions at public inquiries and hearings. We also, with legal support, make cost claims for unreasonable behaviour where justified.
14. Since January 2020, a total of 52 appeal decisions have been issued. These have largely been dealt with by the PAO case officer. The PAO has dealt with 10 of these appeals mostly through the written representations process<sup>3</sup>. Two cases have been determined by hearings<sup>4</sup>, and two have been dealt with by public inquiries<sup>5</sup>, the most recent being The Steeds, Faringdon (April 2021).
15. Generally, the Planning Enforcement team manage their appeal cases.

## Planning Performance

16. In 2013 Government published *“Improving Planning Performance – Criteria for Designation”*<sup>6</sup> the document has regularly been updated since then with the most recent update in December 2020. This document sets out the Government’s criteria for assessing local planning authority performance in determining planning applications for major and non-major development (i.e. Minor and Other planning applications). The explanatory memorandum explains the changes to the criteria for assessing planning performance by councils.
17. The document has its background in the Government’s objectives of boosting the supply of housing and economic growth and the important role councils play in delivering these objectives. The performance of councils in determining planning applications for planning permission in a timely fashion is also crucial to these objectives.
18. Measuring the performance of councils, as introduced by the Growth and Infrastructure Act 2013, is based on assessing councils’ performance on the speed and quality of their decisions in respect of applications for major and non-major development.
19. Where a council is designated by the Secretary of State as underperforming, applicants have the option of submitting their planning applications and associated

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<sup>3</sup> For SODC – 25 appeals 17 via written representations, 3 hearings and 6 via public inquiries( 4 in 2019, 1 in 2020 and 1 in 2021)

<sup>4</sup> [P19/V1332/FUL](#) Northcourt, Abingdon (29 January 2020 and 8 March 2021); [P20/V0857/FUL](#) Chilton (8 April 2021); and [P19/V2459/FUL](#) The Causeway, Steventon (15 April 2021)

<sup>5</sup> [P18/V3052/FUL](#) Chilton A34, [P15/V2933/O](#) Sutton Courtenay and [P18/V0259/O](#) The Steeds

<sup>6</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/947446/CM\\_Improving\\_planning\\_performance\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/947446/CM_Improving_planning_performance_2020.pdf)

fee for major and non-major development (and connected applications) directly to the Planning Inspectorate for determination. The council has to provide the administration of the planning application for the Inspectorate at its own cost and does not receive the usual planning application fee.

20. The Secretary of State can designate councils if they are not adequately performing their function in determining applications<sup>7</sup>. The performance of councils in determining major and non-major development is assessed separately, meaning that a council could be designated based on its performance in determining applications for major development, applications for non-major development, or both. The assessment for each of these two categories of development is against two separate measures of performance: the speed with which applications are dealt with (e.g. 8 weeks) measured against the proportion of applications that are dealt with within the statutory period or agreed extension of time; and the quality of decisions made by councils is measured against the proportion of decisions on applications that are subsequently overturned at appeal.

### Speed of decisions

21. In terms of speed Table 1 below sets out the relevant threshold and assessment period in relation to the speed of decision making.

**Table 1 Threshold and assessment period for the speed of major development and non-major development**

Measure and type of Application	Threshold and assessment period	Threshold and assessment period	Live Table
	October 2018 to September 2020	October 2019 to September 2021	
Speed of major Development (District and County)	60%	60%	District - P151a County – P151b
Speed of non-major Development	70%	70%	P153

22. **Appendix 1** to this report provides an extract of tables 151a and 153 in relation to Oxfordshire councils. It confirms that the council is determining major development proposals at 78%<sup>8</sup> and non-majors at 76.8%<sup>9</sup> for the period July 2019 to June 2021. This period has been largely affected by the Covid pandemic which has affected our ways of working, however despite the increase householder applications (Others) during this period both performance figures are reasonably above the thresholds. Our performance is lower than our pre-Covid figures (see footnotes 8&9).

<sup>7</sup> Section 62b 1(b) of the 1990 Act

<sup>8</sup> 82.3% for the period Jan 2018 to December 2020 – i.e. pre-Covid

<sup>9</sup> 85% for the period Jan 2018 to December 2020 – i.e. pre-Covid

## Quality of decisions

23. Table 2 below sets out the threshold and assessment period for quality of major development and non-major development for the period April 2018 to September 2020. The assessment period rolls forward every 6 months.

**Table 2 Threshold and assessment period for quality of major development and non-major development**

	<b>Threshold and Assessment Period</b> <b>April 2018 to March 2020</b>	<b>Threshold and Assessment Period</b> <b>October 2018 to September 2020</b>
Quality of major development <sup>10</sup>	10%	10%
Quality of non-major development <sup>11</sup>	10%	10%

## Vale District Council's performance 1 April 2018 to 31 March 2020 <sup>12</sup>quality of decisions

24. On 23 September 2021, DLUCH published their latest statistics in respect of the quality of performance for the period 1 April 2018 to end of March 2020 which is summarised in Table 3 below and the table contained in **Appendix 2**<sup>13</sup> to this report:

**Table 3 1 April 2018 to end March 2020 - Major decisions overturned**

Total number of major applications (determined and non-determined)	127
Total major appeal decisions	2
Total number of major decisions overturned at appeal <sup>14</sup>	2 (Committee decision contrary to officer recommendation)
% of overturned major decisions	1.6%

<sup>10</sup> See live table P152A

<sup>11</sup> See live table P154

<sup>12</sup> <https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics>

<sup>13</sup> Appendix 1 provides an Oxfordshire wide analysis for this period

<sup>14</sup> Total 2 major appeal decisions issued in 2020

25. Table 3 above and Appendix 2 confirms that the Council had 1.6% of its major application decisions overturned, which is no change from the previous period January 2018 to December 2019 (see **Appendix 3**).
26. In respect of non-majors, 0.7% appeals were overturned, a minor increase (0.1%) from the period January 2018 to December 2020.
27. Obviously, this period is older than the period being reviewed in this report such that there is very limited overlap. Key major appeal decisions (Bellingers Abingdon & Blue cedar Drayton) overturned from 1 April 2018 to end December 2019 (since from January 2020 is covered in the remainder of this report) are set out in **Appendix 4** together with the respective appeal decisions.

### **The Council's Performance January 2020 to 30 June 2021 – quality of decisions**

28. For the purposes of this report our performance in respect of quality of decisions for both major and non-major development is reviewed for the period January 2020 to 30 June 2021, in the context of the 10% thresholds identified above.
29. This section of the report identifies the number of applications determined (including non-determinations) as this forms the basis for then considering the % of overturned decisions. The number of overturned decisions is set out together with a breakdown of whether the appeal resulted from an officer delegated decision or a committee decision.

### **Major applications**

30. Applications falling within this category include developments above 10 dwellings / site over 0.5ha or 1000sqm/1ha.

#### **1 January to 31 December 2020**

**Table 4 2020 Major decisions overturned**

Total number of major applications (determined and non-determined)	57
Total major appeal decisions	3
Total number of major decisions overturned at appeal <sup>15</sup>	1 (Committee decision contrary to officer recommendation)
% of overturned major decisions	1.7%

31. Table 4 above shows that in 2020 the council determined a total of 57 major applications, 3 decisions were appealed, 1 of which was overturned at appeal (a

<sup>15</sup> Total 2 major appeal decisions issued in 2020

committee decision contrary to officer recommendation). The resulting figure for 2020 is 1.7% of major decisions were overturned.

32. The overturned decision related to application at Cumnor Hill, Oxford, **Appendix 5** contains the details of the appeal, a summary, and the appeal decision.

### 1 January to 30 June 2021

**Table 5 2021 Major decisions overturned**

Total number of major applications (determined and non-determined)	34
Total major appeal decisions	2
Total number of major decisions overturned at appeal <sup>16</sup>	2 (1 officer delegated and 1 Committee. The committee decision was contrary to officer recommendation)
% of overturned major decisions	5.9%

33. Table 5 above shows that between 1 January 2021 to the end of June 2021, 34 major applications were determined. 2 decisions were appealed both of which were overturned at appeal (1 was a delegated refusal and the other a committee decision against officer recommendation). The resulting figure for 2020 is 5.97% of major decisions were overturned.

34. One (Botley Centre) of the two appeal decisions that were overturned (i.e. allowed) was made by the Planning Committee and the other (Greensands, East Hendred) by officers under delegated powers. Details are provided in **Appendix 6** together with copies of the appeal decisions.

### Non-major applications (i.e. Minors/Others)

35. Applications falling within this category comprise minor developments (including residential, offices, retail, Gypsy and Traveller, changes of use and householder applications).

### 1 January to 31 December 2020

**Table 6 2020 Non-major decisions overturned**

Total number of non-major applications (determined and non-determined)	972
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<sup>16</sup> Total 2 appeal decisions from 1 Jan 2021 to end June 2021

Total number of non-major decisions overturned at appeal	6 (5 delegated officer decisions and 1 Planning Committee. The committee decision was contrary to officer recommendation)
% of overturned major decisions	1.7%

36. As the table above shows, over the period 1 January to 31 December 2020, 972 non-major applications were determined. 35 non-major appeal decisions were issued of which 6 were overturned decisions. As a result, the quality performance figure of 1.7% is well below the 10% threshold.
37. The decisions are listed and provided in **Appendix 7**. All the decisions involved the matter of planning judgement and no particular trends or remarks are suggested.

### 1 January to 30 June 2021

**Table 7 2021 Non-major decisions overturned**

Total number of non-major applications (determined and non-determined)	590
Total number of non-major decisions overturned at appeal	4 (3 delegated officer decisions and 1 Planning Committee. The committee decision was contrary to officer recommendation)
% of overturned non-major decisions	0.7%

38. To the end of June 2021, 590 non-major applications had been determined. 12 non-major appeals were decided, of which 4 were overturned decisions, 3 contrary to officer recommendation and one related to a Planning Committee overturn. This represents 0.7% of all non-major decisions, again well below the 10% threshold.
39. The decisions are listed and provided in **Appendix 8** and all involved the matter of planning judgement and no particular trends or remarks are suggested.

## Performance comparison

### 1 April 2018 to 31 March 2020

40. Using the up-to-date information from DLUHC comparisons can be made for the period April 2018 to March 2020. This information is provided in Appendix 2 which shows the performance of the council in comparison with other Oxfordshire councils and England in respect of major applications and appeals. Generally, in the context of the 10% threshold, our performance reflects the national position (England), is good and healthy, and indicates the democratic process is active.



41. Appendix 2 also shows the performance of the council in comparison with other Oxfordshire councils and England in respect of non-major (i.e. minor/other) applications and appeals between April 2019 and end of March 2020. Similarly, the council's performance is good (better than the national position).

**1 January 2020 to 30 June 2021**

42. In relation to this period in respect of major decisions overturned at appeal we compare favourably with South Oxfordshire District Council as shown in Table 8 below:

**Table 8 Vale of White Horse/South Oxfordshire District Council's major decisions overturned 1 January 2020 to 30 June 2021**

	Total major application decisions inc. non-determined	Major decisions overturned at appeal	Quality of major decisions (% overturned at appeal)
<b>Vale of White Horse DC</b>	<b>91</b>	<b>3</b>	<b>3.3%</b>
South Oxfordshire DC	86	5	5.8%

43. In relation to the same period January 2020 to June 2021 the Vale compares closely with South Oxfordshire in respect of non-major (i.e. minor/other) decisions overturned at appeal as shown in Table 9:

**Table 9 Vale of White Horse/South Oxfordshire District Council's non-major decisions overturned 1 January 2020 to 30 June 2021**

	Total non-major application decisions inc. non-determined	Non-major decisions overturned at appeal	Quality of non-major decisions (% overturned at appeal)
<b>Vale of White Horse DC</b>	<b>1,562</b>	<b>3</b>	<b>0.7%</b>
South Oxfordshire DC	2,475	16	0.6%

44. The council is performing well and significantly below the thresholds for both major and non-major decisions.

45. The major application appeal decision in respect of The Steeds ([P18/V0259/O](#)) is worthy of mention. Following the Planning Committee's decision to refuse the proposal as it did not accept the submitted viability evidence, the council appointed consultants who were able to demonstrate that the full policy compliant 35% affordable housing could be provided. As the failure of the development to provide 35% affordable housing was one of the key refusal reasons, the council were to all intents and purposes successful at this appeal as although it was allowed, we

secured full policy compliant affordable housing and the leisure infrastructure contribution.

## Costs Awards

46. Planning Practice Guidance<sup>17</sup> provides advice in respect of applications for the award of costs against the local planning authority or the appellant (and on rare occasions third parties). Parties in planning appeals are expected to meet their own expenses when appealing a decision, regardless of the process chosen. Costs can be awarded where one of the parties has behaved unreasonably and the unreasonable behaviour has resulted in unnecessary expense. Where an application is made for costs, the party applying is called the applicant, as they might not necessarily be the appellant.
47. Table 10 sets out cost applications submitted in 2020 and 2021 by both the council and appellants together with the decision:

**Table 10: 2020/2021 Costs applications and decisions – majors and non-majors**

Application No.	Type	Location / Appeal Decision Date	Costs Allowed/ Refused	Comments
<b>2020</b>				
P18/V3135/FUL	Minor	70 Cumnor Hill, Oxford - Allowed (Committee overturn) 14.02.20	Refused	Application made by the appellant
<a href="#">P19/V0753/FUL</a>	Minor	East Paddocks, Milton Road, Drayton Dismissed 8.02.20	Allowed	Application made by appellant on the grounds that the highways refusal was unjustifiable. OCC withdrew their objection between the application being lodged and the appeal being determined.  Costs paid by OCC
<a href="#">P20/V1083/FUL</a>	Minor	19 Mill Road, Marcham - Dismissed 11.12.20	Refused	Application made by the appellant on the grounds of non-determination. The Inspector did not consider the council behaved unreasonably given discussions were on going with the appellant in respect of highways concerns.
<b>2021</b>				
<a href="#">P19/V1322/FUL</a>	Minor	Former Cricket Pitch, Abingdon Dismissed 6 April 2021	Refused	The council made the application on the grounds that the appellant had altered its position in respect of affordable housing provision in relation to application P18/V2499/FUL and then subsequently withdrew the application. As both appeals were the subject of cojoined hearings had P18/V2499 been withdrawn earlier, an additional day to hear the case would not have been necessary.

<sup>17</sup> <https://www.gov.uk/guidance/appeals#the-award-of-costs--general>

<a href="#">P20/V0404/FUL</a>	Minor	2 Tennyson Drive, Abingdon Allowed 9 April 2021	Refused	See Appendix 8
<a href="#">P20/V0921/FUL</a>	Major	Botley Centre, Botley (Committee overturn) Allowed 12 May 2021	Refused	See Appendix 6

## The Cost of Defending Appeals

48. The costs the council incurs in defending appeals varies depending on the process involved (i.e. written representation, hearing, or public inquiry) and the main issues involve and whether these can be dealt with in-house by officers or whether external consultants, including legal advice, are need to be appointed.

### Written representations

49. Where the officer has refused planning permission under delegated powers, their delegated report will largely form the basis for the submission to PINS which could be a formal statement or simply a letter which states that they will largely rely on their delegated report and cover off any issues the appellant raises which need rebutting. This process can take between half a day and a full day.

50. Having regard to current average officer charge rates, including administrative aspects of the appeal such as sending out consultation letters and assisting members of the public with any questions about the process and recharges, the cost for defending a written representations appeal would be approximately between £300 to £600.

51. For written representations appeals which follow a planning committee decision (i.e. an decision contrary to officer recommendation), the level of work needed is increased given the need to review the application merits as well as examining and rebutting the appellant's statement. In this case it would cost approximately £500 to £850 depending on the issues involved. If a consultant is required to deal with a specific technical matter i.e. noise or drainage, then our costs would increase. A recent example of a noise report needed to defend a written representations appeal was £3,000.

### Hearings

52. The officer costs for a hearing are greater as more work is involved, such as seeking to agree common ground before the hearing as well as drafting and agreeing conditions. In some cases, a S106 agreement may be needed. Officer costs preparing for a 1 day hearing could be between £3,000 - £4,000.

53. In the event consultants are needed to cover technical matters the costs can vary. For the appeal at Chilton (P20/V0857/O) the council needed to appoint a landscape consultant. The cost of preparing that witness statement and attending the hearing was approx. £6,000.

54. For the appeal by Lidl at Grove (P18/V2300/FUL) the council needed to appoint a planning consultant as well as a retail consultant, whilst landscaping was dealt with in

house by one of our landscape officers. The planning consultants' costs were £8,000 whilst the retail consultant costs were £14,000. The appeal was dismissed.

55. Now that hearings have become in person again, the council needs to secure a suitable venue for a hearing (or public inquiry). The availability of a suitable venue can be restricted as village halls which are usually reasonably priced often have classes booked months in advance. Venue costs vary a village hall could cost in the region of £250 per day.
56. It is possible that appellants will seek legal representation at hearings. In such cases the Council is likely to match with a barrister in attendance, as we recently did for the appeals at Chilton (P20/V0857/O) and Steventon (P19/V2459/O) appeals. The legal fees for these two 1-day hearings were £21,000 and £9,000 respectively. The council's legal team who appoints our legal representation always ensure that barristers fees are competitive.

## **Public Inquiries**

57. These are time intensive where officers need to submit the questionnaire, Statement of Case and a proof of evidence. The latter will often need other supporting proofs by consultants/officers. The officer will also be responsible for agreeing common ground with the appellant, working with the council's team. In addition, the officer will project manage the appeal arranging meetings with the barrister and the team when necessary.
58. Consultants will often need to be employed. Viability consultants assisting with the recent appeal at The Steeds (P18/V0259/O) cost approximately £21,000 which ensured the council was successful in securing 35% affordable housing.
59. Barristers' fees for public inquiries can vary depending on the experience of a barrister and usually average between £40,000 to £48,000 for a 4-day public inquiry.
60. It is worth noting that the appellant's will be incurring such costs too and in the event an Inspector finds the council has behaved unreasonably, the council will have to pay these in addition to the costs we have ourselves incurred in defending the appeal.

## **Trends in decisions**

### **Major application appeals**

61. There are no clearly identifiable trends in respect of major appeal decisions. Those that were allowed involved judgement and cannot be considered to form a precedent for other appeals.
62. The appeal decision at The Steeds involved reviewing viability evidence submitted in support of the planning applications. The viability consultants appointed by the council for this appeal work predominantly work with councils and housing associations and were integral in the council's success in securing a policy compliant affordable housing (35%) from the development.
63. The appeal at The Steeds also raises the importance of up-to-date sports and leisure evidence as well as clearly identified schemes that developments should contribute towards. There was insufficient evidence on this aspect for the Inquiry and the

Inspector did not consider the contributions sought by us in respect of such matters to be reasonable. We are assessing with colleagues how this can be addressed for future applications/appeals and plan making.

64. The Sutton Courtenay appeal demonstrated that our housing land supply position is under significant scrutiny by developers.
65. Councillors will be aware following the Oxfordshire Housing and Growth Deal that between September 2018 and March 2021, the council needed to demonstrate a three-year supply of housing land for the purposes of decision making. This position helped our case on the Sutton Courtenay appeal; however, we now need to defend the normal 5-year housing land supply position.

### **Non-major application appeals**

66. The appeals at Chilton ([P20/V0857FUL](#)) and Steventon ([P19/V2459/FUL](#)) set out the council's position regarding self and custom housebuilding needs from our self-build register. We will be reviewing this register to ensure needs are current, there is a local connection and that the necessary finances are available to those who are on the register.
67. The requirement to provide self and custom build housing is a statutory requirement. The Local Plan Part 2 is supportive of self/custom build if the development is appropriately located and we are monitoring the provision of plots to meet the needs with our housing team.
68. The council has been able to successfully defend proposals for residential development in the smaller villages where it does not comprise infill or is of a scale that is inappropriate to the location.
69. However, applications for new dwellings in the countryside need to carefully consider their relationship with nearby dwellings and settlements to determine whether they are truly isolated for the purposes of paragraph 80 of the NPPF. Recent High Court decisions<sup>18</sup> have considered the issue of isolated housing in the countryside. For example, Lang J confirmed at Braintree: "*..a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is, or is not, 'isolated' in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand*"; and "*Whether, in a particular case, a group of dwellings constitutes a settlement, or a 'village', for the purposes of the policy will again be a matter of fact and planning judgment for the decision-maker.*"
70. Many of the appeal decisions relate to matters of planning judgement which is for the decision maker to exercise. Inspectors have closely considered the existing character and appearance of areas and the form of development within them in reaching a contrary decision to the council. On some occasions there has been limited consideration of this in our decision-making and a lack of clarification as to why the development in question is particularly harmful when other directly comparable developments have been permitted. Whilst each case must be determined on its merits, there are circumstances where sites and developments are very similar and

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<sup>18</sup> Dartford Borough Council v SSCLG & ors [2017] EWCA Civ 141 and Braintree DC v SSCLG & ors [2018] EWCA Civ 610).

warrant the same approach regardless of who determined the applications and whether or not those decisions are agreed with.

### **Measures to improve performance**

71. We regularly monitor and review our appeal decisions and costs decisions, particularly where there is a danger of performance figures being breached and where an award of costs could have potentially been avoided. Our monitoring assists us in developing new planning training for councillors, in particular the planning committee, and officers.

### **Climate and ecological impacts implications**

72. Although there are no direct climate or ecological impacts from this report, as part of the appeal process, if an Inspector is minded to allow an appeal, we need to provide draft conditions or a s106 agreement.
73. In these circumstances and subject to the nature of the appeal, we will seek appropriate planning conditions, such as electric vehicle charging points, Green Travel Plans, Construction Environmental Management Plans and biodiversity net gains. S106 agreements can also be used to secure biodiversity gains in addition to securing contributions towards public transport and highways improvements such as cycle lanes, where schemes are identified and considered necessary as a result of the development.

### **Financial Implications**

74. Other than as part of the development management staff time, planning appeals and any costs awarded are not budgeted for.
75. The approximate costs of appeals set out above and implications of being awarded costs against the council is important to recognise. Although our performance on appeals is good, it clearly has cost implications for the council in defending our decisions.
76. Any council decision that has financial implications must be made with the knowledge of the council's overarching financial position. Our position is reflected in the council's medium-term financial plan (MTFP) as reported to Full Council in February 2021 which showed that the council is due to receive £2.6 million less in revenue funding than it plans to spend in 2021/22 (with the balance coming from reserves including unallocated New Homes Bonus).
77. This funding gap is predicted to increase to over £5 million by 2025/26. As there remains no certainty on future local government funding, following the announcement of a one-year spending review by government, and as the long-term financial consequences of the Coronavirus pandemic remain unknown, this gap could increase further. Every financial decision made needs to be cognisance of the need to eliminate this funding gap in future years.

## **Legal Implications**

78. There are legal procedures that we must follow in connection with appeals and deadlines must be met otherwise the council is at risk of incurring additional costs.

## **Risks**

79. As set out earlier in this report, the Government sets out its national performance targets, which we should at least meet or exceed. The potential consequences of poor decision making are both financial and reputational.

## **Conclusion**

80. Overall, although the council's appeals performance has been reasonably strong over the reported period, it comes at a cost. We need to carefully manage our decision making, learn from the themes emerging from planning Inspectors' decisions and undertake/participate in regular officer and councillor training.

## **Background Papers**

The National Planning Policy Framework  
National Planning Guidance