

Final Report of the Project Team
to the Review Committee

Review of Planning Appeal Procedures



REVIEW OF PLANNING APPEAL PROCEDURES

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2 Glossary

LPA	Local Planning Authority
RDC	Rochford District Council

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3 Introduction

- 3.1 The majority of residents will not have much interaction with their Local Authority until they or one of their near neighbours submits a planning application. Depending on the complexities of their application this will either be agreed or declined within the Planning Officers delegated powers or it will be decided by the Development Control Committee. If the application is refused then the applicant has the right to Appeal against the decision via the Planning Inspectorate.
- 3.2 In recent times it has become almost standard practice for applicants to appeal against decisions made by the Development Control Committee that have been contrary to the officers recommendation. The Review by the Project Team has looked at the procedures involved and also the Council's record in relation to the appeals it has been involved with to see what lessons could be learnt for the future.

4 Background

- 4.1 The subject of Planning Appeals and the number the Council has had to deal with recently has been a matter of concern to Members. It was felt that this was an area worthy of review, to compare what other local authorities were doing in this important area and to see what best practices could be identified and possibly introduced to Rochford District Council.

5 Terms of reference

- 5.1 To analyse and comment on the arrangements for dealing with Planning Appeals and to propose options for improvement. The review would look in detail at the procedures and consider the cost and effectiveness of different forms or representation.
- 5.2 It was agreed that the Review would not look at other appeals that are dealt with by the Planning Inspectorate including the following:-
- Access Appeals
 - Call-Ins
 - Environmental Appeals
 - Hedgerow Appeals
 - High Hedges
 - Land Compensation Appeals

6 Methodology

- 6.1 A number of meetings were arranged between the Project Team and the Planning Department where the appeals process was explained and any questions raised by the team were answered. Areas that were covered included:-
- Numbers of appeals
 - Officer Recommendations and Decisions made on applications
 - Venues supplied by RDC for Appeal
 - Council representation at appeals
 - Outcomes
 - Costs around appeals (to include the costs of different forms of representation and costs awards)
 - Looking into the possibilities of benchmarking RDC performance – appeal outcomes against original recommendation and committee decision
- 6.2 A questionnaire was forwarded to other Authorities in the RDC audit family group to obtain their input in relation to the following areas:-
- What other authorities are doing in respect of their Planning Appeals
 - Attempting to identify best practices from other authorities that could be introduced at RDC.

7 Findings

7.1 The Planning Inspectorate

- 7.1.1 When an application for planning consent is refused either under officer's discretionary power or by the Development Control Committee the applicant can appeal the decision to The Planning Inspectorate.
- 7.1.2 Appeals can either be in writing or online via The planning Inspectorate web site, WWW.planning-inspectorate.gov.uk and must be made within 6 months of receipt of the notice of the Local Planning Authority's (LPA) decision.
- 7.1.3 The Planning Inspectorate will also deal with appeals against Enforcement Notices that have been issued by the LPA.
- 7.1.4 At the time of lodging the Appeal the applicant has to decide which method of appeal that they wish to apply for. If all parties agree with the applied for method, (Applicant, LPA and Planning Inspectorate) then this will be the method used. The LPA can ask for a different method of hearing the appeal or the Planning Inspectorate can decide that there is sufficient interest to change the method of appeal if it thinks this would be in the public's interest.

7.2 Types of hearing

- 7.2.1 There are 3 different procedures that the appeals can take. They are:-
- Written Representation
 - Informal Hearing
 - Public Inquiry
- 7.2.2 Written Representation – This method of appeal is designed to make the process proceed quickly. There is a set timetable to which all parties must adhere and any submissions that fall outside the timetable are not considered. The case officer will pull together the LPA's statement for the Planning Inspector who will consider both this Statement and the appellant's statements and undertake a site visit before reaching a conclusion. There can be no application for costs linked to these types of appeals and they are the least expensive in officer time. The actual time taken is dependant on the complications of the case.
- 7.2.3 Informal Hearing – If the Appellant or the LPA do not agree to the written procedure, there will be a hearing or inquiry instead. Hearings are less formal than inquiries and usually involve an open discussion

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led by the Inspector. Whilst the Appellant or LPA can ask for a hearing they do not have the right to one.

- 7.2.4 The Appellant does have the opportunity to make an application for costs. The preparation of the evidence is similar to the written representation. In cases where complications are involved then legal advisors are briefed. These take up more time for officers as they need time to prepare for the hearing, may have to brief a legal advisor when necessary, in addition to the time for the hearing and site visit. In these cases the officer needs to make sure they are fully conversant with all the facts of the case, as the inspector will put questions to the officer at the hearing. Hearings are usually held in one of the Committee Rooms at the Civic Suite, Rayleigh. Most Hearings will be completed in one day, with the evidence being considered in a morning session followed by a site visit in the afternoon.
- 7.2.5 Public Inquiry – An inquiry is held if the appellant or the LPA decide that they cannot rely on the written procedure and a site visit, and the Planning Inspectorate have decided that a hearing is unsuitable. Sometimes the Planning Inspectorate can decide that an inquiry is necessary and they will advise all parties of the reasons for their decision.
- 7.2.6 This type involves the most work for the Council and Appellant. Both sides have legal representation and there is substantial work involved prior to the Inquiry by the case officer in preparing the case and briefing legal advisors. The Inquiry may last for several days. If costs are awarded against the Council these will typically include covering the appellants' legal fees and those of any expert witnesses.
- 7.2.7 Both sides can make a claim for costs if they can prove there has been unreasonable behaviour. For the Council it is very often extremely difficult to make a claim as it would, for example, need to prove that the applicant had submitted the same plans a number of times in a period when the Council's planning policies had remained unchanged.
- 7.2.8 For costs to be awarded against the Council it must be proved that the Council has acted unreasonably in refusing the application. Usually appellants take a reasoned judgement before they apply for costs.
- 7.2.9 Local Authorities have to be transparent and work from Planning Policy. If officers have recommended an application and then it is declined by the Development Control Committee, an appellant can see an element of unreasonableness if no valid planning reason supported with clear evidence, is given for declining the application by the Development Control Committee. If Members put forward reasons for declining a change to a development that had previously been tested by the Planning Inspectorate and found to be acceptable, then this would leave the Council open to the a real danger of costs being awarded against them as this is likely to be seen as unreasonable.

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- 7.2.10 Costs can be awarded to a third party; for instance in one case a next door neighbour who had made their submissions was awarded costs to cover their time and trouble even though the Inquiry did not take place.
- 7.2.11 Whilst the three types of procedure can be used for Enforcement Cases the volume of evidence for these cases is more substantial than for a new build appeal. Detailed evidence, for example, as to how long a use or build has been in place usually means the preparation of the Council's case takes longer, a substantial number of witnesses can be called to back up the appellant's case, which means that the case can take double the amount of time to prepare.
- 7.2.12 The challenge of Enforcement Appeals is often to demonstrate whether the weight of evidence shows that something has been operating for 10 years. The evidence has to be tested. This can prove time consuming and costly.
- 7.2.13 Due to the complexities of the evidence enforcement cases are likely to be heard by a Public Enquiry or informal hearing.

7.3 Details of paperwork

- 7.3.1 The paperwork for each case differs in that each case is unique and will have different levels of complexity. The LPA has to provide copies of the initial application and any paperwork related to it. It also has to provide a proof of evidence by an expert witness, usually this will be a Planning Officer from the LPA although in certain cases an independent planning Consultant will be used. In certain cases where it is applicable there may also be a Proof of Evidence from the Highways Department. The LPA will also send out a notice with a questionnaire to the local residents, all responses will be combined into a booklet for submission to the Planning Inspectorate.
- 7.3.2 The appellant will also provide Proofs of Evidence from a number of sources depending on the reason for challenging the original decision.
- 7.3.3 These papers will be exchanged prior to the date set for the Inspector to hear the case to give both parties the opportunity to comment and if necessary submit additional Proofs of Evidence.
- 7.3.4 On any appeal it is the quality of the evidence that the LPA puts forward that is tested. While the documents are written by Planners using planning terminology, without a strong evidence base to support them the appeal is likely to be unsuccessful.

7.4 How other councils deal with Appeals

- 7.4.1 As part of the Review, questionnaires were sent to other local authorities in the Councils Audit Commissions family group. This was to establish what other authorities were doing in relation to Planning Appeals specifically over the issue of who should act as the authorities

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expert witness for the Appeal and what actions if any the Planning Officers take to ensure that applications that are referred to a Planning Committee are declined for legitimate Planning reasons.

- 7.4.2 Table 1 below details the number of Planning Appeals that each Local Authority has had to deal with during the 2006/07 Municipal year. These appeals could be as a result of applications that had been declined in the previous Municipal Year so no correlation between the decisions in Table 3 and the information in Table 1 is possible. It can be seen that Rochford had the second highest number of appeals within the Authorities canvassed during the period.

No of Planning Appeals 2006/07

Name of Authority	Inquiries	Hearings	Written	Total
Fareham BC	3	5	35	43
Rushcliffe BC	2	8	40	50
Wyre BC	0	3	24	27
Ribble Valley	1	0	24	25
Castle Point BC	4	3	16	23
Eastleigh BC	1	4	34	39
Rochford DC	4	9	35	48

Table 1

- 7.4.3 The information contained in Table 2 contains the numbers of Enforcement Appeals for the same Municipal year and this time Rochford has the highest number of Appeals out of those Local Authorities canvassed. This is not a surprise as it was established last year during the Review of the Enforcement Services at Rochford that a lot of authorities did not put the same amount of effort into enforcing planning breaches as Rochford.

No of Enforcement Appeals
2006/07

Name of Authority	Inquiries	Hearings	Written
Fareham BC	0	0	0
Rushcliffe BC	0	2	3
Wyre BC	1	0	2
Ribble Valley	0	0	4
Castle Point BC	0	0	0
Eastleigh BC	5	0	0
Rochford DC	7	0	2

Table 2

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7.4.4 The figures in Table 3 relate to the number of applications that were referred to each Authorities Planning Committee for the 2006/07 Municipal Year. The difference in number of referrals relates to the differences in the level of delegated planning allowed by each Authority. Due to the differences in each Authorities delegated powers to officers, very little meaningful information can be gained from comparing the data. This data also does not take into account the number of Members who actually sit on the Planning Committee of each authority. Rochford DC still has all Members of the Council as Members of the Planning Committee where most other Authorities have a smaller Committee made up of only a few Members to make the Planning Decisions. This does lead to more agreement with officer recommendations as there are less Members with local knowledge to dispute the reasons for officer recommendations.

Name of Authority	No of Applications reported to Planning Committee 2006/07		No of refusals of Officers recommendations for Approval	Percentage of refusals against Total	Percentage of refusals against Officers recommendations for approval
	Total	Officer approval			
Fareham BC	355	300	5	1.41%	1.67%
Rushcliffe BC	116	99	9	7.76%	9.09%
Wyre BC	61	45	5	8.20%	11.11%
Ribble Valley	204	184	5	2.45%	2.72%
Castle Point BC	37	30	7	18.92%	23.33%
Eastleigh BC	87		22	25.29%	
Rochford DC	49	40	15	30.61%	37.50%

Table 3

8 Conclusion

- 8.1 During the meetings with the Planning Department the Project Team were able to examine the results of the Planning Appeals where the Development Control Committee had refused an application against an officers recommendation. Of the 28 cases since May 2003 to November 2007 the Planning Inspectors had allowed 16 and dismissed 11 with a split decision on the other. The Project Team feel that as 40 % of the decisions the Committee made to overturn officers recommendations were supported by the Planning Inspectorate it shows that Members reasoning's had not been fatally flawed as the Committees Decisions had been found to be reasonable when officers represented their case.

9 Recommendations

Recommendation No 1

- 9.1 Following consultation with other local authorities the team do not feel that there would be any benefit to the authority if Members became the expert witness at an appeal hearing. Members can express their own views and have input into the appeal as a third party witness. They can then represent their constituents' views without compromising the views of the Development Control Committee or the Council.

It is recommended to the Executive Board that in the case of Appeals, Members should only be used as third party witnesses.

Recommendation No 2

- 9.2 The team felt that, as the legislation relating to Planning changes so frequently and Members of the Development Control Committee need to be aware of changes in these regulations when making decisions, it would be of benefit for regular training sessions to be held. Members could be kept up to date with changes in legislation, which would ensure that their decision making was based on the latest planning rules.

It is recommended to the Standards Committee that training for Members on the latest changes in Planning Legislation take place every 4 months.

Recommendation No 3

- 9.3 Taking into account the responses from the other Local Authorities contacted, and looking at the results from the planning appeals that have taken place over the last three and a half years, the team felt that the current policy of using Planning Officers as the Council's expert witness should be continued. The team also felt that the decision of whether an outside consultant should be engaged as an expert witness should be left to the discretion of the Head of Planning and Transportation.

It is recommended to the Executive Board that a Planning Officer should be used as an expert witness for the majority of Planning Appeals when the Head of Planning and Transportation does not feel that the use of an outside consultant would be of benefit.