

Planning Performance – Quality of Decision making on Major Applications

FULL COUNCIL



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PORTFOLIO	Housing and Development Control
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PURPOSE

1. To inform Members of the Council's current performance on the quality of major planning decision making as recorded and published by the Department for Levelling Up, Housing and Communities.

RECOMMENDATION

2. That Members note the report.

REASONS FOR RECOMMENDATION

3. To ensure Members are fully briefed on the Council's current performance on the quality of decision making for major planning applications and are aware of the potential implications if performance worsens.

SUMMARY OF KEY POINTS

Introduction

4. On a quarterly basis local planning authorities supply information to the Department for Levelling Up, Housing and Communities on planning application type, volume, the speed of determination and the number of planning enforcement notices served. The Government then use this information to publish planning performance data for each local authority that assesses the speed of decision making and the quality of decision making for "major" and "non-major" applications.
5. This briefing paper will look specifically at the quality of decision making for major applications which are defined as planning applications that consist of,

- mineral extraction
- waste development
- the provision of 10 dwellings or more
- a site area of over 0.5 hectare and the number of dwellings is not known
- a floorspace of over 1,000sqm or a site area of one hectare

Performance monitoring and published data

- The information on the quality of decision making is published on an annual basis in the first quarter of the year and looks at the local planning authority's performance over a two-year period. The performance data looks at the number of major applications determined by a local planning authority, how many have been refused, how many decisions have been appealed and how many appeals have been allowed. Fundamentally the performance measure is assessing how many applications the planning authority has refused that have gone to appeal and the decision has been overturned by the Planning Inspectorate.
- The current published data runs for the period April 2021 to March 2023 and the next set of published data will run from April 2022 up to March 2024 and is expected to be published in the first quarter of 2025. The data is intentionally 9 months behind the date of publication to allow a time lag for appeals in the pipeline to be determined. The Government have set the maximum threshold that no authority should exceed 10% of decisions overturned at appeal.

April 2021 – March 2023

- The currently published performance data is set out in the table below.

		Majors Applications						
		All Major Decisions	Refusals	Appeals	Dismissed	Appeals allowed	Appeals Pending	Result
Quarter 01	Apr - Jun 2021	4	0	0	0	0		0.00%
Quarter 02	Jul - Sep 2021	4	1	1	0	1		25.00%
Quarter 03	Oct - Dec 2021	1	1	0	0	0		0.00%
Quarter 04	Jan - Mar 2022	6	0	0	0	0		0.00%
Quarter 05	Apr - Jun 2022	5	1	1	1	0		0.00%
Quarter 06	Jul - Sep 2022	6	0	0	0	0		0.00%
Quarter 07	Oct - Dec 2022	6	0	0	0	0		0.00%
Quarter 08	Jan - Mar 2023	4	0	0	0	0		0.00%

total

36	3	2	1	1		2.78%
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Maximum level
required

10.00%

9. This data shows that the Council determined 36 major applications and had two appeals, of which one was dismissed and one was allowed. This resulted in a performance measure of 2.78%. The decision that was overturned at appeal was Former Isaac Centre, Harrogate Crescent, decision date - 13/09/2021, and the decision that was dismissed at appeal was Magnesium Way, decision date - 09/06/2022. The Planning Inspector agreed with the local planning authorities decision to refuse the application for Magnesium Way as it was judged the decision was made on sound planning grounds.

April 2022 – March 2024

10. The table below shows the expected position that will be published in the first quarter of 2025.

		District matter Majors						
Council:		All Major Decisions	Refusals	Appeals	Dismissed	Appeals allowed	Pending	Result
Quarter 01	Apr - Jun 2022	5	1	1	1	0		0.00%
Quarter 02	Jul - Sep 2022	6	0	0	0	0		0.00%
Quarter 03	Oct - Dec 2022	6	0	0	0	0		0.00%
Quarter 04	Jan - Mar 2023	4	0	0	0	0		0.00%
Quarter 05	Apr - Jun 2023	3*	0	1	0	1		33.33%
Quarter 06	Jul - Sep 2023	3	0	0	0	0		0.00%
Quarter 07	Oct - Dec 2023	8	0	0	0	0		0.00%
Quarter 08	Jan - Mar 2024	2	1	0	0	0		0.00%
total		37*	2	2	1	1	0	2.70%
		Maximum level required						10.00%

*Includes non-determined application Hollin Cross Farm.

11. This data shows that the Council determined 36 major applications and had one application that was not determined. From these decisions 2 appeals were made, 1 appeal was dismissed and 1 appeal was allowed, which is expected to result in a performance measure of 2.70%. As with the currently available data the decision that was dismissed at appeal was Magnesium Way - decision date 09/06/2022, and the decision that was granted at appeal was Hollin Cross Farm – decision date 07/12/2023. The Hollin Cross Farm decision was an appeal against non-determination following the Full Council meeting on 07/06/2023.

12. Due to the relatively low number of major applications dealt with by Burnley Council there is very limited scope for appeal overturns in any two-year period. Looking at the number of major applications decided by the Council over the last 5 years, the Council determine on average 15.6 planning applications per year, giving a rolling average of 31 planning application per 2 year period. Therefore, if the Council was to have 3 refusals overturned on appeal in a two year period there would be a risk of triggering the 10% performance level.

April 2023 – March 2025

13. The table below shows the first 12 months of data that we expect will be included in the performance results for April 2023 – March 2025, which shows that in the first 12 months of performance data we are currently running at 6.25%.

Council:		District matter Majors						
		All Major Decisions	Refusals	Appeals	Dismissed	Appeals allowed	Pending	Result
Quarter 01	Apr - Jun 2023	3*	0	1	0	1	0	33.33%
Quarter 02	Jul - Sep 2023	3	0	0	0	0	0	0.00%
Quarter 03	Oct - Dec 2023	8	0	0	0	0	0	0.00%
Quarter 04	Jan - Mar 2024	2	1	0	0	0	0	0.00%
Quarter 05	Apr - Jun 2024							
Quarter 06	Jul - Sep 2024							
Quarter 07	Oct - Dec 2024							
Quarter 08	Jan - Mar 2025							
total		16	1	1	0	1	1	6.25%
							Maximum level required	10.00%

* Includes non-determined application Hollin Cross Farm.

14. If the two applications Land West of Heckenhurst Avenue and Land South of Rossendale Road were refused planning permission and subsequently allowed at appeal the Council (subject to no further appeals being allowed) would have recorded 3 appeal overturns in the period April 2023 – March 2025. Based on the average number of major planning applications received over a two year period the Council could trigger the 10% performance threshold. If the Council’s performance data is carrying 3 appeal overturns over the two year period 1st April 2023 to 31st March 2025, and as a local planning authority we determine 30 or less major planning applications in the same period then the performance threshold of 10% is triggered.

15. If Members are minded to refuse a planning application it is imperative that any reason for refusal is based on material planning considerations and sound reasoning. This will allow the Council as local planning authority to defend the decision to refuse planning permission if it is subsequently appealed by the applicant.
16. The implication of a local planning authority's performance hitting, or going above, 10% of total applications overturned on appeal is the potential for designation of the local authority into "Special Measures" by the Secretary of State.
17. The most recent Council to go into Special Measures is Chorley Council for the determination of major planning decisions. Chorley Council was designated on 19/12/2023 based on the two year period ending on 30th September 2022 and subsequent appeal decisions to 30th June 2023.

The legal context of Special Measures

18. Section 1 of the Growth and Infrastructure Act 2013 inserted sections 62A and 62B into the Town and Country Planning Act 1990. Section 62A allows certain planning applications to be made directly to the Secretary of State, where the local planning authority for the area has been designated for this purpose. Section 62A enables the Secretary of State to designate Local Planning Authorities where "*there are respects in which the authority are not adequately performing their function of determining applications*" and in doing so give applicants the choice to apply for permission direct to the Secretary of State (with the application determined via the Planning Inspectorate) for the category of applications (major, non-major or both) for which the authority has been designated. This is commonly referred to as "Special Measures." Section 62B requires that the criteria for any such designation, or for revoking a designation, must be set out in a document published by the Secretary of State and laid before Parliament.
19. Section 153 of the Housing and Planning Act 2016 amended sections 62A and 62B of the Town and Country Planning Act 1990 to allow the Secretary of State to determine which applications an authority may be designated for. The Town and Country Planning (Section 62A Applications) (Amendment) Regulations 2016 prescribe and define these applications as "non-major development" and "major development".

The implications of Special Measures

20. If 10% or more of the total number of major planning applications dealt with by a local authority are overturned at appeal during the two-year assessment period, the local authority is considered to be underperforming. For example, if a local planning authority determined 50 major planning applications over a 2-year period then 4 would be the maximum number that could be overturned at appeal. If a local planning authority hits or exceeds 10% they are considered to be underperforming and can be put in "special measures" by the Secretary of State.
21. Where an authority is designated and placed in "special measures" applicants may apply directly to the Planning Inspectorate (on behalf of the Secretary of State) for the category of applications for which the authority has been designated i.e., major or non-major. This in effect removes the ability from the local planning authority to determine planning

applications within their borough for those applications against which they are judged to be underperforming. A Council may also be required to prepare an improvement plan by the Secretary of State.

22. Being placed in special measures means that where applicants choose to submit their planning application to the Planning Inspectorate rather than to the Council, the planning fee would be paid only to the Planning Inspectorate. The Council will in these cases still incur substantial costs (due to requirements imposed on the Council to carry out certain administrative functions and Officer assessments and recommendations) but would not receive any part of the fee to pay for this.
23. If placed in special measures not only can the local planning authority lose the ability to make the final decision on a planning application and lose the application fee, but the situation also has the potential to weaken the authorities influence and negotiation position with applicants.
24. Prior to major planning applications being presented at committee for a decision, in most cases, they have gone through a rigorous process of negotiation with the applicant to seek improvements and amendments to the proposed scheme to make them more acceptable and deliver a higher quality of development. The planning officer's role is to achieve the highest standard of development possible before it is presented to committee for a decision. If applicants know that the local planning authority will not be making the final determination on the planning application, they are likely to be less willing to agree to amendments to improve schemes or agree to certain conditions to make applications more acceptable to the planning authority, if they consider in their judgement that the scheme would be acceptable to the planning inspectorate.
25. Being placed in special measures also carries with it a reputational risk for the local authority. Being formally recognised as an underperforming planning authority by the Government has the potential to affect the Council's reputation for sound, quality decision making in the eyes of developers, business, investors and residents.
26. Recruitment to planning posts is already difficult and being placed in Special Measures would most likely heighten that pressure.
27. The Secretary of State decides once each year whether local authorities should be designated and whether those authorities designated should be de-designated.

Guidance for Members on the Council's DC Committee and the Code of Conduct

28. Members are reminded of the personal liability in relation to the decisions they make. Personal liability may arise to any individual member whose wilful misconduct is found to have caused loss to the Council. Such liability would depend upon the exact role played by the member and the seriousness of the loss.
29. Members of the Council's Development Committee will be aware of the guidance made available to them in the Council's Constitution. Members are reminded that:

- Decisions made in Development Control Committee must be made on sound planning grounds only. Party political issues must not be raised at Committee, nor used to influence the consideration of planning applications.
 - Members who sit on Development Control Committee are serving the town as a whole, and not just their ward constituencies. In dealing with planning applications Members must fulfil a number of roles both as representatives of the people and as decision makers, objectively considering the facts and deciding upon them. This is particularly relevant to Members of Development Control Committee who must strike a balance between listening to and responding to the concerns of their constituents and making a decision in accordance with proper planning considerations.
 - An applicant who has been refused planning permission has a right of appeal to the Secretary of State, if an appeal is successful and it is shown that the Council's conduct in dealing with the matter was unreasonable, the appellant's costs may be awarded against the Council.
 - The Secretary of State possesses a range of powers which could be exercised where a local planning authority appears to be making inconsistent decisions or decisions which are seriously in conflict with national and development plan policies. This could involve a greater use of the power to 'call in' applications whereby the application would be determined by the Secretary of State, following a public inquiry, rather than the Development Control Committee.
30. The Council's Code of Conduct for Members provides that in reaching decisions on any matter Members must have regard to any relevant advice provided to them. The Code of Conduct also covers the reasonableness of decision making and that decisions can be reviewed by a range of courts and tribunals and overturned if they are irrational, improper or unfair. It goes on to state that **"sometimes you [Members] may have to take decisions that you [they] personally disagree with if these are the "right" decisions for the Council..."**. Whilst the Committee has the ultimate decision on planning applications presented before them it is important that the decision is made taking account of the planning framework, advice given by officers at the committee and set out within the report, and that despite any personal opinions, decisions are made in the interests of Council and the borough as a whole.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION
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31. The Council would lose planning fee income in relation to applications submitted directly to the Planning Inspectorate if the Council went into Special Measures. Additional staffing and resources would also be required to liaise with the planning inspector as the Council would be required to support the process. By way of background, in 2023 the Council dealt with 12 major planning applications which generated a total fee of £211,322.

POLICY IMPLICATIONS

32. There are no direct policy implications associated with the recommendations in this report.

DETAILS OF CONSULTATION

33. This topic shall be covered as part of the training provided to Members in view of the potential implications if the Council was to be placed in Special Measures.

BACKGROUND PAPERS

34. Code of Conduct for Members:

[CONTENTS \(moderngov.co.uk\)](http://moderngov.co.uk)

35. Procedural guidance for Section 62A Authorities in Special Measures:

[Procedural guidance for Section 62A Authorities in Special Measures - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

FURTHER INFORMATION

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