

Planning Performance – Quality of Decision making on Major Applications

DEVELOPMENT CONTROL COMMITTEE



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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 consider the report and note that it shall be presented to Full Council for information.

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 2019 to March 2021 and the next set of published data will run from April 2020 up to March 2022 and is expected to be published in the first quarter of 2023. 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 2019 – March 2021

- 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 2019	2	0	0	0	0		0.00%
Quarter 02	Jul - Sep 2019	1	0	0	0	0		0.00%
Quarter 03	Oct - Dec 2019	3	2	1	0	1		33.33%
Quarter 04	Jan - Mar 2020	1	0	0	0	0		0.00%
Quarter 05	Apr - Jun 2020	6	2	1	0	1		16.67%
Quarter 06	Jul - Sep 2020	7	1	0	0	0		0.00%
Quarter 07	Oct - Dec 2020	4	0	0	0	0		0.00%
Quarter 08	Jan - Mar 2021	2	1	0	0	0		0.00%
total		26	6	2	0	2		7.69%

Maximum level
required

10.00%

9. This data shows that the Council determined 26 major applications and lost two appeals which resulted in a performance measure of 7.7%. One decision was an officer refusal that was overturned at appeal, Astley House, Albert Street – 01/04/2019 and one decision was a committee refusal that was overturned at appeal, Land to the North of Higher Saxifield – decision date 19/11/2019.

April 2020 – March 2022

10. The table below shows the expected position that will be published in the first quarter of 2023.

		District matter Majors						
Council:		All Major Decisions	Refusals	Appeals	Dismissed	Appeals allowed	Pending	Result
Quarter 01	Apr - Jun 2020	6	2	1	0	1	0	16.67%
Quarter 02	Jul - Sep 2020	7	1	0	0	0		0.00%
Quarter 03	Oct - Dec 2020	4	0	0	0	0		0.00%
Quarter 04	Jan - Mar 2021	2	1	0	0	0		0.00%
Quarter 05	Apr - Jun 2021	4	0	0	0	0		0.00%
Quarter 06	Jul - Sep 2021	4	1	1	0	1	0	25.00%
Quarter 07	Oct - Dec 2021	1	1	1	0	1	0	100.00%
Quarter 08	Jan - Mar 2022	6	1	0	0	0		0.00%
total		34	7	3	0	3	0	8.82%

Maximum
level required

10.00%

11. This data shows that the Council determined 34 major applications and lost 3 appeals which is expected to result in a performance measure of 8.82%. As with the currently available data one decision was an officer decision that was overturned at appeal, Astley House, Albert Street – decision date 01/04/2020 and two decisions were committee decisions that were overturned at appeal, Harrogate Crescent – decision date 13/09/2021 and Butchers Farm – decision date 17/11/2021.

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. As can be seen from the

tables above one more appeal overturn in either of the two-year periods would have resulted in a percentage in excess of the 10% threshold.

April 2021 – March 2023

13. The table below shows the first 18 months of data that we expect will be included in the performance results for April 2021 – March 2023, which shows that in the first 18 months of performance data we are currently running at 9.09%. The figures for July to September 2022 are provisional at this stage of the assessment.

Council:		District matter Majors						
		All Major Decisions	Refusals	Appeals	Dismissed	Appeals allowed	Pending	Result
Quarter 01	Apr - Jun 2021	4	0	0	0	0	0	0.00%
Quarter 02	Jul - Sep 2021	4	1	1	0	1	0	25.00%
Quarter 03	Oct - Dec 2021	1	1	1	0	1	0	100.00%
Quarter 04	Jan - Mar 2022	2	1	0	0	0	0	0.00%
Quarter 05	Apr - Jun 2022	5	1	1	0	0	1*	0.00%
Quarter 06	Jul - Sep 2022	6	0	0	0	0	0	0.00%
Quarter 07	Oct - Dec 2022							
Quarter 08	Jan - Mar 2023							
total		22	4	3	0	2	1	9.09%

Maximum level required

10.00%

*Reserved matters appeal for 1 Magnesium Way.

14. Our calculations indicate that if the outstanding reserved matters appeal is successful, the percentage of major applications overturned at appeal for the forthcoming reporting period to date for April 2021 to March 2023 would be **13.64%**. It must be noted that there are two quarters of data outstanding and the data for July to September 2022 is provisional.

15. The implication of a local planning authority’s performance 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.

16. The most recent Council to go into Special Measures was Uttlesford District Council for the determination of major planning decisions.

17. Data shows that 9 of the 79 major planning applications considered by Uttlesford between April 2018 and March 2020 were overturned on appeal, which at 11.4% of all decisions was above the 10% threshold for intervention.

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. S62A 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.
31. In the cases of Higher Saxifield, Harrogate Crescent and Butcher's Farm the decision taken by committee went against the officer recommendations, and also followed strong advice from both planning and legal officers that the reasons for refusal were weak and the Council would find it very difficult to successfully defend the decisions at an appeal. In one of these cases (Harrogate Crescent), costs of £15,855.60 were awarded against the Council.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

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 2021 the Council received 23 major applications which generated a total fee of £298,432.

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 of the Development Control Committee in view of the potential implications if the Council is placed in Special Measures.

BACKGROUND PAPERS

34. Code of Conduct for Members:
[CONTENTS \(moderngov.co.uk\)](https://www.moderngov.co.uk/contents/)

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

[Procedural guidance for Section 62A Authorities in Special Measures - GOV.UK
\(www.gov.uk\)](https://www.gov.uk/government/guidance/procedural-guidance-for-section-62a-authorities-in-special-measures)

FURTHER INFORMATION

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