

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: Planning Committee

8/1/2014

WARDS: All

PLANNING APPEALS AND COSTS 2012 - 2013

1 EXECUTIVE SUMMARY

- 1.1 This report examines the council's record of success with planning appeals over the last three years. The overall performance with appeals has been very good with over 77 % of appeals lodged against refusals of planning permission being dismissed.
- 1.2 A small number of appeals that have resulted in significant awards of costs against the council are considered in detail, specifically the recent case of 32 – 38 Station Road Cambridge.
- 1.3 Actions that the council should consider taking in the light of those outcomes are suggested.

2. RECOMMENDATIONS

2.1 That Planning Committee:

- 1. Notes the contents of this report and the outcomes of the council's appeal performance over recent years including the appeals where costs have been awarded against the council;
- 2. That the future actions to help mitigate the council's risks of adverse awards of costs set out in section six are agreed and will be brought forward before the end of the current municipal year;
- 3. Agrees the introduction of a two stage decision making process where the committee resolves to refuse major/significant schemes contrary to the recommendation of officers as set out in paragraph 6.2 (this would be subject to the details of how this arrangement would work being brought back to committee first).

3. BACKGROUND

Planning Appeal Performance

3.1 The council has a corporate performance target that seeks 75% of the planning appeals lodged against refusals of planning permission to be dismissed. This information is monitored through the course of each year and the indicator is based upon overall performance across all the appeals decided by the Planning Inspectorate that year. Appeals are made against all types of application determined under delegated authority, by area, planning or joint development control committees. All appeal decisions are circulated to members and reviewed by the planning service.

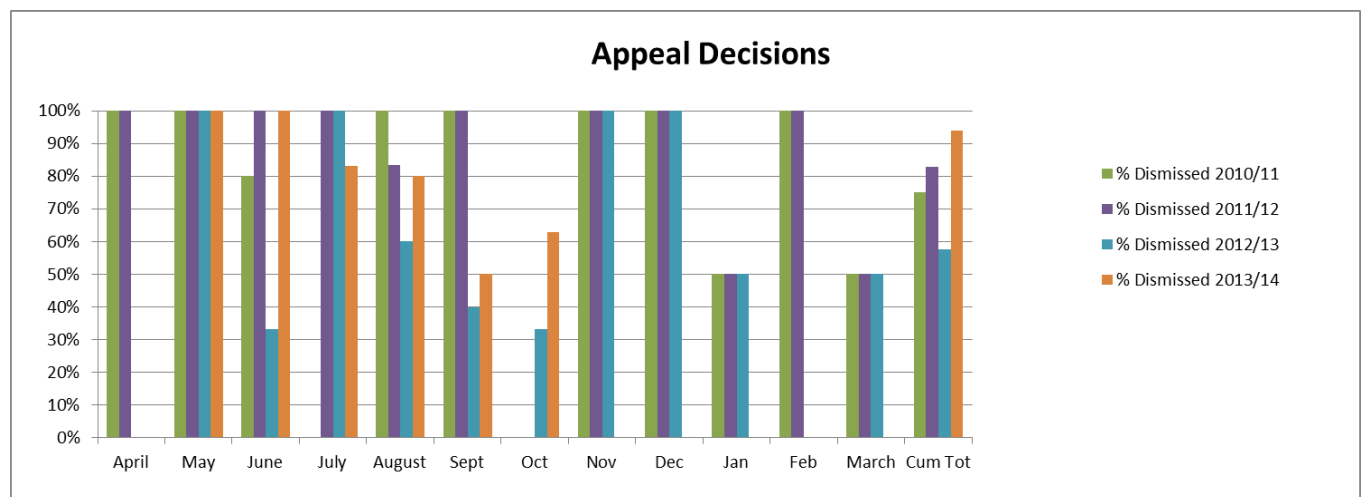
3.2 In the last four years the council's success at appeal has averaged at around 77.5% of appeals being dismissed. This level of performance reflects a high quality of decision making by the local planning authority, with decisions standing up well through the appeal process.

2010/11 – 75% of appeals dismissed

2011/12 – 83% of appeals dismissed

2012/13 – 58% of appeals dismissed

2013/14 – 94% of appeals dismissed (pro-rata)



3.3 The regulations governing awards of costs are set out in planning circular 03/2009. The circular advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in pursuing the appeals process. 'The costs awards regime seeks to increase the discipline of parties when taking action within the planning system, through financial consequences for those

parties who have behaved unreasonably and have caused unnecessary or wasted expense in the process. A party may be ordered to meet the costs of another party, wholly or in part, on specific application by the aggrieved party.

3.4 The costs regime is aimed at ensuring as far as possible that:

- all those involved in the appeal process behave in an acceptable way and are encouraged to follow good practice, whether in terms of timeliness or in quality of case
- taking into account the statutory period for making an appeal, appeals are not entered into lightly or as a first resort, without prior consideration to making a revised application which meets reasonable local planning authority objections
- Planning authorities and applicants enter into constructive pre-application discussions consistent with PPS 1, paragraph 12
- At the appeal stage, statements of common ground are provided at the appropriate time
- planning authorities properly exercise their development control responsibilities, rely only on reasons for refusal which stand up to scrutiny and do not add to development costs through avoidable delay or refusal without good reason
- Unsuccessful applicants exercise their right of appeal responsibly
- Costs applications are not routinely made when they have little prospect of success and merely add to the costs of administering the appeal system

3.5 There have been seven awards of costs in 142 appeal cases decided since 2010/11. This represents a small percentage (5%) of the total number of appeals dealt with. Those cases that have resulted in awards of costs and the costs involved (other than general officer time spent supporting the appeal process) have been identified below.

Table 1: Appeal cases with costs awards

Appeal case	Originally delegated Committee decision or	Award of costs
22 High Street Trumpington – Erection of dwelling	Delegated	Appeal allowed with full costs award of £2,228
25 Cambridge Place, Change of use of offices to studios and flats	East Area Committee	Appeal allowed with full costs award of £6,600

The Penny Ferry Conservation Area Consent for demolition of the former pub	North Area Committee	Appeal allowed with costs award: £1,750
27 Babraham Road Certificate of lawful use for storage of three ice cream vans	Delegated	Appeal allowed with appellants costs: £3,023
Cromwell Road	Planning Committee	Appeal allowed with costs: £70,299 Council's costs: £22,211
Former St Collette's School site, Tenison Road	Planning Committee	Appeal dismissed but partial award of costs against the council Appellants costs being discussed, costs claim is currently £43,000 Council's costs: £38,892
32 – 38 Station Road Four appeals relating to the demolition of Wilton Terrace and its replacement by offices	Planning Committee	Appeals allowed with full costs Appellants costs yet to be finally confirmed but have advised that their costs claim will be between £250,000 and £300,000 Council's costs: £42,640

3.6 The Council decided not to defend the reasons for refusal in the Station Road case and a full award of costs was approved by the Planning Inspector.

3.7 The planning history regarding the demolition of Wilton Terrace and the redevelopment of 32 – 38 Station Road is complex and has been

set out in detail in a number of reports submitted to the council's planning committee over the last 18 months. Three pairs of applications for consent to demolish Wilton Terrace and planning permission to build new office development on the site were refused by the planning committee over the last 18 months.

- 3.8 There are some key events in the planning history that are material in the consideration of the demolition and redevelopment at the site. These are set out in the table below.

Table 2: Chronology of events 32- 38 Station Road

Date	Key events
2004	Station Area Development Framework adopted
2006	CB1 confirmed as an area for comprehensive redevelopment in the adoption of the Cambridge Local Plan 2006
2006	Submission of first CB1 application refused in 2006
2008	Submission of the revised outline planning application for the CB1 development
October 2008	Resolution to approve the CB1 application and master plan subject to a s.106 agreement
April 2010	Completion of the s.106 agreement and outline planning permission for CB1 issued
June 2011	Pre-application discussions start for the site of 32 – 38 Station Road (to facilitate a redevelopment known as 50 and 60 Station Road)
Nov 2011	First application for demolition of Wilton Terrace and redevelopment of the site submitted
Jan 2012	First application for demolition of Wilton Terrace and redevelopment of the site withdrawn
July 2012	Second application considered and refused by planning committee (First applications as far as the appeals go)
November 2012	Third (revised) planning application submitted
March 2013	Third application refused
May 2013	Planning appeals lodged by the appellants, public inquiry scheduled for October 2013
June 2013	Planning Committee considers a report in closed session with external advice from leading planning counsel and planning consultants. That advice was that the prospects for success in defending the grounds for refusal for both applications would be very low leaving council tax payers at serious risk of a significant award of costs. Planning committee resolves that the local planning authority

	will not offer any evidence in support of the reasons for refusal of the four planning applications at the forthcoming public inquiry. Press statement subsequently issued by the council setting out that position.
June 2013	The council invites the appellants to submit a fourth application and to seek to defer the public inquiry. The Planning Inspectorate confirm they will not defer the Inquiry
September 2013	Fourth but third actual Planning Application considered by the planning committee on 4 th September. Planning permission refused.
September 2013	24 th September planning committee considers further advice from leading counsel and legal and planning officers in closed session. Planning committee resolves to continue with the decision made on 5 th June to not offer any evidence to defend the reasons for refusal.
October 2013	Planning Inquiry sits for 3 days.
November 2013	Planning Inspector allows all four appeals and agrees full costs award against the council

3.9 The Inspectors report (Appendix A) identifies the main issues that he considered to be the crux of the appeal case. The first related to the redevelopment of 32 – 38 Station Road and was considered through examination of six key areas, the second related to potential s.106 contributions.

3.10 The key areas and the main points arising from their examination were in summary:

- The contribution of 32 – 38 Station Road (Wilton terrace) to the conservation area: The Inspector considered that this was very modest and the terrace was of limited architectural interest. There were clear public benefits from the regeneration of the wider Station area that had been recognised in the decision to grant outline planning permission back in 2008.
- The outline planning permission had recognised that conservation area consent would be necessary as part of approving replacement buildings that would make an equal or enhanced contribution to the character and appearance of the conservation area. There was a clear expectation that Wilton terrace would be replaced.

- The relationship of the appeal schemes to the outline planning permission. These were full applications rather than reserved matters applications but this difference represents a technicality rather than a radical change of approach. The amendments and adjustments to the original outline approval for this part of CB1 were minor in nature and the original parameter plans remained unchanged. A clear fall-back position existed that was very similar to what was being proposed. This fall back position was material.
- Changes in circumstances since the outline permission was granted – there were changes but none that made a material difference to the future of Wilton Terrace as envisaged when the outline planning approval was originally agreed in 2008.
- The evolving character of Station Road – there is no presumption against substantial new development in conservation areas especially where the replacement buildings will improve the overall character and appearance of the heritage asset.
- The design quality of the appeal schemes was considered to be appropriate and the building height is compliant with the outline permission.

3.11 The Planning Inspector's conclusion was there was no change in circumstances since the outline planning permission for CB1 was approved as far as the demolition of Wilton Terrace was concerned. Moreover he considered the retention of Wilton Terrace to be now out of keeping with the evolving character and appearance of Station Road. The design quality of the proposed development would enhance the character and appearance of the conservation area. He found the scheme to be fully policy compliant with the Cambridge Local Plan 2006.

3.12 In dealing with the appeal costs issues, at paragraph 9 of his costs decision letter he noted: "To refuse planning permission and conservation area consent on two pairs of applications, contrary to the recommendation of the planning officer and the support of other notable bodies, and then to resolve not to defend the reasons for refusal, is extremely difficult to understand. To refuse a third pair of applications, having invited them, is even more bewildering. There was substantial and well briefed objection at the inquiry from members of the public but irrespective of its merits that goes nowhere towards justifying the City Council's stance."

3.13 The Inspectors conclusions were: 'the City Council, by subsequently acknowledging that it could not defend its reasons for refusal, clearly acted unreasonably in refusing all four applications for the reasons it

did. It also acted unreasonably, having announced that it would not defend its reasons for refusal in inviting new applications and then refusing them for very similar reasons’.

4.0 The council’s statutory role with planning matters

- 4.1 The local planning authority (LPA) has a distinct legal identity within the overall scope of statutory responsibilities carried out by Cambridge City Council. The LPA exercises its responsibilities within the statutory planning framework and planning decisions should be based upon the development plan policy framework balanced with material planning considerations.
- 4.2 The exercise of statutory planning functions is undertaken to help achieve a proper balance between respecting private property rights and safeguarding the public interest. The planning functions of the council whether carried out by members or officers must operate within this context.
- 4.3 Members of the planning committee are not bound by their officer’s advice and have the discretion to exercise their own judgement when making planning decisions. The Planning Committee does however remain bound by the same legal and policy framework for decision making on planning matters and must give reasons based in planning grounds and evidence for refusing planning permission. Circular 03/2009 on Costs Awards states:

“Planning authorities are not bound to accept the recommendations of their officers. However, if officers’ professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority. “

- 4.4 Officers have a responsibility to ensure that members are properly advised so that decisions can be made on the basis of the best available advice. Planning Officers are subject to an ethical professional code requiring them to give their professional advice ‘without fear’.
- 4.5 Where planning appeals are involved discussions about the various strengths and weakness of the council’s case may need to be undertaken in closed session so the local planning authority’s position is not disclosed to the disadvantage of the case that is to be

made. The provision of confidential legal advice is also privileged and the council has the ability to determine whether it should publically disclose such advice. The Local Government Act 1972 provides very limited grounds for meetings to be held in closed session.

- 4.6 In the Station Road case two meetings were held in closed session so members could discuss confidential legal and planning advice relevant to the conduct of the council's case at the appeal (public inquiry). The advice from leading planning counsel and external planning consultants confirmed that there were significant risks in trying to defend the reasons for refusal which could put the council at risk of a substantial award of costs. A summary of the advice given and the outcome of the closed meetings were contained within press releases issued immediately after each meeting. The appeals have now been decided and the justification for confidentiality of the reports considered in closed session no longer exists. The reports are attached at appendix B.
- 4.7 Members of the public and objectors may potentially misconstrue the council's motives in discussing these matters in closed session. However it is imperative that the local planning authority has the ability to consider matters germane to the council's case objectively and in private.

5.0. **CONSULTATIONS**

- 5.1 The recommendations of this report have been discussed with a number of members.

6.0. **CONCLUSIONS**

- 6.1 The council needs to learn from this recent appeal experience and review whether anything needs to change with the way that some decisions are made, and how the council's risks from adverse costs awards are managed in future.
- 6.2 A number of actions are suggested that may help the council to move on from this experience.
- A. A facilitated post-hoc review workshop to be arranged with senior officers and all planning committee members (including substitutes) to consider this experience and identify actions/areas for change or further development. The Council to invite one or both of the "Independent Persons", appointed by it under the standards

provisions of the Localism Act 2011, to attend the workshop to provide external challenge.

- B. A follow up report on the outcomes and any agreed actions from that workshop to be brought back to the planning committee subsequently.
- C. Procedural changes - Where major or significant planning applications are being considered by the planning committee and members are minded to refuse planning permission where the officer recommendation is to approve, a new procedure to be introduced. The Planning Committee Chair (or Vice Chair as appropriate when acting in that capacity) will seek a resolution and the specific grounds upon which the members of the committee agree by a majority that planning permission should be refused (including relevant planning policy, technical and other matters where the committee's judgement differs from its officers). Officers in planning and legal services will be asked to prepare a further report on the suggested reasons for refusal giving further advice in relation to any undue risks to the council from the suggested reasons for refusal. This report would normally follow to the next planning committee meeting in the cycle unless external legal or other specialist advice is needed which it may not be possible to secure in the time available. (A further report on the precise procedural detail and operation of this approach will need to come back to the planning committee before it is initiated).
- D. Briefings on complex technical, procedural and legal issues will be provided for Planning, Area and Joint Development Control Committee members as part of on-going member development and where specific cases being considered raise these issues. This approach has been followed recently with the viability issues raised in relation to housing proposals at Devonshire Road and Rustat Road.
- E. Additional planning committee member peer support will be investigated with the Local Government Association.

7.0. IMPLICATIONS

(a) Financial Implications

Costs are only awarded at appeal for 'unreasonable' behaviour. The Local Planning Authority has to operate within the legal and policy framework that exists for making planning decisions otherwise the cost to the council tax payer can be significant.

(b) **Staffing Implications**

There are no direct staffing implications but staff time spent on appeals is also a resource cost to the council.

(c) **Equal Opportunities Implications**

There are no direct equal opportunities implications from this report and no EQIA assessment has been undertaken.

(d) **Environmental Implications**

There are no direct environmental implications but good decision making through the planning process is a key aspect of delivering sustainable development.

(e) **Procurement**

There are no adverse procurement implications.

(f) **Consultation and communication**

The recommendations of this report have been discussed informally with a number of Councillors

(g) **Community Safety**

There are no adverse community safety implications.

BACKGROUND PAPERS: The following are the background papers that were used in the preparation of this report:

Planning Applications at 32 – 38 Station Road.

Planning Inspectorate Appeal Decision letters (Ref: APP/Q0505/A/13/2191482 & E/13/2191474 & A/13/2196604 & E/13/2196639)

APPENDICES:

Appendix A: Planning Inspectorate Appeal Decision letters (Ref: APP/Q0505/A/13/2191482 & E/13/2191474 & A/13/2196604 & E/13/2196639)

Appendix B: Reports to Planning Committee June and September 2013 on 32- 38 Station Road.

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