



City of Westminster

Planning & City Development Committee

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Title: Report on Planning Appeals 2018-2019

Report of: Deirdra Armsby, Director of Place Shaping and Town Planning

Financial Summary: There are no financial implications arising directly from this report.

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1. Executive Summary

- 1.1 This report provides background to the appeals process and presents a summary of appeal decisions in Westminster made by the Planning Inspectorate (on behalf of the Secretary of State) in the last financial year from 1 April 2018 to 1 April 2019. It has been prepared to provide an overview of appeals process and performance and consider whether any conclusions can be drawn on how future appeals performance can be improved, particularly in terms of reducing the risk of costs being awarded against the council.

2. Recommendation

- 2.1 Members are asked to note the contents and conclusions of this report.

3. Background

- 3.1 Following refusal of any planning decision (including listed building and advertisement consents), applicants have the right of appeal to the Secretary of State. This includes appeals made against the non-determination of an application that has passed the statutory time period for determination or against the serving of a formal Notice including a Planning Enforcement Notice, a Listed Building Enforcement Notice and a Discontinuance Notice Enforcement Notice. There is no right of appeal for objectors or other third parties, only the applicant.
- 3.2 An independent Planning Inspector is appointed by the Secretary of State to make the decision. Appeals can be dismissed and permission refused for all, some or even different reasons used by the Council. If an appeal is allowed, planning permission, or a related consent is granted, subject to conditions determined by the Planning Inspector. There are several grounds to enforcement appeals including grounds whereby an appellant argues that permission/consent should be granted for the unauthorised works attacked by the Notice. These appeals are in effect the same as

an appeal against a refused planning permission or listed building consent and the policies used to justify the service of the Notice are tested.

- 3.3 There are three types of appeal procedure: written representations, informal hearings and public inquiries. Written representations are the most common, usually used for cases where the planning issues are straightforward and there is limited public interest. Informal hearings consist of a structured discussion, led by the Inspector. Public Inquiries are the most formal, with the parties having legal representation and cross examination of the planning and other expert witnesses.
- 3.4 Appeal decisions are important in monitoring quality of decision-making and testing effectiveness of policy. The Secretary of State uses the percentage of decisions overturned on appeal as an indicator of the quality of decisions made by planning authorities and alongside the speed of decisions, this is used to decide whether to designate a local planning authority as being poor performing.
- 3.5 When an application is refused, the reasons for refusal need to be clear, evidence-based and linked to Development Plan policies, otherwise there is a risk that the decision could be overturned on appeal. The same is true for the various forms of Notices. If the Council is deemed to have acted unreasonably, there is a risk of an award of costs against the Council irrespective of the appeal decision itself. A costs award can relate to the full or partial cost of the appellant's costs in making the appeal, dependent upon the nature of the unreasonable behaviour and the extent to which this has resulted in the appellant incurring unnecessary costs in making the appeal. Where an appellant has acted unreasonably during the appeal process the Council can also seek a full or partial award of costs.
- 3.6 Appeal decisions are also important as part of the planning history of a site and a material planning consideration when determining any subsequent applications. An appeal decision can indicate how a development could be amended to make it acceptable. Appeal decisions can also be helpful in testing the wording of current policies and indicating where future changes could be made to improve policies or prevent unintended consequences, for example in preparing the new City Plan or Supplementary Planning Documents. Planning decisions always involve a careful balancing of the issues. Understanding where Inspectors place weight on different policies, material planning considerations and their interpretation of the National Planning Policy Framework (NPPF) can help to improve local decision making.

4. Overview of Appeal Decision 2018-19

- 4.1 During the financial year between 1 April 2018 and 31 March 2019, **191** appeal decisions were received from the Planning Inspectorate. Of these:
- **127** were dismissed.
 - **4** were part dismissed/ part allowed.
 - **60** appeals were allowed.
- 4.2 The headline figures therefore show that the majority of Council decisions (**69%**) were upheld in full or in part. Our key performance indicator has a target to win **60%** of all appeals. Performance is very similar to previous financial years - last year of 206 appeal decisions received, 70% were dismissed or part-dismissed.

- 4.3 Of these almost all appeals were written representations, with only two public inquiries and three informal hearings; there were also a small number of fast track householder appeals where an appeal statement is not required.

Central Government Performance Indicators

- 4.4 As set out above, separate to our own performance indicator, the Secretary of State takes into account the percentage of major and non-major decisions overturned on appeal as an indicator of the quality of decisions made by planning authorities. The current criteria are 10% or more of all major decisions made by the authority subsequently overturned at appeal over a two-year period and 10% or non-major decisions overturned at appeal over a two-year period.
- 4.5 Data is published retrospectively. The latest data published by Ministry for Housing, Communities and Local Government (DCLG) covers appeal decisions on applications determined over a 24-month period to end of December 2017. Nine months are allowed after that for appeals to be made and decided.
- 4.6 This data shows that for Westminster **1.1%** of all non-major decisions and **1.9%** of all major decisions were overturned at appeal. This means we are well below the threshold for designation and suggests that the quality of decision making was good over this two-year period.

Appeal Decisions by Type of Application

- 4.7 In terms of types of appeals, a breakdown of appeals won and lost and the types of applications involved is set out below.

Type of Application	Appeals Decisions Received			Total appeals (% of total determined in favour of the Council, including those dismissed and those part - dismissed/)
	Allowed	Dismissed	Part Allowed/ Part Dismissed	
Full Planning	36	70	1	107 (66%)
Approval of Details		1		1 (100%)
Prior Approval	5	2	0	2/7 (29%)
Listed Building Consents	6	10	1	17 (65%)
Telecoms	4	19		23 (83%)
Adverts	7	13	1	21 (67%)
Enforcement	2	9	1	12 (83%)

Tables and Chairs		2		2 (100%)
Trees		1		1 (100%)
WCC Total	60	127	4	191

4.8 Withdrawn appeals have not been included within the statistics, a significant number of these were telecoms appeals for the installation of new telephone kiosks. In terms of full planning applications, there is a fairly even split between appeals refused for design reasons and those refused on the basis of amenity or on land-use grounds.

4.9 The Council's Annual Monitoring Report does not currently report on appeals performance in relation to particular policy areas. However, a summary of allowed appeal decisions is published each month, which provides details of why these decisions were allowed. Details of those decisions allowed following a committee decision are set out below. A list of dismissed appeals which raise issues of interest is at Appendix One.

Appeals following a Committee Decision to Overturn an Officer Recommendation

4.10 The majority of the above appeals relate to delegated decisions taken by officers. During the 2018-19 period, there were nine appeal decisions received which related to applications where a Planning Applications Sub-Committee had overturned the officer recommendation to grant conditional permission (while the appeal decision was issued in this period, the length of the appeals process means the sub-committee decision may have been taken in previous financial years). Seven of these appeals were allowed and two were dismissed. The seven appeals which were allowed are summarised below:

	Reference No/ Site Address	Proposal and Appeal Outcome
1.	17/03567/FULL 1 Regents Mews, London, NW8 0LB	<p>This appeal was against refusal to grant permission to vary the previously imposed condition requiring the second-floor dormer window to be partially obscure glazed. The condition had previously been imposed by Committee.</p> <p>The main issue was whether or not the condition is reasonable and necessary to safeguard the privacy and amenity of the occupiers of adjoining properties. The Sub-Committee considered that the obscure glazing remained necessary to prevent overlooking to the rear garden and windows of the adjacent property.</p> <p>The Inspector, who visited the Objector's property during the course of assessment of the appeal, resolved that obscure glazing was not necessary to protect the amenity of occupiers of the neighbouring property given that the form of the dormer and its orientation facing away from. The Inspector therefore concluded that any increase in overlooking would be limited to oblique views and would not</p>

		amount to a significant increase in overlooking. The appeal was allowed.
2.	16/11276/FULL 157 Edgware Road, W2 2HR	<p>The appeal was against refusal to grant permission for use of part basement, ground, first and second floors as a hotel, external alterations to install louvres to the front and rear elevations and installation of mechanical plant within an enclosure on flat roof above second floor level.</p> <p>The main Issue related to the impact of proposals on highway safety. The application was refused at the Planning Applications Sub-Committee on grounds relating to the impact of servicing and arrivals/ departures from the hotel on the surrounding road network. This was despite permission previously having been granted for a similar hotel use on this site in November 2013 with conditions imposed to control the highways impacts of the development.</p> <p>The Inspector resolved that, subject to conditions including a condition requiring a hotel bookings management plan (to prevent coach party booking being taken), the scheme would cause no harm to highway safety arising from the proposed use of the site as a hotel, in respect of service deliveries, taxis and private hire, and coach parking and that the development would accord with policy. The appeal was allowed and full costs were awarded to the appellant against the council on the basis of unreasonable behaviour in resolving to refuse the application without being able to substantiate the harm that would arise from the development (see paragraph 4.12). The costs in this case are in the process of being settled but the appellants have stated their appeal costs were circa £40,000.</p>
3.	17/03517/FULL 97 Randolph Avenue, W9 1DL	<p>The appeal was against refusal to grant permission for a variation of a previous planning permission for the excavation of basement extension under garden and house, lower ground floor rear and side extension, conversion of roof space to provide habitable accommodation.</p> <p>The main issue was the impact on amenity of adjoining occupiers, with particular regard to potential light disturbance. The application was refused by committee against officer recommendation due to the impact on living conditions of adjoining occupiers.</p> <p>The Inspector concluded that the substitution of 3 rooflights with one larger rooflight would not cause harm to the living conditions of the occupiers of 99 Randolph Avenue. The appeal was allowed.</p>
4.	17/10699/FULL 23 Meard Street, W1F 0EL	<p>The appeal related to refusal of planning permission for the installation of two air conditioning units at rear first floor flat roof level, installation of acoustic screens around the units.</p> <p>The main issues related to impact on amenity (noise) and the impact of proposals on the character and appearance of the conservation area. The appeal was refused at planning applications sub-committee contrary to the recommendation.</p>

		<p>The Inspector did not consider proposals would harm the character and appearance of the conservation area and noted Environmental Sciences officers' advice that proposals were acceptable subject to conditions.</p> <p>The appeal was allowed. An award of costs was sought by the appellant but was refused by the Inspector.</p>
5.	<p>17/10761/FULL</p> <p>20 Ossington Street, W2 4LY</p>	<p>This appeal was against refusal of planning permission for reinstating front lightwell to original depth, relocate front door from side to middle bay of facade, new sloping roof to existing rear extension.</p> <p>The main issue was the impact of the rear sloping roof extension on the amenity of occupiers of adjoining 33 Palace Court and impact on outlook and sense of enclosure. The Planning Applications Sub-Committee resolved to refuse the application against the recommendation due to the impact of the rear sloping roof extension on the adjoining residents due its bulk height and proximity to windows in that property.</p> <p>The inspector assessed the quality of the existing outlook from the adjoining property and taking into account the design of the proposed roof sloping away from the window, the extent to which the outlook from the window is already impinged upon and the presence of an additional window serving the bedroom, on balance the inspector the proposed scheme would not materially decrease the living conditions of the adjoining occupiers.</p> <p>The appeal was allowed.</p>
6.	<p>17/10600/FULL</p> <p>40 - 44 Bark Place, London, W2 4AT</p>	<p>This appeal against refusal of permission the erection of glass enclosure lobby under existing canopy, including rendering brickwork to front and side elevations.</p> <p>The main issue was the impact of proposals on the character and appearance of the conservation area and on highway safety. The Sub-Committee resolved to refuse the application against officer recommendation.</p> <p>The Inspector concluded that the proposal would preserve the neutral effect of the appeal building on the character and appearance of the Conservation Area and would allow an adequate amount of space to be available for school pupils and others to leave the building safely.</p> <p>The appeal was allowed.</p>
7.	<p>18/03465/FULL</p> <p>2 Barton Street, London, SW1P 3NG</p>	<p>This appeal was against refusal of permission for demolition and rebuilding of ground floor extension and excavation of a new basement level beneath the rear extension, widening of existing front dormer window and associated works.</p> <p>The committee resolved to refuse permission against officer recommendation due to the impact of the raising of the boundary wall on the adjoining occupier.</p>

		<p>The inspector concluded proposals were acceptable and would not cause harm to the amenity of the adjoining occupier.</p> <p>The appeal was allowed and full costs were awarded to the appellant against the City Council. The Inspector considered that the Council failed to substantiate the reason for refusal and its assertions were too vague about the proposal's impact and were not supported by any objective evidence. The costs in this case are in the process of being settled but have yet to be specified by the appellant.</p>
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Awards of Costs

- 4.11 Costs can be awarded against the Council if it has behaved unreasonably in a way that has resulted in the appellant incurring costs that could have otherwise have been avoided. This could be failure to properly base the decision to refuse permission or serve a formal notice on adopted planning policy and provide evidence of the material harm that would be caused if the development were approved. Alternatively, costs can also arise from failure to defend reasons for refusal adequately at appeal or failure to comply with the procedural requirements of the appeal process or the procedural requirements associated with serving Notices. Awards of costs are relatively rare.
- 4.12 During the previous financial year there were only two successful awards of costs against the Council, both of these relate to decisions made by Planning Applications Sub-Committees against the recommendations of officers, as summarised above. At 2 Barton Street, the Inspector considered the Council had failed to substantiate the reason for refusal agreed by the Sub-Committee. This appears to be as a result of this appeal being handled under the Planning Inspectorate's fast track 'Householder Appeals Service' through which neither party is permitted to submit an appeal statement. Due to this and the brevity of the explanation of the committee minute in terms of setting out the Sub-Committee's reasons for resolving to refuse permission, the Inspector concluded the Council had failed to adequately substantiate its reason for refusal. The other case where costs were awarded was at 157 Edgware Road. In this case as the Inspector noted that the Council was not able to provide evidence to demonstrate material harm would occur in highways terms if permission were granted subject to conditions similar to those imposed when permission was granted for a similar hotel use on the same site in 2013.

5. Financial Implications

- 5.1 None. A contingency fund is already allocated within the Place Shaping and Town Planning budget to allow for costs awards at appeal and there is no requirement arising from this report for this to be increased.

6. Legal Implications

- 6.1 None.

7. Conclusion

- 7.1 The above statistics demonstrate that the majority of the Council's planning decisions are upheld at appeal and this demonstrates that the quality of decision-making is very good.
- 7.2 Although only a relatively small number of appeals allowed it is considered important to continue to monitor these and ensure any lessons are learnt and we consider where there is potential for improvement. The costs awards highlighted in Section 4 identify the need for the following actions going forward to ensure decision making over the next period for 2019-20 is more robust and more resistant to the award of costs at appeal:
- i. Planning Applications Sub-Committees should ensure they are satisfied, when resolving to refuse applications, particularly where this is against the officer recommendation, that there is demonstrable evidence that material harm would occur if permission were granted.
 - ii. In the case of householder applications (such as in the case of the appeal at 2 Barton Street), where there is no right for local planning authorities to submit an appeal statement in support of their decision to refuse permission, the procedures for recording a Committee's resolution to refuse permission against the officer recommendation need to be strengthened so that the reasons for refusal and any representations to the Sub-Committee are more clearly articulated and therefore better understood subsequently by the Inspector at appeal stage.
- 7.3 Further, it will be particularly important to continue to report on and monitor decision-making, including success at appeal, when the new policy framework in the draft City Plan, is published for formal Regulation 19 consultation and once adopted, to understand the impact this new policy framework has on decision making performance and establish the weight being afforded to new policy, as it moves towards adoption.

If you have any questions about this report, or wish to inspect one of the background papers, please contact: Jane Hamilton, extension 8019.

Appendix One

A summary of some appeals which have been dismissed and which raise issues of interest in terms of application of policy is set out below.

- **Shisha Smoking**

There are two recent appeals of interest which relate to unauthorised Shisha Smoking.

108 Star Street. This case was of interest because it supports the view that shisha use cannot be 'de-minimis' or ancillary to a restaurant/café use. The Inspector concluded shisha smoking is not functionally dependent on a café use. The Inspector refers to the case law which has established that there should be a 'functional relationship' between an ancillary use and a primary use and that relationship should be one that is normally found, not the personal choice of the person carrying out both activities together. The Inspector came to the conclusion that shisha smoking is a separate, identifiable land use that does not normally form part of a café.

The Appeal was dismissed.

386 Harrow Road. Use as shisha café. The main issues identified in this case were the effect of the development on: the provision of retail floorspace in the area; the living conditions of local residents, having regard to outlook, noise and disturbance; public health; and, the character and appearance of the host building and the area. The Inspector concluded that the development will have a detrimental effect on the provision of retail floorspace in the area contrary to Policy S21 and saved UDP Policy SS8.

In respect of Living Conditions, the Inspector concluded whilst the development will not have a harmful effect on the living conditions of neighbouring residents with particular regard to outlook it will have a harmful effect on the living conditions of neighbouring residents with particular regard to noise and disturbance contrary to WCP Policies S24, S29 and S32 which seek to protect residential amenity, including reducing noise pollution. It will also conflict with the residential amenity and pollution aims of saved UDP Policies TACE 9, ENV 5, ENV 6 and ENV 7 as well as the environmental aims of Policies 7.1 and 7.15 of the London Plan. However, the Inspector concluded that the development will not have a harmful effect on the character and appearance of the host building or the area.

The Appeal was dismissed.

- **Local Convenience Retail**

Great Minster House, Horseferry Road This was an appeal against the refusal of planning permission under Section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to a 1989 and 1998 permission. Specifically, the removal of Condition B.2 which required a minimum number of four Class A1 units to be occupied or made available by local convenience trades.

The main issue was the effect of the removal of the condition on the provision of a balance of shops, services and facilities. The Appellant had stated that the shift to online services had impacted on the provision of local conveniences and looked to increase the provision of food and drink outlets specifically aimed at the surrounding office workers in the area. However, the Planning Inspector found that many of the local conveniences specified as part of the condition would constitute services that could not be provided online e.g. hairdressers and dry cleaners. Regard was had to the office workers in the surrounding area and the need for

food and drink outlets but the Inspector found that there were sufficient outlets in the area that catered for this need. What the Planning Inspector found was that what remains, when the workers go home, are local residents who should be served by a good range and variety of services to provide good living conditions.

The Planning Inspector found that requiring just four of the ten ground floor units within the application site requiring to provide a local convenience trade was not overly restrictive and allowing the other six to be used outside of this restriction offers a reasonable degree of flexibility; and that the removal of this condition has not been sufficiently justified.

The appeal was dismissed.

- **Impact of new residential units on residential amenity, setting of conservation area and parking demand,**

William Court Hall Road NW8 This application was for three family dwellings within the grounds of this block of flats located adjacent to the St John's Wood Conservation Area. Members overturned officer's recommendation to approve and refused permission on design, amenity and parking grounds. Permission was refused at committee, contrary to Officer recommendation and a Public Inquiry was held in August last year.

The main issues were the effect of proposals on the St John's Wood Conservation Area and its setting, on living conditions of occupiers of William Court and proposed parking arrangements. The Inspector concluded that the proposal would cause less than substantial harm to the significance of the St Johns Wood Conservation Area, noting the requirement to give great weight to the conservation of the asset which, in this case, he noted is of considerable importance. Collectively, the Inspector considered the identified public benefits of the proposal do not outweigh the harm to the heritage asset, the proposal would have further detrimental impacts on the character and appearance of the area more generally and on the living conditions of the occupiers of flats. It would also result in a limited breach of Policy TRANS23(B). Overall therefore, the inspector concluded that the proposal would not accord with the development plan as a whole and does not amount to sustainable development for the purposes of the NPPF. Residents set up their own group and attended the Public Inquiry as a third party.

The appeal was dismissed.

- **Building Height**

Landward Court Two applications were received for a roof extension to create additional residential dwellings on a 13 storey 1960s tower block on Harrowby Street. The site is not in a conservation area but forms part of the setting of the Molyneux Street Conservation Area as well as several listed buildings. Both applications went to appeal.

The first appeal related to a two-storey roof extension to the tower to create additional units, which the Council refused on land use (residential mix) and design grounds (height and impact on heritage assets). The second appeal related to a single storey roof extension which the Council refused on design grounds only. The Inspectorate supported both decisions to refuse permission, acknowledging that the existing building is already a strident and dominant feature in the townscape and the harmful impact of the proposals for additional height on the setting of the adjacent conservation area and listed buildings and supporting the Council's current approach to resisting upwards development on this imposing tower

block. In the first application, he notes that the provision of 2 bedroom units would make a positive contribution to the shortfall in such units. However, taking this approach, without providing the required mix of units, would result in an unsustainable pattern of growth that would only further compound the issue of a lack of family sized dwellings.

Both appeals were dismissed.

- **Residential Amenity in CAZ**

46 Shaftesbury Avenue This appeal relates to an application for reconfiguration of an existing nightclub which involved repositioning the main entrance from Shaftesbury Avenue to Rupert Street. The appeal site is an existing night club that operates from within the London Trocadero building complex.

The appellant argued that the noise and disturbance that is likely to occur (from patrons entering/exiting) is appropriate in a West End location, where night time leisure and entertainment uses are a strategic function. The inspector agreed that residents of the West End would expect some noise disturbance at night given the vibrant urban location, however, he concluded that the appeal scheme would displace the existing noise and disturbance to a more sensitive location and this would significantly harm the living conditions of the residents of Rupert Street.

The appeal was dismissed.

The appellant also sought a costs application on the grounds that the Council's refusal of planning permission was a substantive failing as the amenity concerns were capable of being dealt with through the imposition of a planning condition. The inspector also agreed that the Council did not act unreasonably in refusing the planning application after exercising its planning judgment and concluding that the Operational Management Plan would be ineffective.

- **Telephone Kiosks**

Euro Payphones appeals for new telephone kiosks (17 dismissed, 2 were allowed)

The reasons for refusing these applications varied and so did the Inspector's decisions. Generally, these were dismissed because the telephone kiosks would add unacceptable visual clutter to the street or harm pedestrian movement. In some cases, there was harm to the conservation area and setting of listed buildings. The proposals did not include advertisements but the kiosks were designed to incorporate them.

Following the High Court decision (currently being appealed by New World Payphones) we would argue that these appeals relating to prior approval should not be processed by PINS because the judgement says prior approval is not the appropriate application, because they are primarily advertisement structures.

- **Temporary Shroud Advertisements**

There have been a number of applications and appeals related to large temporary shroud applications. Appeals on the following sites were dismissed:

131 Baker Street

138 Shaftesbury Avenue

111 Marylebone High Street

5 Lisle Street

7 - 8 St Martin's Place

116 Brompton Road

The Inspectors accepted that although these locations were commercial in character, existing signs are predominantly located at and below the fascia levels of the buildings and the architectural detailing of the upper storeys can be clearly appreciated. The proposed advertisements would be of considerable scale and height and located at a level where other prominent signs are rare. Due to these factors the advertisements would appear out of kilter with the prevailing pattern of the street scene. Where illuminated this would exacerbate its visibility and prominence and thus intensify the harmful effects in these regards.

One appeal was allowed at 25-27 Oxford Street. This was an anomaly even in Oxford Street where almost all appeals have been dismissed in recent years.