Refused for good reason? 
When councillors go against officer recommendations
Lichfields is the pre-eminent planning and development consultancy in the UK

We've been helping create great places for over 50 years.
The delivery of housing is at the top of the political agenda. But, whilst there has been lots of analysis of the planning system, the focus has been on policies and housing delivery post determination. Little attention has been given to the quality of decision making on applications.

Local planning decisions on the delivery of housing schemes are the ultimate responsibility of democratically-elected councillors. Planning officers have a responsibility to the Council that employs them in exercising professional judgement in making a recommendation on planning applications. Councillors serving on planning committees can determine planning applications as they see fit, including deviating from the recommendations of the planning officer. However, councillors are obliged to make their decisions within the legal and policy framework that exists and their refusal of a planning application can be appealed to the Secretary of State.

In an effort to understand the quality of decision making this research looks at all 309 appeals for residential proposals of over 50 residential units that were decided in the 2017 calendar year across England, Wales and Scotland to identify those that had a planning officer recommendation for approval before they were refused by elected councillors. Of the 78 appeals identified, almost two thirds (65%) were allowed, totalling just over 6,000 residential units. The corollary is that in 35% of cases, councillors were justified in overturning the officer recommendation, as the appeal was dismissed. For refusals made in line with officer recommendations just 40% were allowed.

It is thus a legitimate matter of public interest to consider the outcome of planning decisions made by elected councillors against professional advice in the circumstances where the applicant subsequently decides to appeal the decision, particularly in circumstances when the refusal is overturned at appeal. This adds a substantial amount of time to the planning process as well as very substantial costs.

Our research shows that there are factors in schemes refused against officer recommendation which make them more likely to be allowed on appeal. Of the commonly cited reasons for refusal, our research has found that where reasons related to highly technical matters (such as highways impact) the percentage of allowed appeals is generally higher than where reasons for refusal are more subjective. Furthermore, where there is an agreed position of no five year housing land supply, this equated to a c.10% increase in the likelihood of an appeal being allowed.

Whilst it is acknowledged that this analysis is based on a point-in-time assessment and only looks at a year’s worth of appeals, on the basis of this research we identify a number of recommendations. These include:

1. Councils should seek independent advice where there is disagreement between the planning officer and members on a technical issue;
2. Allowing for a ‘cooling off’ period whereby impartial advice can be sought about appeal prospects before a refusal is confirmed;
3. An obligation to record and publish the outcomes of appeals where decisions were made against officer recommendation;
4. Offering more bespoke training to planning committee members, particularly where more appeals are overturned than the authority average when determined against officer recommendation; and
5. Extending the Secretary of State’s powers to designate authorities that “are not adequately performing their function of determining applications”, to include a measure on appeals being overturned when refused against officer recommendation.
### Key Figures

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
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<tbody>
<tr>
<td>309</td>
<td>identified appeals for schemes of 50 residential units or more decided in 2017</td>
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<tr>
<td>25%</td>
<td>(of the 309) of these appeals where the application was refused against a planning officer recommendation for approval</td>
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<tr>
<td>65%</td>
<td>of the appeals where the recommendation was overturned were allowed, compared to 40% where refusal was recommended</td>
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<tr>
<td>c.6,000</td>
<td>residential units can now be delivered through being allowed on appeal</td>
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<tr>
<td>71%</td>
<td>of appeals featured five year housing land supply, either contested by the appellant or agreed between the parties</td>
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<tr>
<td>74%</td>
<td>of appeals where councillors refused due to highways were allowed on appeal. Landscaping was 54%</td>
</tr>
<tr>
<td>64%</td>
<td>of appeals where refusal went against officer recommendation had no post-NPPF Local Plan</td>
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01 Introduction

When a housing application is refused contrary to planning officer recommendation for approval, what happens to these applications when they are appealed?

The pressing need to increase housing delivery has received a huge amount of attention and analysis. However, whilst there has been lots of analysis of the planning system and its ability to assist in increasing housing output, this often focuses on planning policies. There is very little analysis of the decision making process and whether there is room for improvement. The Housing White Paper¹ states that "Everyone involved in politics and the housing industry has a moral duty to tackle [the housing crisis] head on". With this in mind, this research considers the role of planning committees and applications for housing schemes which have been refused against planning officer recommendation.

There is a longstanding role for elected councillors to decide on planning applications as they see fit, and no obligation to follow the recommendations of the planning officers advising them. However, it is clearly important for those practising within the planning system to better understand the characteristics of applications where councillors are disagreeing with their planning officers; whether there are some local authorities where disagreement is more common and what are the key reasons that lead to councillors refusing applications. It is also relevant to see if their decisions prove more or less resilient to challenge when applicants decide to appeal and an Inspector² (or the Secretary of State/Minister) makes the ultimate decision, and the timescale implications for development. Our research report explores these and other issues.

¹ DCLG Fixing our broken housing market (February 2017)
² Planning Inspectors are known as Reporters in Scotland. For simplicity and brevity, all references to Inspector or Secretary of State in this report also refer to the equivalent roles in Wales and Scotland.
O2 Councillor decisions and appeals

To be quite clear, under the current system it is neither incorrect or inappropriate for a planning committee to disagree with the recommendation of planning officers. Local planning decisions are the ultimate responsibility of democratically elected councillors, accountable to their communities, whilst planning officers are responsible to the Council that employs them in exercising their own professional judgement. Having a planning committee arrive at different conclusions from the planning officers advising them - having balanced the various considerations - is both legitimate and to be expected. The Nolan Committee on Public Life\(^3\) stated that:

“There is nothing intrinsically wrong if planning committees do not invariably follow the advice of officers. Planning officers exist to advise planning committees, which are entitled to reach their own decisions by attaching different weight to the various planning criteria which are relevant to an application. If a decision is thought to be perverse, a planning officer should so advise the committee, but respect the committee’s conclusion.”

However, councillors are obliged to make their decisions within the legal and policy framework that exists, which will comprise, inter alia, the NPPF and the statutory development plan. In combination - along with the ability to appeal to the Secretary of State (SoS) - these provide a level of constraint on the discretion of councillors in exercising their decision-making function. The NPPF (2018) states that:

“Local planning authorities should approach decisions on proposed development in a positive and creative way... Decision-makers at every level should seek to approve applications for sustainable development where possible”

This is given effect through Paragraph 11 of the Framework (which mirrors in many respects paragraph 14 of the 2012 NPPF) which maintains a presumption in favour of sustainable development with parameters for how material considerations are balanced, based on the development plan and the NPPF as a whole.

When applicants appeal planning decisions, it will typically result in significant cost for all parties, and in situations where an appeal is successful, will result in a delay in acceptable development occurring at a time when there is national policy imperative to boost housing supply.

It is thus a legitimate matter of public interest to consider the outcome of planning decisions made by elected councillors against professional advice in the circumstances where the applicant subsequently decides to appeal the decision.

Our research

In order to explore the issue, this research looked at all appeals for residential proposals of over 50 residential units that were decided in the 2017 calendar year across England, Wales and Scotland\(^4\). In total there were 309 appeals that fitted this description totalling just under 50,000 residential units. This long list was then filtered to include only those that had a planning officer recommendation for approval before they were refused by elected councillors. This research looks only at those examples where a formal decision notice was issued for a refusal, and thus excludes examples where the appeal was made against non-determination in anticipation of elected councillors refusing the appeal as well as call-ins by the SoS. In total, 78 appeals met these criteria, totalling c.10,000 residential units. They are fairly evenly spread geographically – see Figure 1.

As well as refusals against officer recommendation, there are also obviously instances where planning committee members approve schemes against a recommendation of refusal from planning officers. However, there is no national dataset recording such decisions and analysis of it would be disproportionate for this particular research.

\(^3\) Third Report of the Committee on Standards in Public Life, Standards of Conduct in Local Government in England, Scotland and Wales. Cm 3702, July 1997

\(^4\) The data is obtained from Compass. Generally the data was accurate but some anomalies were removed from the research including appeals related to conditions, obligations or were withdrawn, as well as duplicates.
Figure 1: Appeal Decisions for Residential Proposals over 50 Units where initial refusal overturned against planning officer recommendations

Source: Lichfields analysis

INSIGHT
REFUSED FOR GOOD REASON?

Source: Lichfields analysis
What is happening at appeal?

Of the 78 appeals for schemes of 50 or more residential units determined in 2017 where the refusal was made against planning officer recommendations, almost two thirds (65%) were allowed, totalling just over 6,000 residential units. The corollary is that in 35% of cases councillors were justified in overturning officer recommendation as the appeal was subsequently dismissed. This 65% figure compares to 40% of appeals of 50 or more residential units in 2017 refused in line with planning officer recommendations and 50% of all the appeals for schemes of 50 or more residential units determined in 2017 being allowed (See Figure 2). Many applications refused against planning officer recommendation are not contested at appeal so it is impossible to estimate how many other schemes may have also been successful if pursued at appeal.

There also appears to be a slight correlation between the size of the scheme and the appeal decision with 69% of schemes of 50-99 residential units being allowed, 67% of appeals of 100-199 residential units and 50% of schemes of 200+ residential units. Of the 78 appeals, only six were determined by the Secretary of State rather than an Inspector. For these appeals where the SoS decides, the statistic is reversed, four of the six appeals being dismissed, but the sample size is clearly small.

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Figure 2: Comparative approval rates for appeals

- **Appeals refused in line with officer recommendation for refusal**
  - 60% Allowed
  - 40% Dismissed

- **All Appeals**
  - 50% Allowed
  - 50% Dismissed

- **Appeals refused against officer recommendation for approval**
  - 35% Allowed
  - 65% Dismissed

Source: Compass / Lichfields analysis

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* This compares to 35% of all S78 Planning Appeals and Called In Applications allowed in the five year period 2013 to 2018 (as published as part of the Independent review of planning appeal inquiries: call for evidence)

* Drawn from Compass data on schemes of 50 or more residential units
Does it happen more often in some Local Authorities?

The 78 appeals researched in this analysis fall within 53 Local Planning Authorities. A total of 15 had more than one appeal which met the methodology’s criteria while six authorities had three or more appeals decided in 2017 which were refused against planning officer recommendation. Authorities with the most appeals are listed below (Table 1).

Table 1: Local Authorities with three or more appeals against councillor-instigated refusals

<table>
<thead>
<tr>
<th>Local Authority</th>
<th>Number of appeals</th>
<th>Percentage allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cornwall</td>
<td>6</td>
<td>67%</td>
</tr>
<tr>
<td>South Oxfordshire</td>
<td>4</td>
<td>75%</td>
</tr>
<tr>
<td>Fylde</td>
<td>3</td>
<td>100%</td>
</tr>
<tr>
<td>Tendring</td>
<td>3</td>
<td>67%</td>
</tr>
<tr>
<td>Uttlesford</td>
<td>3</td>
<td>67%</td>
</tr>
<tr>
<td>Havering</td>
<td>3</td>
<td>33%</td>
</tr>
</tbody>
</table>

Source: Lichfields analysis

As also shown in Figure 3, the percentage of allowed appeals is generally higher if more than two appeals have been determined.

Political control

In our sample of appeals, the political control of a Local Authority has some relationship with the outcome of the appeal but appeals generally appear to be more frequent within Conservative controlled authorities. A total of 56% (44) of the appeals were in Conservative controlled authorities, with the next most likely political status being ‘No Overall Control’ (NOC) equating to 27% (21) of all appeals. Only 14% (11) of the appeals were in Labour controlled authorities.
**Reasons for refusal**

Our analysis has categorised the reasons for refusal given by planning committees on each of the 78 appeals. A wide variety of reasons for refusal were stated – as shown in Figure 5 – with the most prevalent, ‘go to’ reasons for refusal against planning officer’s recommendation for approval being:

- impact on landscape/countryside (36% of appeals);
- highways and other transport related issues (24% of appeals);
- impact on character of areas (24% of appeals);
- height/scale of development (22% of appeals); and
- not sustainable development (15% of appeals).

**Figure 5: Stated reasons given for refusal of applications against planning officer recommendation**
Of the commonly-cited reasons for refusal which are then considered at appeal, our research has found the following percentage of cases which feature these reasons for refusal were subsequently allowed:

- 74% of appeals relating to highways and other transport related issues;
- 68% of appeals on matters relating to impact on character;
- 67% of appeals relating to whether the proposal represents sustainable development;
- 59% of appeals which considered the height/scale of development; and
- 54% of appeals relating to impact on landscaping countryside matters.

27% of the appeals analysed were refused by planning committee with an absence of a S.106 legal agreement cited as a reason for refusal. Our research shows that 71% of these appeals were allowed. In reaching a recommendation for approval from planning officers, it can be assumed that officers were satisfied that the applicant agreed in principle to make contributions where necessary to mitigate against site specific impacts of the development. As such, the inclusion of this reason for refusal in 27% of case is typically resolvable.

Where appeals include reasons for refusal related to a highly technical matters (such as highways impact) the percentage of allowed appeals is generally higher than those which contain reasons for refusal where matters and issues are more subjective (eg. impact on landscape or scale of development).

Whilst highways and transport issues are frequently among the most contentious in terms of resident concerns about development – views to which councillors will often give significant weight in their decision making – they are also ones where there is greater reliance by planning officers and Inspectors on technical evidence, including quantitative modelling that is in many cases common ground between the appellant and the relevant Highway Authority.

This means it is less likely that Inspectors will be in a position to justify decisions contrary to the advice that informed the judgement of the planning officers in recommending approval.

**Local Plan status**

The majority of appeals were located within authorities without an up-to-date Local Plan. Of the 78 appeals assessed, 64% (50) were within authorities which did not have a post-NPPF adopted Local Plan with the remaining 36% (28) located within authorities with a Local Plan adopted after 27 March 2012. This perhaps reflects that those local authorities without an up-to-date plan are more likely to have planning applications that are ‘speculative’ in the sense that they are not coming forward on allocated sites or where there is a clear local policy test against which elected councillors can frame their decision.

Interestingly, the Local Plan status did not have a significant impact on the outcome of the appeals. 66% of appeals were allowed in authorities with a post-NPPF adopted Local Plan and 64% were allowed in authorities without.
**Five-year housing land supply**

The research shows that five-year housing land supply (5YHLS) featured as a main issue in the majority of the appeals. In 55 out of the 78 appeals (71%), 5YHLS was either contested or it was agreed by both parties that a 5YHLS could not be demonstrated.

In terms of the latter, where a lack of 5YHLS was agreed by both parties, an appeal was more likely to be allowed by an Inspector. In our sample there were 38 such appeals and 71% (27) were allowed compared to the overall average of 65%. Putting this in context, of the 17 appeals where 5YHLS was contested, 59% (10) of appeals were allowed and 61% (out of 23 appeals) were allowed where 5YHLS did not feature as a key issue.

Where there is an agreed position of no 5YHLS, analysis of our sample shows that this equated to roughly a 10% increase in the likelihood of an appeal being allowed.

This indicates that harms identified by planning committee members are rarely sufficient to outweigh the benefits considered by Inspectors to be provided by the delivery of new housing. However, where a 5YHLS is contested, or does not feature as a main issue, the outcome is generally more balanced which is then more likely to reflect the subjective nature of many of the stated reasons for refusal.

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**Figure 7: The five-year housing land supply position of the appeals**

[Diagram showing the analysis of appeals based on 5YHLS status.]

Source: Lichfields analysis
How much time does this add to the process?

The majority (65%) of appeals were allowed in situations where councillors went against planning officer recommendation. As such it is important to explore the implications for development in situations where an appeal ought to have been unnecessary to achieve a successful outcome (i.e. if the planning officer’s initial recommendation had been followed, the permission would have been granted locally) and also identify how much time this added to the process.

In theory, applicants can expect to achieve a decision locally for a major development within 13 weeks of the submission of a planning application. The average timescale, from submission of a planning application to receiving a decision, for the 78 appeals, was assessed as part of this research to understand the additional time an appeal adds on to the process, equating to eight months on average.

Our analysis shows that, on average, the time from validation of the planning application to receiving an appeal decision was 19 months. This increased to 21 months on decisions determined by the SoS.

The research also showed that timescales can vary depending on the number of houses proposed. As shown in Figure 4.1, the average time from validation of the planning application to receiving an appeal decision is 18 months for modest development proposals (up to 150 residential units) however this increases to 25 months for schemes of 150 homes or more. From the date of the decision notice to the date of the appeal decision, the average time was 10 months for schemes of less than 150 units, whereas this increases to 13 months for developments of 150 residential units or more. These figures increase slightly for decisions determined by the SoS.

Given that appellants have six months from the date of the decision notice to submit an appeal, these timescales do not account for when the appeals were submitted. The time taken from the date of the decision notice to the date of the appeal decision does, however, vary significantly from 4 months to 39 months (not including SoS decisions) so it is generally reasonable to assume that an appeal can add around a year on to the process.

It is clear that the process of overturning refusal against planning officer recommendation for appeal adds a substantial amount of time to the planning process. Obviously, there are very substantial costs associated with this process, as well as the risk that the appeal is unsuccessful. Because of this, not all applications refused against officer recommendation will challenge the decision at appeal.

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Figure 8: Timescale to appeal decision from validation of application (left) and from date of decision notice (right)

Source: Lichfields analysis
Conclusions

This research identifies that in 2017, 65% of appeals made against officer recommendation of schemes of 50 residential units or more were allowed on appeal compared to 40% where refusal was recommended by officers. However, 35% of the refused schemes were justifiably determined in so far as they were dismissed on appeal. The research shows a number of factors which make a positive decision at appeal more likely, including reasons for refusal which are more technical in nature and an agreed lack of 5YHLS.

It must be acknowledged that this analysis is based on a point in time assessment and only looks at a year's worth of appeals. The circumstances of Local Planning Authorities will vary on year based on a number of factors including the quantity of applications submitted that year and whether, or when, a Local Plan is adopted.

On the basis of our research findings we set out below a number of recommendations:

1. Where the appeals in this research were allowed, the reasons for refusal were more likely to be technical matters (such as highways impact) rather than more subjective planning matters (such as impact on landscape or scale of development). In these instances where planning committee members seek to include a technical reason for refusal, which are frequently among the most contentious in terms of resident concerns, consideration needs to be given to the greater reliance by planning officers and Inspectors on technical evidence. We propose that where councillors have concerns about a technical issue, independent advice should be sought to understand whether there is a case to support this reason for refusal at appeal, before formally determining the application.

2. Similarly, in circumstances where planning committee members are inclined to refuse a scheme against officer recommendation, it may be prudent to have a 'cooling off' period whereby impartial advice can be sought about appeal prospects. This could be sought from a planning consultant, planning solicitor or Counsel and would offer third party advice about the prospects of winning an appeal for the reasons for refusal considered appropriate by planning committee members.

3. Local Planning Authorities could record and publish statistics on the frequency of decisions made against planning officer recommendation, the outcome of appeals (how many are allowed and dismissed) and the type/scale of proposals to which the appeals relate. This could be presented in monitoring reports and would allow applicants to understand the likelihood of their schemes going to appeal.

4. Training is available to councillors who sit on planning committee through the Local Government Association and the Planning Advisory Service etc, but it is not mandatory and with the turnover of the committee members there may often be new training needs arising. Training could be made compulsory for members by the time they have sat on the committee for six months or, for all committee members in Councils where appeals are allowed on decisions made against officer recommendation at a rate higher than the authority appeal average.

5. Section 62B of the Town and Country Planning Act 1990 (as amended) allows the SoS to designate local planning authorities that “are not adequately performing their function of determining applications”, when assessed against the speed and quality of decisions made measured by the proportion of decisions subsequently overturned at appeal. This could be extended to include a measure of how many appeals are being overturned when refused against officer recommendation.

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7 The Planning Inspectorate records statistics on decisions by local planning authority – s78 planning appeals, Householder appeals and s174 Enforcement Notice appeals, but not on the origin of the refusal
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