

Committee(s): Planning and Licensing Committee	Date: 28 June 2022
Subject: Planning Appeals Update (February – May 2022)	Wards affected: All
Report of: Phil Drane, Corporate Director (Planning and Economy)	Public
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Summary

This report provides Members with information regarding recent planning appeal decisions.

Main Report

Introduction and Background

1. This report provides a summary of recent decisions concerning appeals relating to sites in the borough. This is part of a regular series of updates brought to the Planning and Licensing Committee for information, the most recent update brought on 22 February 2022 (Item 294).
2. The report provides a summary of the main issues and comments made by inspectors, which can be useful when making decisions on current and future planning applications. It shows that different inspectors can reach different views on similar matters. Inspectors can sometimes have an inconsistent approach to the conditions they are willing to impose, for example requiring provision of a travel information pack often requested by highways and also on the removal of specified permitted development rights.
3. The committee is aware that a local planning authority record of success for defending appeals is the measure taken by the Department for Levelling up, Housing and Communities (DLUHC) to assess the quality of decision making. This is broken down into Majors (M) and Non Majors (NM), with a maximum allowable 'loss rate' of ten percent of the total number of applications of that type determined. Members may be aware that one Essex authority (Uttlesford District Council), recently exceeded the allowable loss percentage for Majors. One consequence of that is that applicants are now able to choose to make their Major applications direct to the Planning Inspectorate rather than having them determined locally by the authority. The measure relating to Major appeals is challenging due to the low number of such applications that smaller authorities tend to receive, including Brentwood Borough, in contrast to the measure for Non Majors.

4. The summaries below identify the type of appeal in each case. Any cases listed in this report that were determined by the Planning and Licensing Committee are marked with a (C).
5. The application documents and the appeal decisions are available to view on the Council's website at <https://publicaccess.brentwood.gov.uk/online-applications/> via Public Access.

Comparative data with other Essex authorities

6. The committee has previously expressed an interest in seeing how the authority performs in comparison to other Essex authorities. Below are two tables providing such comparative information on general planning appeals (S78) and householder appeals. The data is taken from the Government website and Planning Inspectorate statistics, which is updated annually and most recently in April 2022 (see <https://www.gov.uk/government/statistics/planning-inspectorate-statistics>).

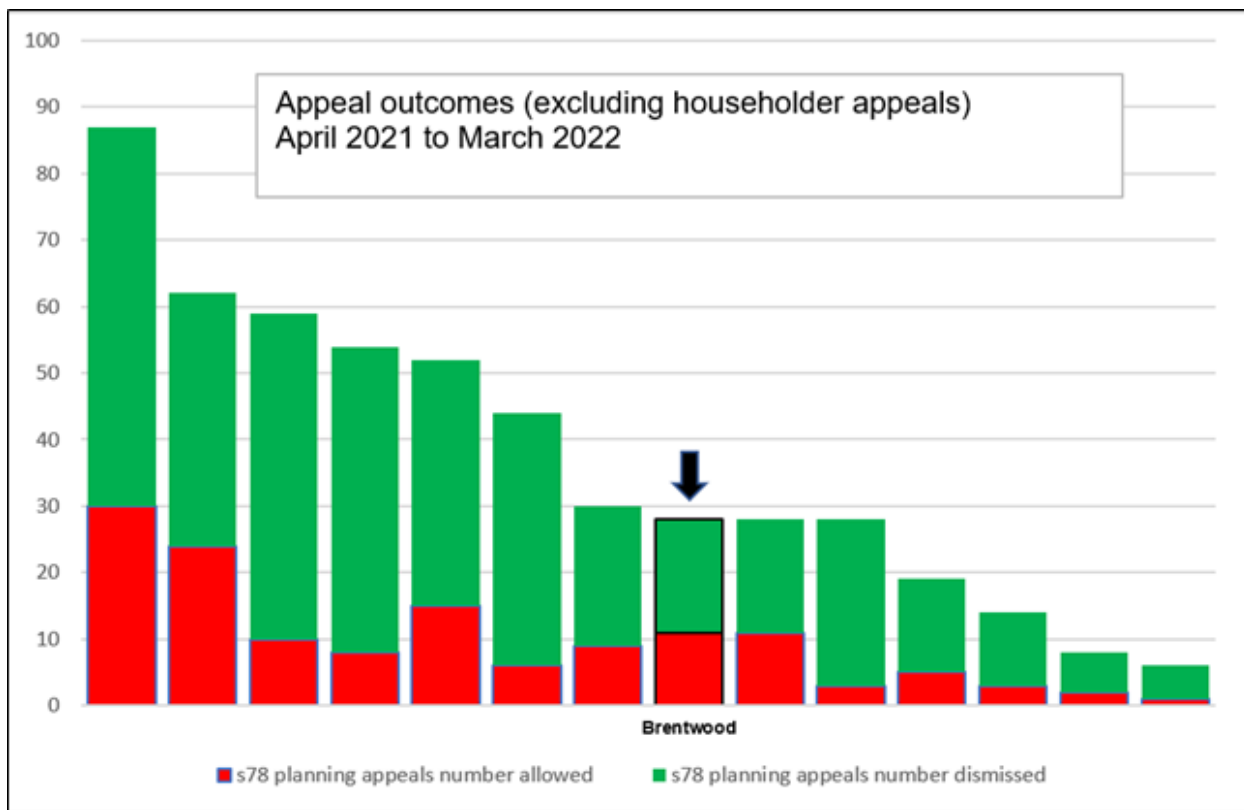


Table 1: Appeal outcomes in Greater Essex (excluding householder appeals), April 2021 to March 2022

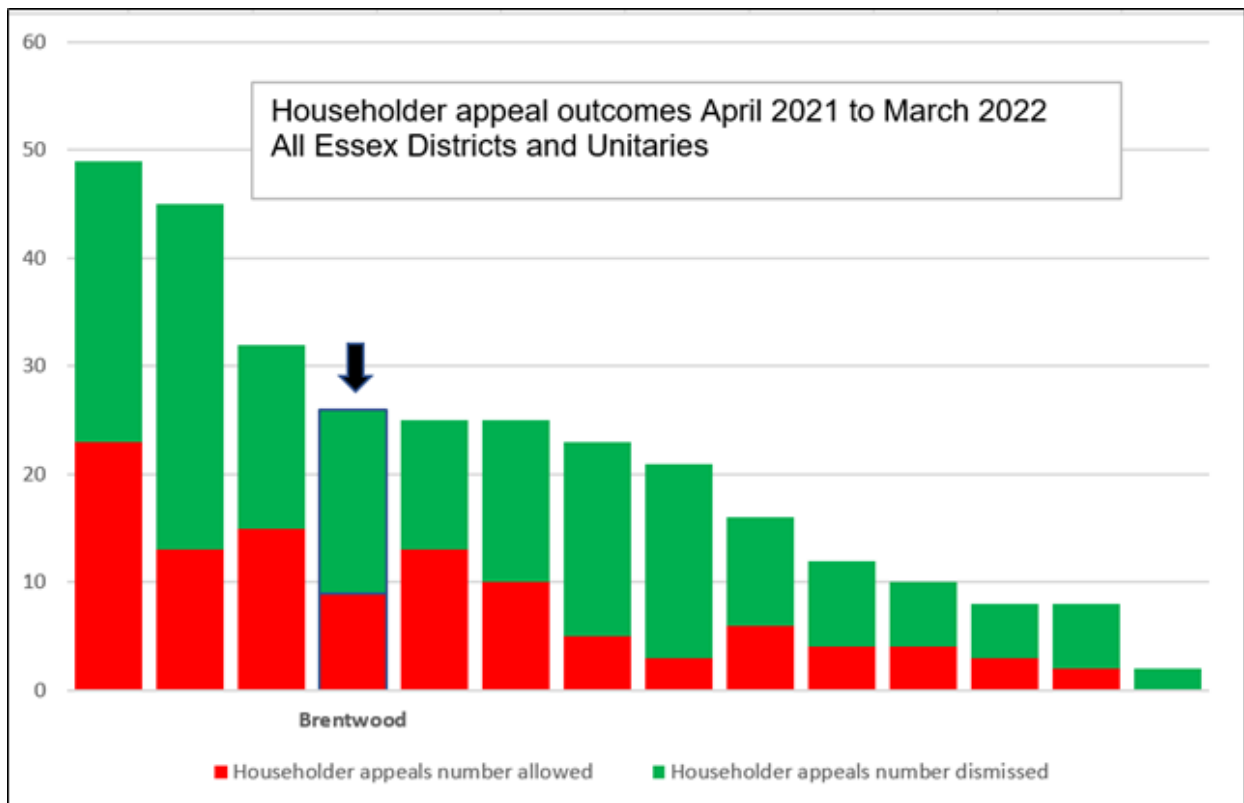


Table 2: Householder appeal outcomes in Greater Essex, April 2021 to March 2022

Appeal Decisions

7. The following appeal decisions have been received since February 2022. Overall, 13 decisions were issued of which 11 were dismissed and two were allowed (75% dismissed or in line with the council's decision). There were no cases determined by the Planning and Licensing Committee.

7.1	Application No:	21/00537/HHA (NM)
	Location:	Oak Hill, Beggar Hill, Fryerning
	Proposal:	Demolish existing rear extension. Two storey side and rear extension to west elevation. Two storey side and rear extension to east elevation to include creation of new basement. Proposed new driveway with timber gates
	Appeal Decision:	Appeal Dismissed 15 March 2022

The main issues identified by the Inspector were the impact upon the Green Belt and whether there were any very special circumstances to justify the proposal and on the Fryerning Conservation Area. In relation to the Green Belt, the Inspector considered that the proposal, although would include a subterranean basement, the basement along with the additions above ground would represent a significant increase in the size of the overall property, resulting in a disproportionate addition to the original dwelling and would not meet the exceptions of para. 149 of the NPPF. Due the overall development above ground, including the new entrance gates and driveway, along with the substantial extensions to the dwelling, the proposal would result in an adverse impact on the openness of the Green Belt, resulting in moderate harm to the Green Belt.

Consideration was given to the potential impact upon the Conservation Area. The property is significantly set back with limited views from the public realm. The proposal would retain its arts and crafts character due to the design of the proposed extensions and was therefore considered to result in a neutral impact on the dwellings contribution to the significance of the Conservation Area.

The inspector concluded that the development resulted in harm to the Green Belt and that very special circumstances did not exist.

7.2	Application No:	20/01255/FUL (NM)
	Location:	Fantails, Hook End Road, Hook End
	Proposal:	Construction of agricultural building to be used for the storage of machinery and hay (Retrospective)
	Appeal Decision:	Appeal Dismissed 4 March 2022

The main issues for the Inspector were whether the retrospective development represented inappropriate development within the Green Belt; and the effect of the development on the setting of the adjacent Designated Heritage Assets. This appeal was determined prior to the adoption of the new local plan.

The Inspector concluded the proposal would meet the exception to inappropriate development under para 149(a) (buildings for agriculture and forestry) despite the

Councils assertion that little evidence was forthcoming to demonstrate it was agricultural purposes – there was no test within the Framework or local policy. A condition could be imposed to ensure it was for such a purpose.

In terms of heritage assets, the Inspector concluded that the historic evolution of the site stemmed from a farmhouse with associated barns which created a nucleus of buildings to the front of the site (a small farmstead). The setting of the farmstead would have historically included expansive open and undeveloped space beyond. The relationship of the new building to those existing is demonstrably greater in terms of distance and it would be substantially removed from the existing nucleus of buildings at odds with the historic layout and impeding upon the open setting beyond. Concerns were also raised in respect of the scale of the building constructed and its prominence has a negative impact upon the setting of the heritage assets. The harm would be 'less than substantial' and there were no public benefits to outweigh the harm. The appeal was dismissed on the second ground.

7.3	Application No:	21/01143/S192 (NM)
	Location:	34 Kensington Way, Brentwood
	Proposal:	Application for a Lawful Development Certificate for a proposed use or development to convert existing garage/car port into a kitchen and convert existing kitchen into a study
	Appeal Decision:	Appeal Dismissed 25 March 2022

This appeal relates to the determination of a Lawful Development Certificate to convert a carport into a kitchen. The application was refused due to Condition 20 on the original planning permission 10/00201/FUL for the dwelling restricting the use of the garage for parking of motor vehicles and incidental uses. The Planning Inspector agreed with the Councils determination and upheld the appeal.

7.4	Application No:	20/01687/HHA (NM)
	Location:	Spinney Lodge, First Avenue, Hook End
	Proposal:	Demolition of existing garage. Construction of a two storey side extension to create an annexe

Appeal Decision:	Appeal Dismissed 15 March 2022
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The main issue identified by the Inspector was the impact upon the Green Belt and considered the extension would result in a dwelling which is disproportionate in size compared to the original building. The extension would also erode the visual openness of the site which is not mitigated by the large size of the plot.

Regard was given to the Public Sector Equality Duty (PSED) as the applicant submitted information for personal circumstances, however the inspector was not persuaded that the additional accommodation proposed to meet all possible eventualities and requirements that may or may not arise was reasonable and the accommodation to be excessive.

There was also a lack of detailed information submitted to indicate the provision of the accommodation could not be made in an alternative form outside the Green Belt or inside the existing house.

The inspector concluded that the development resulted in harm to the Green Belt and that very special circumstances did not exist.

7.5	Application No:	21/00871/FUL (NM)
	Location:	50 Oliver Road, Shenfield
	Proposal:	Demolition of existing bungalow, construction of two three bedroom dwellings with off street parking
	Appeal Decision:	Appeal Dismissed 4 March 2022

The main issue identified by the Inspector was the effect of the proposed development on the character and appearance of the area. This was the second appeal, there also having been four refusals for a similar proposal to replace a bungalow on a corner plot with two dwellings. The Inspector agreed with the authority that the development would be unduly prominent, appearing squeezed in and out of keeping with the more spacious pattern and character of development in the area.

The appeal was determined before the adoption of the new local plan. At that time the authority could not demonstrate a five year land supply and consequently, in combination with low levels of housing delivery, the tilted balance was engaged. However, the Inspector considered that the addition of just one extra dwelling in the borough would make only a very small difference to housing supply and therefore did not overcome his objections to the proposal. This issue has been reported in appeal summaries in the past where, in contrast, it was the main reason for allowing two appeals relating to individual plots.

7.6	Application No:	21/01274/FUL (NM)
	Location:	Braeside, 112 Priests Lane, Shenfield
	Proposal:	Demolition of existing house and garage and construction of two detached houses. Resubmission of refused application: 21/00509/FUL
	Appeal Decision:	Appeal Dismissed 15 March 2022

The main issue for the Inspector was the impact of the proposal on the character and appearance of the local area and impact on the living conditions of occupants of No. 108 Priests Lane by way of overbearing effect.

The Inspector set out the character of the area, agreeing with the officer interpretation being varied in design and scale, set in good sized plots, with the trees and foliage adding to the verdant spacious character of this plot.

The proposed dwellings would be set back from the existing frontage, out of line with the adjacent dwellings appearing at odds with the surrounding character. The proposed dwellings due to their scale and design, would have bulky features and large blank walls that would appear overly large when compared to surrounding properties. Whilst the trees on the site would be retained, due to the proximity with Plot 1 would likely suffer overshadowing issues, with potential pressure in the future for removal. Whilst the trees are not protected, they offer verdant benefits to the character of the area. Overall, the proposed dwellings due to their size and position would have a jarring visual relationship with their surroundings, resulting in harm to the character and appearance of the street scene.

Given the relationship of Plot 1 with No. 108 Priests Lane and the change in land levels between the two dwellings, along with the existing trees providing some screening, the Inspector considers that Plot 1 would not result in an overbearing impact. Whilst finding in the appellants favour with regard to the living conditions, this would not outweigh the harm to the character and appearance of the area.

7.7	Application No:	21/00360/FUL (NM)
	Location:	Land At La Plata Grove, Brentwood
	Proposal:	Removal of Conditions 3 & 4 of application 20/00920/FUL and replace with new Condition:- "Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any Order revoking and/or re-enacting that Order with or without modification, no development under Schedule 2 Part 1 Classes A, D, E, F, G, H shall be carried out unless approved by way of a planning permission granted."
	Appeal Decision:	Appeal Dismissed 15 March 2022

This appeal related to the removal of two planning conditions attached to the planning permission for the erection for three dwellings on previously vacant land at the end of a cul-de-sac adjacent to existing properties. Those conditions removed selected permitted development rights – rights to install additional windows (above ground floor) on the rear elevation of the dwellings and to erect extensions - only insofar as they were necessary to avoid overlooking of neighbours and of each other.

The appellant wanted to remove the conditions but suggested an alternative as a replacement that would remove a broader range of permitted development rights. The application had been refused because of the effect on amenity of removing the restrictions but also because the revised condition removed rights that were not harmful and therefore their removal was unjustified. The main issue therefore was whether the existing conditions were reasonable and necessary in the interests of safeguarding the living conditions of neighbouring occupants.

The Inspector found that there was clear planning justification for the conditions which are necessary, reasonable and important to safeguard the living conditions of neighbouring occupants and should therefore be retained.

7.8	Application No:	20/01854/FUL (NM)
	Location:	1 Rose Hall Cottages, Shonks Mill Road, Navestock
	Proposal:	Demolition of existing outbuilding and construction of a new dwelling
	Appeal Decision:	Appeal Dismissed 14 February 2022

The main issues identified by the Inspector were whether the proposed development would be inappropriate development in the Green Belt, and whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, amounting to very special circumstances (VSC) necessary to justify the proposal.

The Inspector agreed with the officer's assessment that the proposal would result in inappropriate development in the Green Belt and would fall outside an exception for development as set out in Para. 149 of the NPPF.

In reference to VSC, the Inspector considered the approval of application 21/00564/FUL, for a rebuild of the existing outbuilding to a lesser extent with residential Permitted Development (PD) Rights retained, however as the comparison between a PD fallback off application 21/00564/FUL and the appeal scheme did not clearly indicate a similar/ lesser impact on Green Belt openness this was not considered to outweigh the harm identified to the Green Belt.

7.9	Application No:	21/01457/HHA (NM)
	Location:	3A Roman Road, Ingatestone
	Proposal:	Single storey front extension and single storey side extension
	Appeal Decision:	Appeal Allowed 4 March 2022

The dwelling is sited on a corner and the Council's concerns related to the size, design and forward projection of the extension relating poorly to the surrounding area.

The inspector found the dwelling was constructed on a lower ground level to the adjacent properties and did not consider the dwelling appeared prominent within the street scene. However, the Inspector did consider the proposal would not be a subservient addition, but as the proposal included a hipped design and pitched roof that hipped back into the site and away from the site boundaries with the render applied to existing elevations integrating the extension into the building as a whole concluded the appearance would not be disproportionate or harmful to the building's general appearance. Overall, the design and appearance was considered not to be disproportionate or harmful but accepts the proposals would give the building a greater prominence but would not be harmful to the character or appearance of the wider area. The appeal was allowed subject to conditions.

7.10	Application No:	21/00462/FUL (NM)
	Location:	Chelmer Cottage, Docklands Avenue, Ingatestone
	Proposal:	Demolition of existing dwelling and construction of two new dwellings
	Appeal Decision:	Appeal Allowed 27 May 2022

The main issue for the Inspector was the impact of the proposal on the character and appearance of the local area including the setting of the Ingatestone Conservation Area. The appeal was determined following the adoption of the new local plan and the appeal was considered on this basis.

The Council's key concern related to the new house (plot 1) and its projection beyond the established building line which was considered to erode the orderly, defined spatial openness to the entrance to the Avenue. The Inspector disagreed and considered that the irregular building line along Roman Road and would be difficult to discern with the set back of houses of varied architectural design and landscaped frontages. Any infringement would be marginal and the scale of the buildings would be similar to nearby buildings. The buildings would fit reasonably comfortably within the site and street scene. Furthermore, the Conservation Area is far enough away from the site to ensure no significant impact upon setting and whilst

objections from neighbours were considered, no significant harm was identified to their amenities or to the local sewer network in terms of capacity in the absence of any evidence.

The Inspector whilst finding no harm also identified that the presumption in favour of sustainable development would apply with the under-delivery of housing within the borough. Whilst only a net increase of one house, this would contribute to an identified need. The appeal was allowed subject to conditions.

7.11	Application No:	21/01873/HHA (NM)
	Location:	37 Kelvedon Green, Kelvedon Hatch
	Proposal:	Demolition of existing conservatory and construction of two storey rear extension. Fenestration alterations.
	Appeal Decision:	Appeal Dismissed 4 March 2022

The main issue for the Inspector was the impact of the proposal on the living conditions of neighbouring occupants.

The Inspector considered that the extension at two storeys high, 0.5 metres from the boundary and 3.5 metres in depth would result in a dominant and oppressive element adjacent to the rear garden of No. 35 Kelvedon Green, which would restrict the outlook from the conservatory, forming an unneighbourly form of development, resulting in an overbearing effect, causing significant and unacceptable harm to the living conditions of No. 35 Kelvedon Green.

7.12	Application No:	21/01344/PIP (NM)
	Location:	Rose Court, Great Warley Street, Great Warley
	Proposal:	Permission in Principle for the construction of 1-3 dwellings
	Appeal Decision:	Appeal Dismissed 9 May 2022

The proposal relates to ‘permission in principle’ which is an alternative way of obtaining planning permission for housing-led development. The consent route has two stages: the first stage (permission in principle) establishes whether a site is suitable for development, and the second stage (technical details consent) considers the detailed development proposal. The appeal relates to the first stage only with considerations limited to location, land use and the amount of development permitted.

The main issue for consideration was whether the proposal would be inappropriate development within the Green Belt and if so, whether there were very special circumstances to justify the development.

Several exceptions were considered under the Framework including para 149(e) which relates to limited infilling in a village. The gaps from existing development and the linear development located further along the street were found to be considerable and the proposal was not considered to contribute to a continuous built frontage. It would not amount to limited infilling even if the settlement were found to meet the definition of a village. The second exception related to previously developed land under para 149(g)(i). The Inspector concluded the built form and footprint of development would increase significantly above that as existing (currently no buildings) and have a greater coverage of the site. In spatial and visual terms, there would be a greater and harmful impact and significant harm to Green Belt openness.

Despite an under-delivery of housing within the borough, the Inspector concluded they were not required to apply the tilted balance as the harm identified (Green Belt) was a clear reason for refusing the proposal albeit moderate weight could be attached to the under-delivery of housing where three new units were proposed. There were no very special circumstances to clearly outweigh the harm and the appeal was consequently dismissed.

7.13	Application No:	21/01307/FUL
	Location:	189 Coxtie Green Road, near Pilgrims Hatch, South Weald
	Proposal:	Conversion of two outbuildings to residential and the construction of a replacement building for residential purposes
	Appeal Decision:	Appeal Dismissed 9 May 2022

Since the submission of the appeal Brentwood Borough Council had adopted the Brentwood Local Plan 2022 (LP), as such this plan was used to determine the appeal.

The main issues identified by the Inspector were whether the proposed development would be inappropriate development in the Green Belt, and whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, amounting to very special circumstances (VSC) necessary to justify the proposal.

The Inspector considered the conversion of outbuildings 1 and 2 to dwellings would not be inappropriate development in the Green Belt, in reference to Para 149 (g) of the NPPF. However, the additional dwelling proposed would lead to the introduction of a structure where no structure currently exists, resulting in an increase in built form to the rear of the site and the spatial gap would not be maintained, summarising this would have a greater and harmful impact upon the openness of the Green Belt in both spatial and visual terms.

The site previously included an outbuilding, however a condition of decision 17/00863/FUL for the neighboring dwelling required the outbuilding to be demolished, as this outbuilding was therefore demolished the additional dwelling proposed would result in a reduction in openness of the Green Belt and the proposal viewed holistically would result in modest harm to the openness of the Green Belt, resulting in inappropriate development.

In reference to VSC, the Inspector did not find VSC exist through the construction of three dwellings to outweigh the harm identified to the Green Belt. The Inspector also noted application 21/01307/FUL, approved for the conversion of the existing two outbuildings on site, did not result in further harm to the openness of the Green Belt than the appeal proposal and therefore not substantiating a fallback position.

Consultation

8. Individual applications include statutory consultation periods.

References to Corporate Strategy

9. The Council's Planning Development Management team performs statutory planning functions as the local planning authority. The team assists in achieving objectives across the Corporate Strategy, including economic growth,

environmental protection, community development and delivering effective and efficient services. The planning appeals system is part of the local decision-making process.

Implications

Financial Implications

Name/Title: Jacqueline Van Mellaerts, Corporate Director (Finance & Resources)

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10. There are no direct financial implication arising from this report. The cost of defending appeals is covered by the Development Management budget. Lost appeals can result in additional financial implications if costs are awarded, for instance. This is projected and considered when setting the budget.

Legal Implications

Name & Title: Amanda Julian, Corporate Director (Law & Governance) and Monitoring Officer

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11. There are no legal implications arising from this report.

Economic Implications

Name/Title: Phil Drane, Corporate Director (Planning & Economy)

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12. There are no direct economic implications arising from the report.

Background papers

- Item 294, Planning and Licensing Committee, 22 February 2022, Planning Appeals Update (December 2021 – January 2022)
- Item 253, Planning and Licensing Committee, 15 December 2021, Planning Appeals Update (July – November 2021)
- Item 90, Planning and Licensing Committee, 27 July 2021, Planning Appeals Update (February – July 2021)

Appendices to report

None