

Title of Report: Item 9 Planning Appeals Update	Officer Presenting: Principal Planning Officer Author: Principal Planning Officer
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1 Purpose of Report/Recommendations

- 1.1 To appraise members on planning appeals currently in the system. A background table is enclosed in Appendix 6 showing the current status of any live appeals and any decisions made since last month.
- 1.2 At the Planning Committee on 5th October 2016, members requested that planning appeal J/2011/0272/F is tabled for discussion at the next Planning Committee meeting (2nd November 2016). Members also requested the appeals spreadsheet be updated to include only live appeals and a summary of each case.

2 Background

- 2.1 Since transfer of Planning to local government, members have been advised on a monthly basis of the transitional provisions for dealing with planning appeals following transfer of powers on 1st April 2015 as set out in The Planning (2011 Act) (Commencement No.3) and (Transitional Provisions) Order (Northern Ireland) 2015. Paragraph 3 applies to appeals against a relevant decision or determination of the Department under the 1991 Order (or any order or regulations made under the 1991 order) which was made prior to the transfer date. The transitional provisions state that any appeal made to the Planning Appeals Commission before the transfer date (1st April 2015) and has not been decided by that date by the Planning Appeals Commission, then for the purposes of the appeal the relevant decision shall be treated as if it has been made by the appropriate council. It goes on to state that if an appeal has not been made to the Planning Appeals Commission by 1st April 2015, but the time limit prescribed in the 1991 Order for making such an appeal has not expired before the transfer date, again the relevant decision shall be treated as if it has made by the appropriate council.

- 2.2 With regard to applications refused by the Council post 1st April 2015, officials have and will continue to notify the Planning Committee when appeals are received and dates for submission are published by the Planning Appeals Commission.

3 Key Issues

- 3.1 Members are advised that no new appeals have been received by the Council and no new submission dates published.
- 3.2 There has been one appeal decision in the past month for A/2011/0453/O, which is referred to in para 3.5 below. Updates are as follows:
- 3.3 J/2011/0272/F – At the last Planning Committee meeting on 5th October 2016 Members agreed to have the details of this appeal brought to Committee for further discussion on the case, following the request by an individual Member for Council not to defend this appeal.
- 3.4 J/2011/0272/F is a retrospective planning application refused by the DOE on 12th February 2015. The proposal was for the “Westerly extension (retrospective) to existing sand pit and proposed proximate south-western extension to existing pit to provide for extraction of sand and gravel, and full restoration of site. Works also include: retrospective retention of mobile washing plant, crushing plant and mobile screener, removal of unauthorised static washing plant, replacement of unauthorised office with new office block, new toilet block, realignment of internal haul roads and staff parking. The application was one of two applications (J/2011/0272/F, J/2012/0390/F) submitted in response to enforcement action for unauthorised development on the site. J/2012/0390/F was for the “Enabling works relating to J/2011/0272/F and retrospective permission to retain settlement ponds, stockpiles of gravel, and other associated works”. The refusal reasons for both applications are listed in Appendix 7, which is an Appeals paper presented to this committee back in November 2015, seeking member support to defend both appeals at that time. This Committee agreed with the proposal to defend the appeals and proceeded accordingly. The minutes of this meeting are in Appendix 8.

The appeal process for both applications to date has centred on the submission of the necessary Environmental Information required under the Planning (EIA) Regulations (NI) 2015, in order to proceed and determine the appeals. J/2012/0390/F was deemed refused by the PAC on 17th May 2016 (see Appendix 9, letter to agent dated 17th May 2016). The Council is currently liaising with the PAC on J/2011/0272/F and providing comment on Further Environmental Information submitted by the agent to the PAC. Further hearing dates have not yet been scheduled by the PAC. The current enforcement case is still open and ongoing and is being dealt with by DFI Strategic Projects team. Officers recommend to the Planning Committee that Council should continue to defend the appeal.

- 3.5 A/2011/0453/O – Appeal 2012/A0131, Appeal allowed. This is a proposal by Lynwood Homes for approximately 25 houses on part of this H2 site, at the junction of Whitehouse Road and Buncrana Road, Derry. On 28th September 2016, the PAC issued a decision on this protracted case. Because there are substantive and technical concerns about this planning appeal decision, the Council’s solicitor and Planning officials, along with TransportNI, have been considering our options and have corresponded with the PAC and held further meetings with the appellants and their legal team in an effort to resolve this situation. Officials will bring a further update Paper to the Committee at a forthcoming meeting regarding progress and resolution of this matter.

4 Financial, Equality, Legal, HR, Improvement and other Implications

- 4.1 Paragraph 3(5) of The Planning (2011 Act) (Commencement No.3) and (Transitional Provisions) Order 2015, states that an appeal made to PAC against relevant decisions or determinations of the Department under the 1991 Order before 1st April 2015, the aware of costs shall not apply.
- 4.2 In relation to the cost implications of members deciding not to defend the appeal for J/2011/0272/F, then no claim for costs can be awarded. However the wider implications of not defending this decision may impact on the ability to effectively enforce this proposal and those of a similar nature.
- 4.3 In relation to A/2011/0453/O – Appeal 2012/A0131, there are no implications for Council at this stage, but a future paper will advise the Committee if there are to be any significant legal implications, costs of legal challenge or planning precedent issues.

5 Recommendations

- 5.1 Members agree to proceed to defend the appeal for J/2011/0272/F.
- 5.2 Members note the update on Lynwood Homes.
- 5.3 Members note the update on the appeals schedule in Appendix 6.

Background Papers

Appendix 6 Appeals Schedule

Appendix 7 Appeals paper from Planning Committee Meeting in November 2015

Appendix 8 Minutes from Planning Committee meeting in November 2015

Appendix 9 Letter from PAC to agent re: deemed refusal of appeal for J/2012/0390/F