

## **Planning and Rights of Way Committee**

**25 April 2023**

### **Development Management Annual Report 2022**

#### **Report by Head of Planning Services**

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## **Summary**

This report reviews the performance of the County Planning Team in relation to the management of development, including the determination of planning applications, in 2022.

The Team determined 82% of 34 applications on time in 2022, three of which were considered by Committee. This represents a notable improvement over the previous year. It continues to exceed Government targets for determining applications for major development proposals within statutory time periods and the quality of decisions remains well above Government targets.

Although the Team fell below required national performance figures for the speed of determination of oil and gas applications, there is little risk of designation and the Team have adopted additional procedures to ensure future performance exceeds required targets.

Monitoring visits were undertaken to all mineral/landfill sites, as well as some waste sites in response to complaints or in conjunction with other monitoring agencies, with informal enforcement action resolving issues without formal action being required in most instances.

Overall, it is considered that the Team's performance during 2022 demonstrated a continued commitment to taking a positive and proactive approach to development, as set out in the National Planning Policy Framework. Where necessary, new procedures have been introduced for both monitoring purposes and improved transparency for third parties/the public, and to ensure that Government performance targets are met.

## **Recommendation**

That the Planning and Rights of way Committee notes the content of the report.

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### **1. Introduction**

- 1.1 The County Planning Team determines applications for planning permission relating to 'County Matters' (minerals and waste development) and 'Regulation 3' developments - that is, development to be carried out by West Sussex County Council or where the Council has a significant interest. The Team is also

responsible for ensuring minerals and waste development across the County is compliant in planning terms and for taking enforcement action where it is not.

- 1.1 The purpose of this report is to review the performance of the County Planning Team in relation to the management of development, including the determination of planning applications, in 2022.

## **2. Management Information**

### *Pre-Application Advice (and EIA Screening & Scoping Opinions)*

- 2.1 The Team provided two formal (charged) pre-application responses in 2022 (compared to eight in 21 and six in 2020). It also provided 15 Environmental Impact Assessment (EIA) screening/scoping opinions in 2022 (compared with eight in 2021 and 14 in 2020).
- 2.2 In addition to formal pre-application advice, the Team also provide informal pre-application advice to relevant internal departments responsible for submitting development proposals for the County Council's own development (e.g. schools, highways, libraries, fire stations). Informal advice makes up a significant proportion of pre-application advice offered, which at present is offered free of charge for initial meetings/high level advice. This also includes reviewing self-funded school proposals ('Self-Helps') and identifying qualification for permitted development rights (i.e. where express planning permission is not required).

### *Minerals and Waste Safeguarding consultations*

- 2.3 The Team also provides consultation responses (as the Minerals and Waste Planning Authority) to District and Borough planning applications, where they could affect safeguarded mineral resources (clay, sand and gravel, building stone) and/or minerals and waste infrastructure/sites/ancillary development (including allocated sites and railheads/wharfs). The Team provided 142 safeguarding consultation responses in 2022 (compared to 89 in 2021 and 82 in 2020). It is of further note that officers also provided support to Arun District Council in 2022 at an appeal against refusal of planning permission, which included minerals and waste safeguarding grounds.

### *Planning Applications*

- 2.4 The County Council registered 31 valid planning applications in 2022 (compared to 50 in 2021 and 56 in 2020), as follows:
  - one was for EIA development, that is, larger-scale schemes that are considered to have the potential to result in significant environmental effects, as set out in Schedules 1 and 2 of the EIA Regulations 2017.
  - 15 were for major development, which includes all minerals and waste applications, as well as Regulation 3 applications involving sites of more than one hectare in area or where more than 1,000 square metres of floor space will be created.
  - 16 were for minor development, which includes all other Regulation 3 applications.
- 2.5 In addition, 15 applications for the discharge of planning conditions were received in 2022 (compared to 21 in 2021 and 22 in 2020) and four

applications for non-material amendments (NMA) (compared to one in 2021 and two in 2020). However, it is of note that these figures are based only on submissions made through the Planning Portal, which underestimates actual applications received because, at present, some submissions in relation to County Council development are made direct to officers). Further, it should be noted that a discharge of planning condition application can include multiple conditions within a single submission.

### *Appeals*

- 2.6 The County Council received one appeal in 2022 (compared with one in 2021 and one in 2020), in respect of the Planning and Rights of Way Committee refusal of planning application WSCC/045/20 for a hydrocarbon exploration proposal at Lower Stumble Wood, Balcombe (against officer recommendation). This appeal was allowed (permission granted) by the Planning Inspectorate on 13 February 2023. The appeal decision is now the subject of judicial review proceedings, which are ongoing.
- 2.7 It is of note that an appeal dating back to 2021 remains under consideration by the Planning Inspectorate. The appeal relates to the Planning and Rights of Way Committee's refusal of planning application WSCC/081/19 for a Temporary Concrete Crushing and Soil Recycling Facility at Kilmarnock Farm, Ifield Road, Charlwood (consistent with the officer recommendation). All evidence has been presented by the County Council (written representations) and a decision is expected in spring/summer 2023.

### *Compliance and Enforcement*

- 2.8 The Planning Compliance Officer carried out 39 chargeable (fees) monitoring visits to minerals sites and landfills during 2022. This was in addition to regular monitoring of waste sites and responding to complaints of breaches of planning control (either breaches of condition or operating without planning permission).
- 2.9 A number of planning applications have been received to retrospectively regularise unauthorised activity that have been brought to the County Council's attention. In a number of other cases, operations have been brought back into compliance through negotiation and joint working with other agencies, which has avoided the need for formal enforcement action.
- 2.10 Formal enforcement action in conjunction with Mid Sussex District Council is ongoing at one site.

## **3. Performance Information**

### *Performance Targets*

- 3.1 Each application for planning permission has a target period for determination, measured from the date that the application is made valid:
- EIA development - 16 weeks.
  - Major development - 13 weeks.
  - Minor development - 8 weeks.
- 3.2 If applications are likely to require additional time to reach a satisfactory outcome, extensions of time (EoT) can be agreed in writing with applicants prior

to determination. EoT are frequently used for more complicated and/or controversial applications, particularly those that need to be determined by the Planning and RoW Committee, which can extend the decision-making period. Revised end dates are agreed with applicants; this is the time by which the applications will be determined and decision notices issued, including the completion of any accompanying legal agreements.

- 3.3 If a decision is not made by the target date, the applicant can submit an appeal to the Planning Inspectorate based on the non-determination of the application. In addition, if a decision is not made within six months of the application being registered, the applicant can ask for a refund of the planning fee (where no extension has been agreed).
- 3.4 The target for the discharge of planning conditions is eight weeks and the target for determining NMA applications is 28 days or an EoT is agreed with the applicant.

#### *Overall Performance*

- 3.5 Table 1 sets out overall performance in determining planning and other applications in 2022, with the data for previous years provided for comparison. The figures for the speed of decisions take into account any EoT that have been agreed.

**Table 1: Overall Performance Determining Planning and Other Applications**

<b>Measure</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>Number of Planning Applications (all)</b>	63	49	34
% determined on time	57 (90%)	38 (76%)	28 (82%)
Committee decisions	9 (14%)	4 (8%)	3 (9%)
Delegated decisions	51 (81%)	41 (84%)	29 (85%)
Withdrawn Applications	3 (5%)	4 (8%)	2 (6%)
<b>Number of EIA Development</b>	3	4	2
% determined on time (16 weeks or EoT)	2 (67%)	4 (100%)	1 (50%)
Withdrawn Applications	0	2	0
<b>Number of Major Development</b>	22	15	17
determined on time (13 weeks or EoT)	21 (95%)	11 (73%)	15 (88%)
Withdrawn Applications	2	3	2
<b>Number of Minor Development</b>	41	34	15
determined on time (8 weeks or EoT)	38 (93%)	27 (79%)	13 (87%)
Withdrawn Applications	1	1	0

<b>Number of Discharge of Conditions Applications</b>	22	21	15
determined on time (8 weeks or EoT)	No data	No data	No data
<b>Number of NMA Applications</b>	2	1	4
determined on time (28 days)	No data	No data	No data

3.6 Table 1 shows that compared with the previous year, the team dealt with fewer planning applications in 2022 (by some 30%). However, it is of note that the number of applications for EIA and major development (which includes all minerals and waste) has remained broadly consistent. The key difference results from a significant reduction in the number of Regulation 3 applications for minor County Council development proposals (principally schools).

3.7 One application was refused, namely:

- Clay quarry and construction materials recycling facility (CMRF) for CD&E wastes including the use of an existing access from Loxwood Road, the extraction and exportation of clay and restoration using suitable recovered materials from the CMRF to nature conservation interest including woodland, waterbodies and wetland habitats at Pallinghurst Woods, Loxwood (WSSC/030/21). Although the refusal of planning permission was appealed by the applicant in early 2023, it was subsequently withdrawn before the public inquiry in May 2023.

#### *Commentary on Performance*

3.8 The above figures show that the County Planning Team has continued to perform well. The key target is the speed at which major applications are determined, with the Team achieving 88% on time (15 out of 17), including two EIA applications. Although this is an increase over the previous year, it remains broadly consistent with historic performance. Further, one of the two late decisions related to an application that was withdrawn (i.e. no further extension of time was required) and the other related to the refused Loxwood application; applicants rarely agree an extension of time where there is a recommendation of refusal.

3.9 In 2022, the Team determined significantly fewer minor Regulation 3 applications than in the previous period (15 applications compared to 34), but with more of them on time, 13 out of 15 (87% compared to 79%). One of the two late decisions was an oversight (i.e. no EoT was sought); the Team have subsequently implemented procedures to avoid this happening in the future, which should result in improved performance figures.

3.10 In 2022, The Team determined fewer discharge of condition applications than the previous year (15 compared with 21), which is likely to result from the reduction in minor development applications (principally WSSC school proposals). There was an increase in the number of NMA applications (four compared with two); however, the overall volume of applications for discharge of conditions and NMAs remains broadly consistent. It should be noted that although these figures can be used to illustrate trends, they are unlikely to represent the true figures (see paragraph 2.4).

3.11 As there is no statutory requirement to record performance figures in respect of discharge of condition or NMA applications, records have not been kept determination periods to date. However, for both discharge of conditions and NMA applications, the Team have recently introduced new procedures, whereby all such applications will now be formally recorded within the planning database system, allocated a planning reference number, and a corresponding independent file made available online. This will ensure that accurate recording of such applications, corresponding decisions, and timeframes for determination in the future. It will also provide greater transparency for third parties wishing to follow progress with any subsequent decisions following the grant of planning permission.

#### *Review of Committee Decisions*

3.12 In 2022, three applications were taken to the Planning and Rights of Way Committee for determination. All three were minerals and waste developments (two for an extension in time to the hydrocarbon exploration site at Wood Barn Farm, Broadford Bridge and the other for extended public holiday waste acceptance Hours and increased HGV movements at the Biffa Mechanical and Biological Treatment (MBT) facility, Brookhurst Wood, Horsham). There were no deferrals and members followed officer recommendations for all three applications.

#### *National Performance Measures*

3.13 Missing target dates for determination runs the risk of a planning authority being 'designated' for poor performance, whereby applications can be made directly to the Secretary of State rather than the planning authority (known as being put into 'special measures'). The 'criteria for designation' (October 2022)<sup>1</sup> are:

- *Speed of Decisions* - percentage of decisions over the previous two years made on time or an extended period agreed with applicant (see paragraph 3.2 above). The threshold for this measure for Major Development (including all Minerals and waste development) is 60%.

NB: the County Council's performance in relation to determining 'minor' Regulation 3 applications is not measured.

County Councils are also separately measured in relation to oil and gas applications<sup>2</sup>. Where authorities have decided more than two such applications in the previous two years, they will be designated if less than 50% are determined on time.

- *Quality of Decisions* - average percentage of decisions on applications overturned on appeal. The threshold for this measure is 10%.

3.14 There is an additional national measure relating to the 'quality of non-major development'; however, for the County Council, this would only apply to appeals against the refusal of minor Regulation 3 applications, which are non-existent.

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<sup>1</sup> [Improving planning performance: Criteria for designation \(updated 2022\) \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>2</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-09-16/HCWS201/>

3.15 Table 2 sets out the County Planning Team’s performance against the national performance measures. The figures for the speed of decisions take into account any EoT agreed with applicants.

**Table 2: Performance against National Measures**

<b>Measure (NB: over a two-year assessment period)</b>	<b>2019/2020</b>	<b>2020/21</b>	<b>2021/22</b>
Speed of Major Development - % of applications decided on time (13/16 weeks or agreed extension)	<b>86%</b> of 63 applications	<b>86%</b> of 37 applications	<b>81%</b> of 32 applications
Speed of Oil/Gas Applications - % of applications decided on time (13/16 weeks or agreed extension)	<b>100%</b> of 4 applications	<b>75%</b> of 4 applications	<b>25%</b> of 4 applications
Quality of Major Development - % of LPA decisions overturned at appeal	<b>2%</b> of 63 applications (one appeal – EfW at Brookhurst Wood, Horsham – overturned)	<b>3%</b> of 37 applications (one appeal – EfW at Brookhurst Wood, Horsham – overturned)	<b>0%</b> of 32 applications (No appeals determined)

3.16 The above figures show that the Team performed well in 2022 against national performance measures for the speed of determination of applications for major development (81% compared to the threshold of 60%). They also show that the County Council performed well in relation to the quality of decisions, with no appeals being overturned in 2021/2022.

3.17 However, of some concern is the above figures show that the Team fell below required national performance figures for the speed of determination of oil and gas applications in 2021/2022 (25% compared to the threshold of 50%). There has been no approach by the Secretary of State in relation to this performance. Should that be the case, the County Council would be given the opportunity to set out the reasons as to why designation would be unreasonable.

3.18 In this case, four oil and gas applications were determined in 2021/2022, with three being late decisions. Of those late decisions, one related to the refusal of planning application WSCC/045/20 for a hydrocarbon exploration proposal at Lower Stumble Wood, Balcombe (applicants rarely agree an extension of time where there is a recommendation of refusal), and the remaining two related to an extension in time to the hydrocarbon exploration site at Wood Barn Farm, Broadford Bridge. For the latter, although extensions in time had been agreed by the applicant, the decisions were issued late (3 days after the agreed extension in time) due to an administrative error and staff sickness/leave.

3.19 Owing to the limited number of oil and gas applications received, the above error has had a significant impact on recorded performance figures. However, given the reasons explained above, it is considered there is little risk of designation. Nonetheless, the Team have introduced additional procedures and safeguards to ensure that such an error does not happen in the future.

## **4. Other Matters**

### *Nationally Significant Infrastructure Projects*

- 4.1 In addition to work relating to the County Council's land-use planning duties and responsibilities, officers have also been involved in supporting the Authority's engagement in the statutory Development Consent Order (DCO) process in relation to the three Nationally Significant Infrastructure Projects in the County: Rampion 2, Gatwick Northern Runway, and A27 Arundel Bypass.
- 4.2 The County Council is only a statutory consultee and it has no control over whether an NSIP should be granted consent (which is the responsibility of the relevant Secretary of State). However, it does have specific responsibilities in the DCO process, including: responding to consultations by the applicant; discussing requirements (akin to conditions attached to planning permissions) and legal agreements with the applicant; providing 'Adequacy of Consultation' responses to the Planning Inspectorate; preparing statements of common ground and local impact reports; and submitting written representations to PINS and participating in the examination process.

## **5. Conclusion**

- 5.1 The Team determined 82% of 34 applications on time in 2022, three of which were considered by Committee. This represents a notable improvement over the previous year.
- 5.2 The Team continues to exceed Government targets for determining applications for major development proposals within statutory time periods, with performance in this regard having slightly improved over the previous year. The quality of decisions remains well above Government targets.
- 5.3 Although the Team fell below required national performance figures for the speed of determination of oil and gas applications, it is considered there is little risk of designation and the Team have adopted additional procedures to ensure future performance exceeds required targets.
- 5.4 Monitoring visits were undertaken to all mineral/landfill sites, as well as some waste sites in response to complaints or in conjunction with other monitoring agencies, with informal enforcement action resolving issues without formal action being required in most instances.
- 5.5 Overall, it is considered that the Team's performance during 2022 demonstrates a continued commitment to taking a positive and proactive approach to development, as set out in the National Planning Policy Framework. Where necessary, new procedures have been introduced for both monitoring purposes and improved transparency for third parties/the public, and to ensure that Government performance targets are met.

## **6. Recommendation**

- 6.1 It is recommended that the contents of the report are noted.

## **7. Consultations**

- 7.1 Not applicable.

**8. Resource Implications and Value for Money**

8.1 Not applicable.

**9. Equality and Human Rights Assessment**

9.1 An Equality Impact Report is not required as the report only deals with internal and procedural matters.

**10. Risk Management Implications**

10.1 Not applicable.

**11. Crime and Disorder Reduction Assessment**

11.1 Not applicable.

**12. Social Value and Sustainability Assessment**

12.1 Not applicable.

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**Appendices**

None

**Background Papers**

None