

The Planning and Water Appeals Commissions

Annual Report of the
Chief Commissioner



2017 - 2018

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Chief Commissioner's Statement



Andrea Kells
Chief Commissioner

This is the Annual Report of the Planning Appeals Commission and the Water Appeals Commission for the year April 2017 to March 2018.

It is now just over a year that I have been in post. It has been a year where we have faced significant challenges, having to operate within an environment of reduced resources and personnel changes both within our organisation and Sponsor Department. May 2017 saw the retirements of George Scott and Brian Martin. George and Brian started with the Commissions on the same day, and 16 years later they officially retired within a week of each other. A number of individuals have left to take up other posts during the year. We thank all of them for their contribution to the organisation and wish them well in the future.

We have, as an organisation, met the challenges experienced in the past year. Although overall output is down from 2016/17, hard work and dedication within the PACWAC team has ensured that we have delivered above expectations. A business case has been submitted to the Sponsor Department to bring our Commissioner complement to a level to deliver on existing business requirements. We have also started the process of looking at different and better ways of delivering our services and both our Commissioner and administrative teams have initiated improvements.

One key aspect since my appointment has been to undertake a business planning exercise to ensure that we can position ourselves to deliver on the anticipated programme of Local Development Plan (LDP) Independent Examinations. We have engaged with Councils and the Department to discuss administrative aspects. Business cases have been submitted to the Sponsor Department to address anticipated resource requirements.

Achievements

In addition to the completion of the business planning exercise and commencement of internal business improvement initiatives we have continued to engage with a variety of different bodies in relation to our work. I provided presentations in relation to our role in the LDP process at both the RTPI Planning Conference in September 2017 and the Agenda NI Conference in November 2017.

Trevor Rue, Deputy Chief Commissioner, provided a presentation on the award of costs in planning appeals at an EPLANI Seminar in April 2017. He provided the Planning

Appeals update to the RTPI in November, and also spoke at the Policy Forum for NI on the topic of 'Ensuring an open, fair and transparent appeals process' in December.

Our acting Principal Commissioners, Rosemary Daly and Mandy Jones, have been working with staff and students from Queen's University Belfast to provide insights into the appeals and hearing processes. On a personal note, Commissioner Diane O'Neill has had her PhD research on 'Equality law, good relations and planning' published in 'Planning law and practice in Northern Ireland (2017)'.

Hear and Decide

In 2017/18, the Commissions received 309 appeals. We disposed of 300 cases with 276 decisions and 24 appeals being withdrawn or declared invalid. The focus on reducing the number of appeals in the system for long periods of time has maintained the median time for decisions at 23 weeks.

The success rate at appeal is currently 26%, a reduction on 2016/17. Despite having the longest median time for decision, hearings continue to be the main method of processing of appeal case work. The Commission issued 41 costs decisions in addition to the 276 appeal decisions in 2017/18. Costs were awarded in 12 of the cases.

Hear and Report

In 2017/18 the Commission reported on five referred cases. Two cases which were referred to the Commission continue to be on hold pending additional environmental information.

The Independent Examinations into Local Development Plans are expected to be a major feature of the Hear and Report element of the work of the Planning Appeals Commission in the coming years. Significant investment went into preparing for this work in 2017/18 which included publication of our Procedures for the Independent Examination of Local Development Plans, engagement with Councils and the Department on administrative aspects, Commissioner training, and presentations at conferences.

Conclusion

The Commissions as independent appellate bodies are in a unique position within the planning world. We as a body recognise not only the important role that we play in the development management process, but also the contribution that we can make to the delivery of local development plans. It will take some time for new resources and initiatives to have an impact but I have no doubt that the professionalism and dedication within the PACWAC team will ensure that we will continue to do the best that we can, both as individuals and as a corporate body.

Andrea Kells

Chief Commissioner





Section One

Introduction and Staffing

Introduction and Staffing

Planning Appeals Commission

The Planning Appeals Commission is an independent appellate body established under statute to decide a wide range of appeals and to report on various matters under planning and other legislation.

Aims and Values

The Commissions' aim is to make the best possible appeal decisions and offer the best possible recommendations to Departments, consistent with the evidential context within which appellate functions are exercised.

The Commissions, as independent appellate bodies, attach great importance to the following values in the exercise of their work:

Delivering our service effectively

- Providing a high quality service to the public
- Maximising the benefit from available resources, providing value for money
- Aspiring to always improve

People Focused

- Being honest, open and transparent
- Treating everyone with respect and understanding different needs
- Developing and supporting our workforce

Dependability

- Approaching work with an open mind without predisposition to any particular view
- Acting with professionalism and integrity

Water Appeals Commission

The Water Appeals Commission is a separate appellate body and exercises a wide range of functions under water, fisheries and drainage legislation. It shares the vision, aims, objectives and core values of the Planning Appeals Commission.

Accountability

The Commissions are not part of any Government Department. They receive financial and administrative support from their sponsoring Department, the Department of Justice, through the Northern Ireland Courts and Tribunals Service (NICTS). The Chief Commissioner is responsible for the financial, operational and administrative management of the Commissions.

The Commissions are wholly independent of NICTS in terms of decision-making and the operation of the appeals and hearing/inquiry/examination processes. They are not answerable to any Government Department or any other agency or public body. Their decisions are subject to the supervision of the Courts, reflecting their independent appellate roles in planning and environmental processes.

Commissioners



Mr Trevor Rue

Chief Commissioner

Miss Andrea Kells BA MSc LLB MRTPI

Deputy Chief Commissioner

Mr T A Rue MA DipTP MRTPI

Principal Commissioners

Ms R Daly BSc MSc MRTPI
(temporary promotion from May 2017)

Ms M Jones BA BArch ARIBA
(temporary promotion from May 2017)

Mr G Scott BSc MRTPI (until May 2017)

Senior Commissioners

Ms J de-Courcey BSc MSc LLB MRTPI

Mr A Speirs BSc MSc MRTPI

Ms D McShane BA MTP MEPPA MRTPI
(temporary promotion from October 2016 to May 2017)

Mr M Watson BSc DipTP MRTPI
(temporary promotion from May to November 2017)

Mr A Beggs BSc MSc MRTPI (until February 2018)

Mr B Martin BSc MRTPI (until May 2017)

Commissioners

Mrs P Boomer BSc DipTP MRTPI

Ms H Fitzsimons BSc DipTP MRTPI

Mr D Hannon BA DipTP MRTPI

Mrs B McGlinchey BSc MA MRTPI

Ms P O'Donnell BSc DipTP MRTPI

Dr D O'Neill BSc DipTP PhD MRTPI

Administrative Staff



Mr. Ciaran Purvis

Chief Administrative Officer

Mr Ciaran Purvis

Office Manager

Ms Maura McGreevy (until August 2017)

Mrs Fiona Campbell (from 18th September 2017)

Team Leaders

Mrs L Donaldson

Mr C Morgan

Mr B Fegan

Case Officers

Miss Y Adgey

Mrs M English

Mr R Mageean (until 18th August 2017)

Ms J Millar

Mr J Nelson

Mr L Reynolds (until June 2017)

Mrs R Rodgers (from 18th September 2017)

Administrative Support Officer

Mrs E McShane

Personal Secretary to the Chief and Deputy Chief Commissioners

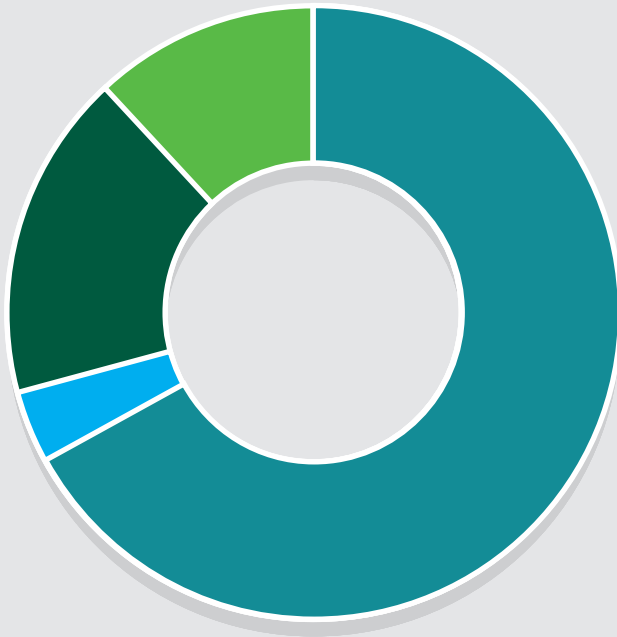
Mrs S Quinn (until August 2017)

Section Two

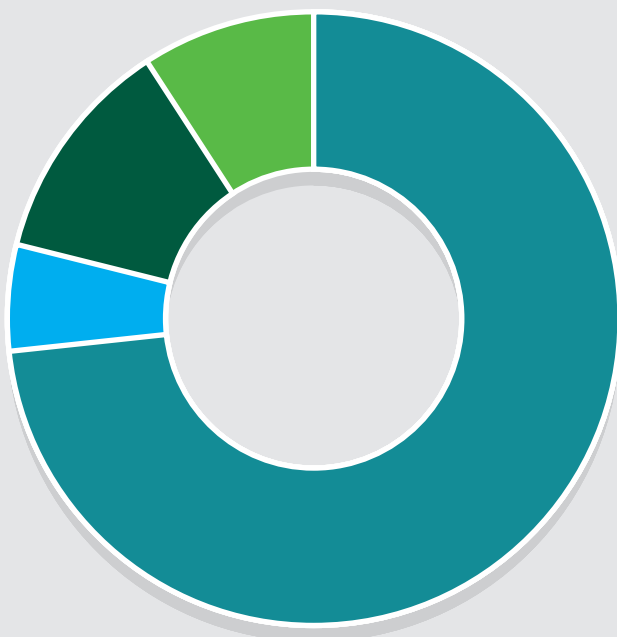
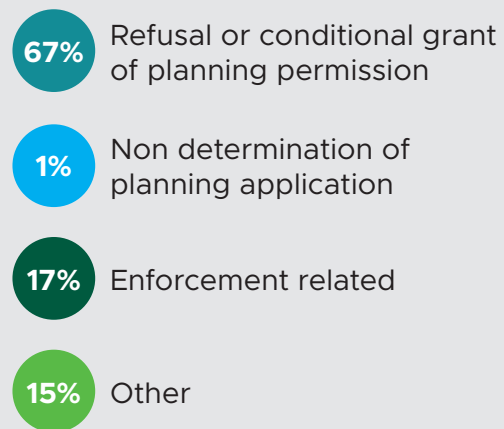
Analysis of Casework

Analysis of Casework

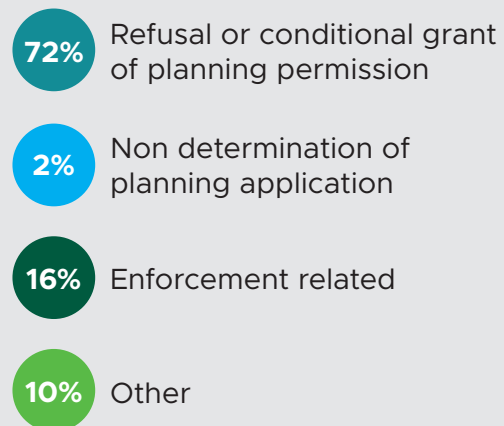
Appeals Overview



Appeals received between April 2017 and March 2018



Appeals decided between April 2017 and March 2018



Hear and Decide

Appeals Caseload

The following tables set out detailed information on the volume of casework of the Planning Appeals Commission, the means of processing appeals, the clearance times achieved and appellants' success rates for each procedure.

Table 1: Appeals received, by appeal type

Appeal Type	2013-14	2014-15	2015-16	2016-17	2017-18
Refusal or conditional grant of planning permission	215	221	224	221	207
Non determination of planning application	33	33	8	4	4
Enforcement related	58	60	58	53	53
Other	23	31	29	22	45
TOTAL	329	345	319	300	309

The total number of appeals received this year has increased slightly from the number received in 2016-17.

70% of the appeals received were against decisions on planning applications, representing a decrease of 4% on last year. The percentage of appeals in relation to non-determination of planning applications has remained constant at 1%.

The percentage of enforcement related appeals, including Certificates of Lawfulness, has also remained at around the same level as last year, representing 17% of all appeals received.

Table 2: Appeals received – breakdown of 'other' 2017-18

'Other' type	Number
Advertisements	36
Conservation Area Consent	1
Roads	4
Environmental	4
TOTAL	45

15 appeals were withdrawn before a decision could be issued, representing 5% of all appeals received this year. The number of appeals withdrawn before decision last year was 21, or 7% of all appeals received.

Table 3: Appeals decided, by appeal type

Appeal Type	2013-14	2014-15	2015-16	2016-17	2017-18
Refusal or conditional grant of planning permission	233	172	207	221	198
Non determination of planning application	18	22	24	11	7
Enforcement related	63	42	34	36	44
Other	21	26	29	28	27
TOTAL	335	262	294	296	276

The number of appeals decided has decreased from last year, with the proportion of appeals against decisions on planning applications and non-determination of planning applications representing 74% and 2% respectively of the total appeals decided. These proportions remain fairly static compared with last year, at 75% and 4% respectively.

Table 4: Appeals decided – breakdown of ‘other’ 2017-18

‘Other’ type	Number
Advertisements	21
Listed Building Consent	1
Conservation Area Consent	0
Roads	3
Environmental	2
TOTAL	27

As can be seen from **Table 5** (right), the largest single category of appeals decided continues to be single dwellings in the countryside; at 43% the proportion of this category in relation to other categories has decreased by 3% from last year. The percentage of decisions made on single dwellings in urban areas has doubled, to 6%, from last year. Multiple housing cases have also increased by 5.5%, while householder cases remain fairly static at 9%.

Table 5: Appeals decided by appeal category, excluding enforcement-related and other types

Appeal Category	Number	%
Single dwelling in the countryside	88	43
Multiple housing	38	18.5
Householder	19	9
Renewable energy	16	8
Single dwelling in an urban area	13	6
Agricultural	8	4
Industry, business and distribution	5	2.5
Other residential	5	2.5
Other non-residential	5	2.5
Retail	3	1.5
Tourist accommodation	3	1.5
Houses in multiple occupancy	1	0.5
Recreation	1	0.5
Residential care	1	0.5
TOTAL	205	100

Table 6: Appeals decided, by procedure

Procedure	2013-14	2014-15	2015-16	2016-17	2017-18	2017-18 %
Hearing	158	109	120	128	116	42
Written representations with accompanied site visit	127	95	98	92	101	37
Written representations with Commissioner site visit	50	58	76	76	59	21
TOTAL	335	262	294	296	276	100%

42% of appeals were decided employing an informal hearing procedure, representing a decrease of 1% on last year. 58% of appeals were decided using a written representations procedure, an increase of 1% on last year; of these, the percentage of written representations with an accompanied site visit has risen by 6%, with the percentage of those with a Commissioner site visit falling by 5%.

Table 7: Appeals allowed, by type

Appeal type	Number decided	Number allowed	Success rate %
Refusal or conditional grant of planning permission	198	50	25
Non determination of planning application	7	2	28
Enforcement related	44	17	39
Other	27	3	11

Table 8: Appeals allowed, by procedure

Procedure		2013-14	2014-15	2015-16	2016-17	2017-18
Hearing	Number	158	108	120	128	116
	Allowed	53	35	54	40	31
	% Allowed	33%	32%	45%	31%	27%
Written representations with Commissioner site visit	Number	127	95	98	92	101
	Allowed	48	25	31	23	29
	% Allowed	38%	26%	32%	25%	29%
Written representations with accompanied site visit	Number	50	59	76	76	59
	Allowed	17	11	15	21	12
	% Allowed	34%	19%	20%	28%	20%

26% of the total appeals decided were allowed. There was a 27% success rate for appeals allowed using the hearing procedure, a decrease of 4% from last year. The success rates for written representations with an accompanied site visit increased by 4% on last year to 29%, while the percentage of appeals allowed following written representations with a Commissioner site visit decreased by 8% to 20%.

Success rates vary from year to year and between different appeal types; as each appeal is decided on its own particular facts and individual circumstances, the Commission considers that there is no significance in success rate variations and no connection between an appeal outcome and the means of processing employed.

Table 9: Appeal decisions, median times in weeks

Procedure	2013-14	2014-15	2015-16	2016-17	2017-18
Hearing	26	28	32	29	27
Written representations with accompanied site visit	20	23	25	21	21
Written representations with Commissioner site visit	20	22	29	20	22
Mean average	22	24	29	23	23

While median times for processing appeals have varied slightly from last year depending on procedure employed, the overall median time taken has remained static at 23 weeks.

Table 10: Appeals in hand at year end

Year	Number
2013-14	174
2014-15	163
2015-16	183
2016-17	142
2017-18	157

The number of appeals in hand has increased over the period of the current report.

Costs Awards

The Planning Act (Northern Ireland) 2011, which came into operation on 1st April 2015, empowers the Commission to make orders as to the costs of the parties involved in planning and related appeals. Costs awards are intended to provide redress where one party to an appeal has put another party to unnecessary expense because of unreasonable behaviour. It is on this basis that the Commission assesses claims for costs.

The Commission will normally award claims for costs only where all four of the following conditions are met:

- A party has made a timely claim; and
- The claim relates to an appeal of a type specified in the Planning Act; and
- The party against whom the award is sought has acted unreasonably; and
- The unreasonable behaviour has caused the party claiming costs to incur unnecessary or wasted expense.

Cost Claims Caseload

Table 11: Claims for costs made and awarded

Costs decisions	2015-16	2016-17	2017-18
No award	4	40	29
Partial award	2	4	2
Full award	1	1	10
TOTAL	7	45	41

41 claims for costs were received by the Commission this year, compared to 45 last year and 7 the previous year.

Hear and Report

Public Inquiries

North South Electricity Interconnector and associated works

The Commission conducted a conjoined inquiry in 2016-17 and presented its report to the Department for Infrastructure in November 2017.

A5 Western Transport Corridor Road Scheme

Having held public inquiries between October and December 2016, the Commission presented its report to the Department in May 2017.

Mineral Extraction Plant, Boardmills, Lisburn

Having held a public inquiry, the Commission presented its report to the Department in October 2017.

Sand and gravel extraction works, Lough Neagh

The Commission received a request for a public inquiry which has been programmed for the 2018-19 financial year.

Hearings

Proposed solar farm, Kells

The Commission has received a request for a hearing into this matter, which has been programmed for the 2018-19 financial year.

Tourist development, Gublusk Bay, Killadeas

The Commission received a request for a hearing in relation to this development but it has subsequently been withdrawn.

Request for adoption of Gransha Way, Belfast as a public road

The Commission conducted a hearing and reported on this matter in 2017-18.

Fold Housing Association development, Ballymagroarty and Bridge over Owenbeg River, Dungiven

The Commission conducted hearings and reported on the need for environmental impact assessment in 2017-18.

Water Appeals Commission

Appeals Caseload

Table 12: Water appeals received

Appeal Type	2013-14	2014-15	2015-16	2016-17	2017-18
Water appeals received	3	6	5	5	1
Water appeals withdrawn	3	2	1	0	2
Water appeals decided	0	4	1	8	1

Appeal activity in this area has remained at a very low level. There are currently no water appeals in hand.

Quality

Complaints and Judicial Reviews

Table 13: Complaints, received and justified

	2015-16	2016-17	2017-18
Total complaints received	13	16	17
Total justified complaints	2	2	3

The complaints system allows for the investigation of complaints made by any party involved in proceedings before the Commission. All complaints are investigated and a relevant response is issued to the complainant. Where complaints are found to be justified, an explanation and apology are provided. Of the 17 complaints considered in 2017-18, 3 were found to be justified.

Table 14: Judicial reviews

	2015-16	2016-17	2017-18
Number of challenges	5	6	4
Successful challenges	3	2	2

The Commissions' decisions can be challenged by an application for judicial review to the High Court, on a point of law only. In circumstances where there is agreement that the decision is flawed the judicial review application is not contested by the Commissions. In the case of a successful challenge, following receipt of the Court Order the appeal is reheard by a different Commissioner (from that who made the original decision) and a new decision is issued.

Section Three

Performance Measures and Targets



Performance measures and targets

The performance measures set out in the Commissions' Business Plan for 2017-18 and performance against these targets are detailed below.

Appeals

To decide 80% of appeals* within specified time periods as below:

- Informal hearings within 30 weeks;
- Written representations with an accompanied site visit within 28 weeks;
- Written representations with a commissioner site visit within 26 weeks; and
- Enforcement-related appeals within 34 weeks.

*excluding cases where there are delays caused by the appellant and developments involving an Environmental Impact Assessment.

90% of cases involving written representations with an accompanied site visit were decided within the target period. However decisions in other categories were delayed, resulting in the Commission only deciding on 72% of all appeals within the specified timeframes.

The median time taken to decide on appeals has remained static from last year at 23 weeks.

Major Casework

- In 80% of hear-and-report cases, to conduct a pre-inquiry or pre-hearing meeting within 16 weeks of the receipt of all relevant documents from the Department or, where no such meeting is held, to open the public inquiry or hearing within 24 weeks of the receipt of the documents.

This target was met in 100% of cases.

- To deliver 100% of reports on all hear-and-report cases to the Department by the indicative date announced at the end of the public proceedings.

Reports for five of the six cases (83%) were delivered by the indicative date.

Quality

- To ensure that the number of appeal decisions giving rise to a justified complaint or successful judicial review challenge in the previous and current accounting years amounts to no more than 1.5% of the total number of appeal decisions issued in that two-year period.

The proportion of appeal decisions giving rise to a justified complaint or successful judicial review challenge in 2017-18 was 1.2%. The Commissions remain committed to providing decisions of the highest quality. The issues identified from these cases have been shared with Commissioners and administrative staff to ensure that all procedures are followed correctly and a high standard of decisions and customer service maintained.

Section Four

Financial Statement

Financial Statement

Running costs

	2016-17		2017-18	
	£	%	£	%
Commissioners' salaries/fees	1,206,059	64.63	1,186,945	66.26
Administrative staff salaries	376,754	20.19	276,670	15.45
Travel & subsistence	21,182	1.14	12,920	0.73
Accommodation charges	110,768	5.93	107,065	5.98
Advertising	27,136	1.45	26,999	1.51
External training	5,686	0.31	3,956	0.22
Legal fees	23,058	1.24	105,091	5.87
Postage & telephone charges	15,505	0.83	12,920	0.73
Electricity	7,772	0.42	11,652	0.65
Library	10,042	0.54	15,119	0.85
Stationery & printing	7,040	0.38	2,316	0.13
Contract cleaning	10,812	0.58	10,330	0.58
Office equipment	6,888	0.37	4,245	0.24
Hospitality	937	0.05	564	0.04
Incidental expenses	20,967	1.12	6,850	0.39
Software maintenance contract	9,434	0.50	3,761	0.21
Refund of fees	5,991	0.32	4,142	0.24
TOTAL	1,866,031	100	1,791,545	100

Receipts

	2016-17	2017-18
	£	£
Appeal fees	56,804.00	28,985.00
Photocopying charges	128.15	118.00
TOTAL	56,932.15	29,103.00





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