



# The Planning and Water Appeals Commissions

Annual Report of the Chief Commissioner  
2018/19



# CONTENTS

Page 2	Chief Commissioner’s Statement
Page 5	SECTION ONE Introduction and staffing
Page 11	SECTION TWO Analysis of casework
Page 25	SECTION THREE Performance measures
Page 29	SECTION FOUR Financial Statement

# Chief Commissioner's Statement

This is the Annual Report of the Planning Appeals Commission and the Water Appeals Commission for the year April 2018 to March 2019.

At present PACWAC continues to operate with reduced resources within the Commissioner hierarchy. We have been working in partnership with our sponsor, the Department of Justice (DoJ), through the Northern Ireland Courts and Tribunal Service (NICTS) to regain our Commissioner complement to levels agreed at point of transfer to DoJ. We anticipate being able to recruit Commissioners early in the next financial year.

We have continued in our efforts to improve our service delivery and both our Commissioner and administrative teams have initiated improvements in terms of our Hear and Decide work. Despite reduced resources we are now seeing the impact of some of the changes and our teams are to be commended for their efforts. We are seeing improvements in our delivery times while maintaining our quality standards as outlined later in the report.

Business volumes in respect of our Hear and Decide casework remain fairly constant although we have seen a slight increase recently. In terms of Hear and Report casework the anticipated referrals of Local Development Plans (LDPs) for Independent Examination in 2018/19 have not yet occurred. NICTS has worked collaboratively with the Commissions to build robust business planning submissions to the Department for a proportionate increase in resources to address anticipated future workstreams.

Our public engagement has continued in the 2018/19 year. I provided presentations in relation to our role in the LDP process at an RTPI Training Event in April 2018. Presentations were also delivered to the Agenda NI Conference in November 2018 and the RTPI in October 2018. Public information sessions on our anticipated role in the LDP Independent Examination process have been delivered in Belfast, Fermanagh and Omagh, and Mid Ulster Council areas. Feedback has been positive in relation to these public engagement sessions and we have offered to provide future sessions within each Council area.

In September, Trevor Rue, Deputy Chief Commissioner, provided a presentation on the work of the Planning Appeals Commission to a Friends of the Earth event and also gave a presentation and conducted a mock hearing as part of a training programme for Councillors which was run by the Northern Ireland Local Government Association. In March, Principal Commissioner, Pamela O'Donnell, provided insights into the appeals process for students from Queen's University Belfast who then observed an appeal hearing as part of their degree programme.

## Hear and Decide

In 2018/19, the Commissions received 323 appeals, an increase on the 309 received last year. We disposed of 305 cases with 278 decisions, and 27 appeals being withdrawn or declared invalid. Success rate at appeal is currently 37%, an increase on last year. The Commission issued 35 costs decisions. Costs were awarded in fifteen of the cases.

We have continued to focus on improving our delivery times and reducing the number of appeals in the system for long periods of time within our Hear and Decide workstream. Currently we have only nine appeals within the system pre-2018. Six of these appeals were conjoined with a Hear and Report case. Three of the cases were the subject of a judicial review of the original decision and are back with the Commission for reconsideration.

Despite having the longest median time for decision at 23 weeks, hearings continue to be the main method of processing appeal casework. Accompanied Site Visit and Written Representation procedures are processed with median times of 19 weeks and 20 weeks respectively. Our median delivery time overall has reduced to 21 weeks from 23 weeks last year.

## Hear and Report

In 2018/19 the Commission reported to the Department on one referred case. In four cases the Commission made arrangements for hearings but due to circumstances beyond our control the cases did not proceed to reporting stage. The Commission held one hearing which is expected to report in 2019/20. The Commission has made arrangements for six cases in the 2019/20 financial year which were received in 2018/19.

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 has gone into preparing for this work by both the Commissioner and administrative teams in the past few years. 2018/19 saw the start of our public engagement sessions and we have continued with our engagement with Councils and the Department for Infrastructure on administrative aspects.

## Conclusion

This is a good news story for 2018/19. Given that we have achieved the improvements against the backdrop of reduced resources, it demonstrates the commitment of our teams to delivering on our corporate objectives. We will continue to do the best that we can both as individuals and as a corporate body. I hope that the additional resources we expect to be in place shortly will ensure that we at the very least maintain our high standard of service in the future.

## Andrea Kells

Chief Commissioner





Section One

# Introduction and staffing



# Introduction and staffing

## The Commissions

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.

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

## The Commissions' Vision and Values

The Commissions' aim is to make the best possible appeal decisions and offer the best possible advice and recommendations to public bodies, 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 undertaking of our 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

### Being people-focused

- Being honest, open and transparent
- Treating everyone with respect and understanding different needs
- Developing and supporting our workforce to make the best use of skills and abilities

### Dependability

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

# Accountability

The Commissions are not part of any Government Department. Financial and administrative support is provided by our sponsoring Department, the Department of Justice, through the Northern Ireland Courts and Tribunals Service (NICTS).

The Commissions are completely autonomous in our decision-making and operation of the appeals, hearing, inquiry and examination processes. We are not answerable to any Government Department or any other agency or public body. Our decisions are subject to the supervision of the Courts, reflecting our independent appellate roles in planning and environmental matters.

# Commissioners

## Chief Commissioner

Miss Andrea Kells BA MSc LLB MRTPI

## Deputy Chief Commissioner

Mr T A Rue MA DipTP MRTPI

## Principal Commissioners

Ms P O'Donnell BSc DipTP MRTPI  
(from October 2018)

## Senior Commissioners

Ms R Daly BSc MSc MRTPI

Ms J De-Courcey BSc MSc LLB MRTPI

Mrs M Jones BA BArch ARIBA

Mr A Speirs BSc MSc MRTPI

## Commissioners

Mrs P Boomer BSc DipTP MRTPI

Mrs H Fitzsimons BSc DipTP MRTPI

Mr D Hannon DipTP MRTPI

Mrs B McGlinchey BSc MA MRTPI

Ms D McShane BA MTP MEPPA MRTPI

Dr D O'Neill BSc DipTP PhD MRTPI

Mr M Watson BSc DipTP MRTPI

# Administrative Staff

## Chief Administrative Officer

Mr Ciaran Purvis

## Office Manager

Mrs Fiona Campbell

## Team Leaders

Mr C Morgan

Mr B Fegan

Mrs L Donaldson (until June 2018)

Mr J Bickerstaff (from May 2018)

Mrs J O'Connor (from January 2019)

## Case Officers

Miss Y Adgey

Ms J Millar

Mr J Nelson

Mrs R Rodgers

Not disclosed

## Administrative Support Officer

Mrs E McShane



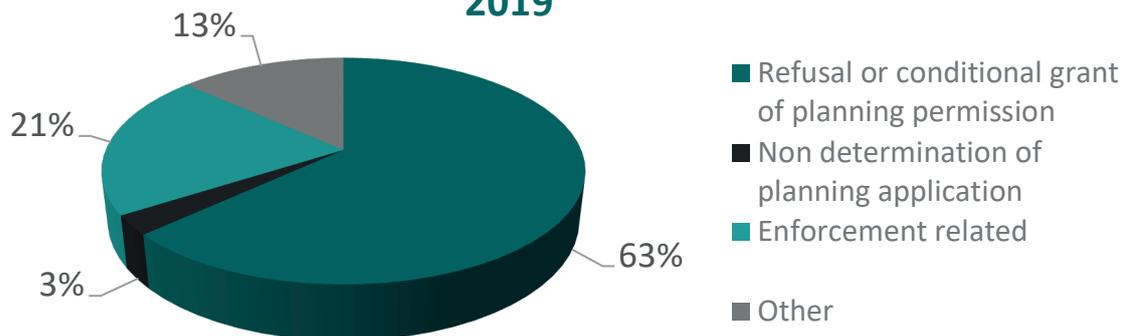
Section Two

# Analysis of Casework

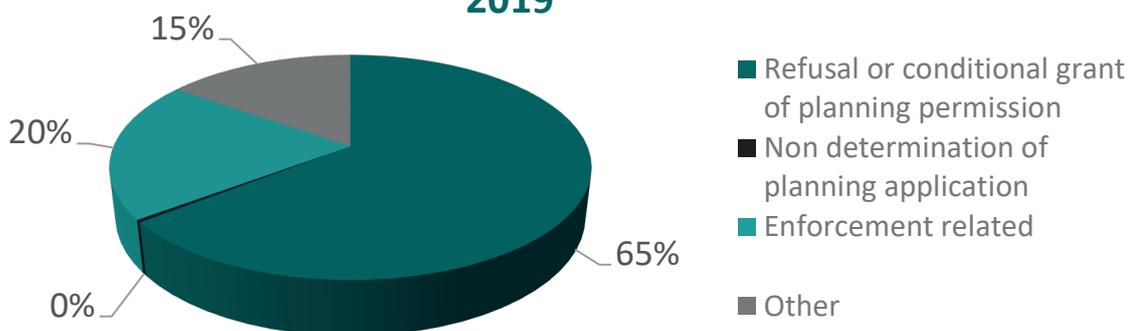


# Appeals Overview

### Appeals received between April 2018 and March 2019



### Appeals decided between April 2018 and March 2019



# Hear and Decide

## Appeals Caseload

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

Table 1: Appeals received, by appeal type

Appeal type	2014/15	2015/16	2016/17	2017/18	2018/19
Refusal or conditional grant of planning permission	221	224	221	207	<b>204</b>
Non determination of planning appeal	33	8	4	4	<b>9</b>
Enforcement related	60	58	53	53	<b>67</b>
Other	31	29	22	45	<b>43</b>
<b>TOTAL</b>	<b>345</b>	<b>319</b>	<b>300</b>	<b>309</b>	<b>323</b>

The Commission has seen an increase in the total number of appeals received this year compared to 2017/18.

Appeals against decisions on planning applications accounted for 63% of all appeals received, a decrease of 4% on last year. The number of appeals against non-determination of planning applications has increased.

The number of enforcement-related appeals received, at 21%, represents an increase of 4% on last year.

Table 2: Appeals received – breakdown of ‘Other’

‘Other’ type	Number
Advertisements	35
Conservation Area Consent	0
Roads	7
Environmental	1
<b>TOTAL</b>	<b>43</b>

25 appeals were withdrawn in 2018/19 before a decision could be issued. This represents 8% of appeals received. Two invalid appeals were received.

Table 3: Appeals decided, by appeal type

Appeal type	2014/15	2015/16	2016/17	2017/18	2018/19
Refusal or conditional grant of planning permission	172	207	221	198	<b>179</b>
Non determination of planning appeal	22	24	11	7	<b>1</b>
Enforcement related	42	34	36	44	<b>56</b>
Other	26	29	28	27	<b>42</b>
<b>TOTAL</b>	<b>262</b>	<b>294</b>	<b>296</b>	<b>276</b>	<b>278</b>

The total number of appeals decided in 2018/19 has increased slightly on that of the previous year. The proportion of decisions against refusal or conditional grant of planning permission, and non-determination of an application, has decreased by 9%. Enforcement related appeals, and those in the ‘other’ category, have increased in proportion at 20% and 15% respectively, from 16% and 10% in 2017/18.

Table 4: Appeals decided – breakdown of ‘other’ 2018/19

‘Other’ type	Number
Advertisements	29
Conservation Area Consent	1
Roads	6
Environmental	3
Listed Building Consent	2
Consent to fell or lop trees	1
<b>TOTAL</b>	<b>42</b>

The number of appeals decided in the ‘other’ category in 2018/19 was greater than in the previous year, at 42 compared to 27. Advertisement appeals represented the largest category, as was the case in 2017/18.

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

Appeal category	Number	%
Single dwelling in the countryside	69	39%
Multiple housing	22	12%
Householder	18	10%
Single dwelling in an urban area	13	7%
Other non-residential	12	7%
Agricultural	11	6%
Renewable energy	9	5%
Industry, business and distribution	8	4.5%
Retail	6	3.5%
Houses in multiple occupancy	4	2%
Mixed use	2	1%
Tourist accommodation	2	1%
Waste	2	1%
Other residential	1	0.5%
Recreation	1	0.5%
<b>TOTAL</b>	<b>180</b>	<b>100%</b>

Single dwellings in the countryside continue to represent the highest number of appeals decided, although the number and percentage have decreased from last year. The second highest category is multiple housing, as was the same last year. 2018/19 saw increases in the number and variety of appeals decided.

Table 6: Appeals decided, by procedure

Procedure	2014/15	2015/16	2016/17	2017/18	2018/19	2018/19 %
Hearing	109	120	128	116	128	<b>46%</b>
Written representations with accompanied site visit	95	98	92	101	92	<b>33%</b>
Written representations with Commissioner site visit	58	76	76	59	58	<b>21%</b>
<b>TOTAL</b>	<b>262</b>	<b>294</b>	<b>296</b>	<b>276</b>	<b>278</b>	<b>100%</b>

The informal hearing procedure continues to be the most requested means of deciding an appeal with 128 cases, representing an increase of 4% on last year. Written representations with accompanied site visit have decreased from 37% of cases last year, while written representations with Commissioner site visit figures remain static at 21% of cases.

Table 7: Appeals allowed, by appeal type

Appeal type	Number decided	Number allowed	Success Rate %
Refusal or conditional grant of planning permission	179	66	37%
Non determination of planning application	1	1	100%
Enforcement related	56	23	41%
Other	42	13	31%

Table 8: Appeals allowed, by procedure

Procedure		2014/15	2015/16	2016/17	2017/18	2018/19
Hearing	Number	108	120	128	116	<b>128</b>
	Allowed	35	54	40	31	<b>55</b>
	% Allowed	32%	45%	31%	27%	<b>43%</b>
Written representations with accompanied site visit	Number	95	98	92	101	<b>92</b>
	Allowed	25	31	23	29	<b>26</b>
	% Allowed	26%	32%	25%	29%	<b>28%</b>
Written representations with Commissioner site visit	Number	59	76	76	59	<b>58</b>
	Allowed	11	15	21	12	<b>20</b>
	% Allowed	19%	20%	28%	20%	<b>34%</b>

As table 7 shows, the overall rate of success for appellants across all appeal types was 37%, an increase of 11% on overall success rates in 2017/18.

As shown in table 8, the success rate for appeals decided using the written representations with accompanied site visit procedure was around the same as for 2017/18. Success rates for appeals decided by the hearing procedure, and for those decided by written representations with Commissioner site visit, increased by 16% and 14% respectively.

Success rates for appeals 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, by procedure type

Appeal type	2014/15	2015/16	2016/17	2017/8	2018/19
Hearing	28	32	29	27	<b>23</b>
Written representations with accompanied site visit	23	25	21	21	<b>19</b>
Written representations with Commissioner site visit	22	29	20	22	<b>20</b>
<b>Overall median time</b>	<b>24</b>	<b>29</b>	<b>23</b>	<b>23</b>	<b>21</b>

A significant improvement in processing times for appeals decided using the informal hearing procedure has been achieved in 2018/19, with the time taken to decide these appeals decreasing by four weeks. Improvements have also been achieved in processing the other procedure types and the time taken for these has decreased by two weeks. Overall, the median time taken to process appeals has decreased by two weeks, to 21 weeks. The median time for enforcement-related appeals was 22 weeks.

Table 10: Appeals in hand at year end

Year	Number
2014/2015	163
2015/2016	183
2016/2017	142
2017/2018	157
<b>2018/2019</b>	<b>169</b>

The number of appeals in hand has increased over the period of the current report due to the reduced availability of Commissioners.

# Costs Awards

The Commission is empowered to make Orders as to the costs of the parties involved in planning and other appeals. Costs awards are intended to provide redress where unreasonable behaviour by one party to an appeal has put another party to unnecessary expense. It is on this basis that the Commission assesses claims for costs.

The Commission will normally award costs only where all four of the conditions below have been met:

- A party has made a timely claim; and
- The claim relates to an appeal of the 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.

Table 11: Costs awards

Costs decisions	2015/16	2016/17	2017/18	2018/19
No award	4	40	29	<b>20</b>
Partial award	2	4	2	<b>7</b>
Full award	1	1	10	<b>8</b>
<b>TOTAL</b>	<b>7</b>	<b>45</b>	<b>41</b>	<b>35</b>

The number of claims for costs decreased in 2018/19 for the second year in a row.

# Hear and Report

Hear and Report is an area of work which is less predictable and more resource intensive than Hear and Decide casework. Currently the principal elements are public inquiries and hearings into regionally significant and called in planning applications. In these cases, referrals are made from the Department for Infrastructure to the Commission. The Commissioner will consider the evidence presented to them and report back to the Department, who will make the final decision.

There are also a variety of other Hear and Report functions, including public inquiries into development schemes, vesting orders and road schemes, and hearings on the need for Environmental Impact Assessments for planning applications.

2018/19 has not been reflective of the normal workload due to the political situation. The anticipated referrals of Local Development Plans have also not occurred. These factors, combined with the withdrawal of a number of cases which were at an advanced stage, have created difficulties in planning and programming our work. We have however continued to try to ensure that resources are made available for this workstream.

## Public Inquiries

### 2017/C004 - Sand and gravel extraction works, Lough Neagh

The Commission conducted a public inquiry in 2018/19 with the report due to be presented to the Department for Infrastructure early in the financial year 2019/20.

### 2018/C007 - Proposed wind farm and associated works, Broughderg

The Commission received a request for a public inquiry which has been programmed for the financial year 2019/20.

## Hearings

### 2017/C003 - Proposed solar farm, Kells

This case was withdrawn during 2018/19 after arrangements had been made for a hearing.

### 2017/C005 - Tourist resort development, Gublusk Bay, Killadeas

This case was withdrawn during 2018/19 after arrangements had been made for a hearing.

### 2018/C001 and 2018/C002 - Installation of a hydro-electric turbine and associated installation of a fish pass to existing weir, Claudy

Hearings have been requested on these two cases and are programmed to take place in the financial year 2019/20.

### 2018/C003 - Fishquarter Quarry, Kircubbin

This case was withdrawn during 2018/19 after arrangements had been made for a hearing.

### 2018/C004 - Lisbunny Quarry, Claudy

The Commission conducted a hearing and issued a report on the need for an environmental impact assessment in 2018/19.

#### 2018/C005 - Infilling of land at Killyliss, Dungannon

The Commission conducted a hearing on the need for an environmental impact assessment in October 2018 but as the associated Enforcement Notice was quashed, the Council's determination ceased to have effect in November 2018.

#### 2018/C006 - Proposed housing development, Lenamore Road, Derry/Londonderry

A hearing has been requested in relation to the need for an environmental impact assessment and is programmed to take place in the financial year 2019/20.

#### 2018/C008 - Finaghy Road North, Belfast

The Commission received a request for a hearing under sections 73 and 74 of the Planning Act (Northern Ireland) 2011.

#### 2018/C009 - Proposed wind farm and associated works, Swatragh

The Commission received a request for a hearing.

# Water Appeals Commission

## Appeals Caseload

Table 12: Water appeals

	2014/15	2015/16	2016/17	2017/18	2018/19
Water appeals received	6	5	5	1	<b>3</b>
Water appeals withdrawn	2	1	0	2	<b>2</b>
Water appeals decided	4	1	8	1	<b>0</b>

Activity in this area continues at a low level. One appeal remains in hand.





Section Three

# Performance Measures



# Performance measures

The performance measures are set out in the Commissions' Business Plan for 2018/19. Performance against those measures are detailed below.

## Appeals

Measures: to decide 80% of appeals within specified timeframes\*

- 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 delays are caused by the appellant, and developments involving an Environmental Impact Assessment.

**Achieved.**

Overall, the Commission decided on 81% of all appeals within specified time frames.

The median time taken to decide all appeals in 2018/19, at 21 weeks, has decreased by two weeks from the previous year.

## Major Casework

Measure:

- 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.

**Achieved.**

## Quality

Measure:

- 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.

**Achieved.**

The proportion of appeal decisions which were associated with a justified complaint or successful judicial review challenge remains constant at 1.2%. This means that 98.8% of our decisions are free from challenge. The Commissions are committed to providing decisions of the highest quality, and the lessons learned from these cases have been shared with Commissioners and administrative staff to ensure that procedures are followed correctly and a high standard of decision making and customer service are maintained.





Section Four

# Financial Statement



## Financial Statement

# Running costs

	2017/18		2018/19	
	£	%	£	%
Commissioners' salaries	1,186,954	66.26	<b>1,112,866</b>	<b>62.6</b>
Administrative staff salaries	276,670	15.45	<b>270,440</b>	<b>15.2</b>
Travel & subsistence	12,920	0.73	<b>14,749</b>	<b>0.82</b>
Accommodation charges	107,065	5.98	<b>120,264</b>	<b>6.76</b>
Advertising	26,999	1.51	<b>37,320</b>	<b>2.1</b>
External training	3,956	0.22	<b>4,685</b>	<b>0.26</b>
Legal fees	105,091	5.87	<b>119,945</b>	<b>6.75</b>
Postage & telephone charges	12,920	0.73	<b>8,728</b>	<b>0.49</b>
Electricity	11,652	0.65	<b>19,821</b>	<b>1.11</b>
Library	15,119	0.85	<b>10,754</b>	<b>0.61</b>
Stationery & printing	2,316	0.13	<b>2,875</b>	<b>0.16</b>
Contract cleaning	10,330	0.58	<b>9,026</b>	<b>0.51</b>
Office equipment	4,245	0.24	<b>1,095</b>	<b>0.06</b>
Hospitality	564	0.04	<b>216</b>	<b>0.01</b>
Incidental expenses	6,850	0.39	<b>9,196</b>	<b>0.52</b>
Software maintenance contract	3,761	0.21	<b>22,494</b>	<b>1.27</b>
Refund of fees	4,142	0.24	<b>13,749</b>	<b>0.77</b>
<b>TOTAL</b>	<b>1,791,545</b>	<b>100</b>	<b>1,778,223</b>	<b>100</b>

## Receipts

	2017/18	2018/19
	£	£
Appeal fees	28,985	<b>53,636</b>
Photocopying charges	118	<b>29</b>
<b>TOTAL</b>	29,103	<b>53,665</b>



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