

TO: Executive  
14 JUNE 2016

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## **OVERVIEW AND SCRUTINY A REVIEW OF PROCEDURES FOR PLANNING APPLICATIONS AND ENFORCEMENT**

**Director of Environment Culture and Communities**

### **1 PURPOSE OF REPORT**

- 1.1 To determine the Executive's response to the recommendations in the report by a working group of the Environment, Culture and Communities Overview and Scrutiny into the review of procedures for planning applications and enforcement

### **2 RECOMMENDATION(S)**

- 2.1 **That the Executive commend the working group for the review it conducted and the helpful report it produced: and,**
- 2.2 **The Executive endorse the proposed response to the working group report as set out in section 5 of this report.**

### **3 REASONS FOR RECOMMENDATION(S)**

- 3.1 As set out in section 5 of this report

### **4 ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 The Executive may wish to consider an alternative response to that outlined in section 5.

### **5 SUPPORTING INFORMATION**

- 5.1 The Overview and Scrutiny Working Group undertook a review of the planning application process and of enforcement. The working group was encouraged to undertake a thorough and in depth review, exploring the anecdotal problems and issues which have been raised by members about the service. It undertook a number of exploratory meetings with officers and also undertook a visit to Elmbridge Council which had been a runner up in a recent national planning award
- 5.2 It is positive that the review did not find any fundamental issues with the current service. The findings of the report are welcomed and identify a number of suggested changes in process and procedure. The working group has made a range of recommendations to the Executive, of the 17 recommendations, it is suggested that the Executive;
- Agree with 13;
  - Partially agree with 3; and

- Disagree with 1.

The 17 recommendations are replicated below with the Director's suggested response to each shown in italics.

Planning applications involving Councillors and Planning Officers

- 5.3 By custom and practice, any planning applications from Bracknell Forest Councillors, are put forward by officers for determination by the Planning Committee (PC). In the interests of high standards of governance, we recommend that the Council should explicitly require Committee approval for planning applications by any Borough Councillor, perhaps by amending the Planning Protocol.
- 5.4 **Agree-** *this change will be made to the Planning Protocol the next time the constitution is reviewed.*
- 5.5 The Chief Officer: Planning and Transport's delegated authority requires that any planning applications from members of staff in that division, also any staff involved in the decision making process, shall be determined by the Planning Committee (PC). To achieve and maintain high standards of governance, the Panel recommends that the Council should require Committee approval for planning applications by any Council employee.
- 5.6 **Disagree-** *while the desire to extend the transparency of the planning process to include all members of staff is laudable, this is felt to be a disproportionate step in trying to achieve that objective. The current requirement applies to Councillors and groups of staff where it might be expected the public may assume a degree of influence on a planning decision which in reality doesn't exist. However, it is not believed that this sphere of influence could reasonably be applied to any other member of staff from any of the council's numerous operations, and presumably this requirement would extend to spouses and other relations making a planning application. As well as being disproportionate, the requirement to refer all such applications to Committee would be very onerous on a Committee which already undertakes a high workload.*
- 5.7 *It is suggested that the Executive consider extending the current delegations to include all Chief Officers, Directors and the Chief Executive, and that the Chief Officer : Planning Transport and Countryside uses his discretion to bring forward applications to the planning committee where the applicant is a member of staff whose role involves working directly with the planning division.*

Recognition of the different roles that officers and members have in the planning process

- 5.8 The Panel recommends that induction training for PC Members and Planning Officers should openly recognise the separate roles of Members and officers, and encourage mutual understanding and respect between the two groups.
- 5.9 **Agree-** *this will build on the current training already provided at induction stage for new councillors*

The split of responsibilities between the Planning Committee and planning officers

- 5.10 The Panel recommends that to minimise the number of minor and non-controversial Planning Applications referred to the Planning Committee, there should be an increase in the threshold for the numbers of objections resulting in referral to the Planning Committee, from 'more than 3' to 'more than 5', and the criteria for referral could usefully distinguish between major and minor developments. The current trigger point of three can be met very easily, and setting the bar higher should result in only those applications attracting substantial opposition (i.e. beyond the immediate neighbours of the applicant) being put before the PC.
- 5.11 **Agree**- *distinguishing between Major and Minor applications would suggest a higher threshold for major applications than has been suggested and the Executive could consider more than 10 objections for major Applications and 5 or more for minor applications*
- 5.12 The Panel also recommends that the increase to 'more than 5' objections should be accompanied by a change to the 1-3 objections procedure and move to a 3-5 objections procedure, by which the ward councillors and the Chair of the Planning Committee are provided with details of a scheme and the objections to see if they wish to bring the scheme to the PC for determination.
- 5.13 The Panel also recommends that any objections that do not refer to any Planning issues should be excluded from the calculation of the number of objections (though the existence of all objections should be recognised in the Case officer's report).
- 5.14 **Agree** – *recommendations set out in 5.9, 5.11 and 5.12 are all supported and changes to the constitution on these points should be made at the next time it is reviewed.*

#### Operation of the Planning Committee

- 5.15 From the Panel's observations and participation, it was felt that the Planning Committee works well. Nevertheless, the Executive and the Planning Committee should consider making possible improvements to its proceedings, these are as follows:
- in order to make the best use of the Committee's time, presentations by officers should be shorter, focussing on the key issues, plans and photographs.
  - the Chairman of the Committee should have an agenda-setting meeting with a senior planning officer to determine the order of the agenda.
  - In order for Planning Committee to finish at a reasonable time it is recommended that there are more precise time allocations to agenda items by the Chairman and a warning point at 10.30pm, with a cut-off point at 10.45pm. However, this should not mean that decisions are deferred as the national standard deadlines for determining applications need to be adhered to. These new arrangements should be reviewed after six months in the light of practical experience.
- 5.16 **Partially Agree**– *the above points can be easily implemented subject to agreement of the Chair of Planning Committee. However the cut off time (at 10:45pm) could only be used as a reminder to the committee as the business of the committee would need to be concluded on the night. It was suggested throughout the review that an earlier start time would be beneficial and could help to end committee at a reasonable hour.*

- 5.17 In order that the PC should not be over-burdened with minor matters, the Panel recommends that Members should be reminded that their right to request that an Application should go before the Committee should be exercised judiciously, and their request should only be accommodated if they provide good cause and valid planning reasons for doing so. The Chairman of the PC should be informed by officers of these requests and – in consultation with the Vice Chairman – they should have the right to decline Members' requests if they believe it would not be a good use of the Planning Committee's time.
- 5.18 **Agree**– *this change could be easily implemented subject to the agreement of the Chairman of the Planning Committee.*
- 5.19 The Panel does not believe it is appropriate that officers are allowed to decide not to enforce planning conditions previously set by members of the Planning Committee, and other significant issues. It recommends that the scheme of delegation is amended to require that, for applications previously approved by the PC, any subsequent non-material amendments or significant changes to planning conditions should be notified to the Chairman and one Planning Committee member from the affected ward to decide whether the change should be considered by the Planning Committee.
- 5.20 **Agree**- *amend delegations to reflect the above point*

#### Planning Enforcement – Performance

- 5.21 There are relatively few anonymous reports of breaches in planning, and the Panel recommends that the Enforcement Team should follow them up as far as they are able to.
- 5.22 **Agree** – *The recently agreed Local Enforcement Plan (Planning) introduces standards of response to alleged breaches of planning but with no-one to feed back to, and depending on the issue raised, this means these type of reports are likely to be of a lower priority and the Panel's caveat of "as far as they are able" is welcomed since this recognises a finite resource. However, the actual enforcement response will be linked to the seriousness and urgency of the alleged breach not the source of information. Unless there is spare capacity, which experience suggests is unlikely, alleged minor breaches of enforcement from anonymous sources are unlikely to be investigated.*
- 5.23 The Panel recommends that the Planning Committee's role should not be confined to determining individual planning applications; there should be an open, quarterly report to the Planning Committee on the performance on enforcement, as well as other key performance information, such as the numbers of planning applications and appeals.
- 5.24 **Agree**- *The ECC Quarterly Service report contains all of this information and this could be extracted and placed in a report for the committee if the Executive felt this would be useful. The committee would then be able to review progress and if required suggest courses of action which may need to be considered to improve performance.*
- 5.25 The Panel recommends that if in future there are insufficient staff resources to progress enforcement cases, then a request should be made for temporary additional staff.

- 5.26 **Agree-** *this opportunity is already in place but within the current financial environment, authority to expend additional resources on staff would depend on the harm that would be caused by the lack of enforcement and the initial response to workload pressures would be to prioritise high profile enforcement cases, with those having lesser impact being deferred (additional resources would be considered in this context). Another dimension to be considered at a time when the Council is scrutinising all its budgets is that planning enforcement is a non- mandatory function which the council performs.*
- 5.27 The Panel recommends that guidance to planning applicants, also formal notices giving planning permission, should clearly state that any failure to comply with planning conditions will be viewed seriously. The Council should also explore the possibility of recovering enforcement costs in such cases, and the feasibility of imposing an automatic fine, similar to that recently introduced by the Council for failures to notify change in circumstance affecting Council Tax.
- 5.28 **Partially agree** – *all planning permissions are issued with a standard condition that requires the scheme to be built in accordance with the approved plans, which covers the first point. With regard to fines to recover enforcement costs, there is no legal mechanism to do this. The only option to recover any costs would be through Proceeds of Crime Act (POCA) which is only an option at the final stages of the enforcement process (where a successful prosecution has taken place).*

#### Affordable Housing

- 5.29 *The Panel accepts that requiring affordable housing provision must not be allowed to undermine the commercial viability of the development, but it was not convinced that the maximum level of suitable affordable housing is being achieved. The Panel recommends that this is further reviewed by the Executive, particularly the robustness of the Council's challenge to developers' representations about commercial viability.*
- 5.30 **Partially agree-** *The Council undertakes viability assessments using the valuation office to consider cases presented by developers. This is to ensure that the highest level of affordable housing which is viable is achieved. It is considered this external scrutiny follows good practice and ensures that viability assessments are reviewed by competent valuers and as such it is not considered necessary for the Executive to explore this recommendation further at this time.*
- 5.31 The Panel felt that the type and location of the affordable housing dwellings is important, and this is unlikely to be best served by this being determined solely by the commercial developer. It recommends that in the event that the offered affordable housing units are unsuitable, the Council should make more frequent and innovative use of requiring an alternative financial contribution, for use perhaps in grant-aiding the provision of suitable affordable housing units by a Housing Association.
- 5.32 **Agree-** *this approach has already been adopted on a couple of occasions, but needs to be formulated in to a policy to be set out in the Comprehensive Local Plan.*
- 5.33 The cost of defending appeals against the Council's Planning decisions can be substantial. We were told that it was possible for the Council to apply for costs when defending an appeal, but this would only be justified rarely. We do not consider this to be a fair burden on Council Tax payers, and we recommend that wherever an applicant has acted unreasonably, the Council routinely seeks recovery of costs of defending appeals.

- 5.34 **Agree** - where an applicant has acted unreasonably a costs application will be made alongside the appeal. This is already an established approach.
- 5.35 The Local Government Association has recently urged the Government to allow councils to set their own planning fees, as they often do not cover the cost of processing applications. We recommend that the Executive supports the LGA initiative and makes representations to the Government to allow the Council to set fees to recover more of its planning-related costs than is currently allowed.
- 5.36 **Agree** – responses to a current government consultation on changes in the planning system have already made this point, and where opportunities arise officers will continue to make this point.
- 5.37 The Panel felt there was an opportunity to increase charges for the legal costs of producing S106 agreements. The Council's charge of £160 per hour is well below some other council's. Given the pressure on the Council's finances, this should be pursued quickly, and the panel recommend that the Executive should increase the S106 legal fees charge and review all Legal's other fees and charges to determine whether income is being maximised.
- 5.38 **Agree** – a review of legal fees should be undertaken benchmarking against other local authorities.

## 6 **ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

### Borough Solicitor

- 6.1 Legal issues are incorporated within the body of this report

### Borough Treasurer

- 6.2 None arising from this report

## 7 **CONSULTATION**

### Principal Groups Consulted

- 7.1 Environment Culture and Communities Overview and Scrutiny Panel.

### Method of Consultation

- 7.2 The Panel Report was presented by the Lead Councillor to the Environment Culture and Communities Overview and Scrutiny Panel on the 23 March 2016.

### Background Papers

Overview and Scrutiny review of procedures for planning applications and enforcement report 24 March 2016

### Contact for further information

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