

Agenda

Connected Communities Scrutiny Committee

Date: **Friday 18 November 2022**

Time: **9.15 am**

Place: **The Conference Room, Herefordshire Council Offices,
Plough Lane, Hereford, HR4 0LE**

Notes: Please note the time, date and venue of the meeting.

For any further information please contact:

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Agenda for the meeting of the Connected Communities Scrutiny Committee

Membership

Chairperson **Councillor Jonathan Lester**
Vice-chairperson **Councillor Tracy Bowes**

Councillor Paul Andrews
Councillor Barry Durkin
Councillor Kath Hey
Councillor Jim Kenyon
Vacancy (The Green Party)

Agenda

Pages

1. APOLOGIES FOR ABSENCE

To receive apologies for absence.

2. NAMED SUBSTITUTES

To receive details of members nominated to attend the meeting in place of a member of the committee.

3. DECLARATIONS OF INTEREST

To receive declarations of interests members of the committee in respect of items on the agenda.

4. MINUTES

To approve and sign the minutes of the meeting held on 14 October 2022.

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HOW TO SUBMIT QUESTIONS

The deadline for the submission of questions for this meeting is 9.30 am on Tuesday 15 November 2022.

Questions must be submitted to councillorservices@herefordshire.gov.uk. Questions sent to any other address may not be accepted.

Accepted questions and the responses will be published as a supplement to the agenda papers prior to the meeting. Further information and guidance is available at

www.herefordshire.gov.uk/getinvolved

5. QUESTIONS FROM MEMBERS OF THE PUBLIC

To receive any written questions from members of the public.

6. QUESTIONS FROM MEMBERS OF THE COUNCIL

To receive any written questions from members of the council.

7. GENERAL SCRUTINY COMMITTEE RECOMMENDATIONS AND THE EXECUTIVE RESPONSES - UPDATE ON THE PLANNING SERVICE

17 - 46

To provide the response to the Connected Communities Scrutiny Committee, the successor committee to the General Scrutiny Committee (GSC), on the executive response to the recommendations made by the GSC on 21 March 2022. The recommendations made by the committee followed the Planning Advisory Service (PAS) Peer Review on the Planning Service in November/December 2020.

[Note: the papers for this agenda item are the same as those published previously for the 9 September 2022 meeting that was postponed]

8. DATES OF THE NEXT MEETING

[Monday 12 December 2022, 9.15 am](#)

The public's rights to information and attendance at meetings

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We will review and update this guidance in line with Government advice and restrictions.

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- Inspect agenda and public reports at least five clear days before the date of the meeting. Agenda and reports (relating to items to be considered in public) are available at www.herefordshire.gov.uk/meetings
- Inspect minutes of the council and all committees and sub-committees and written statements of decisions taken by the cabinet or individual cabinet members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting (a list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public register stating the names, addresses and wards of all councillors with details of the membership of cabinet and of all committees and sub-committees. Information about councillors is available at www.herefordshire.gov.uk/councillors
- Have access to a list specifying those powers on which the council have delegated decision making to their officers identifying the officers concerned by title. The council's constitution is available at www.herefordshire.gov.uk/constitution
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The location of the office and details of city bus services can be viewed at:
www.herefordshire.gov.uk/downloads/file/1597/hereford-city-bus-map-local-services-

The seven principles of public life

(Nolan Principles)

1. Selflessness

Holders of public office should act solely in terms of the public interest.

2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

6. Honesty

Holders of public office should be truthful.

7. Leadership

Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

Minutes of the meeting of the Connected Communities Scrutiny Committee held in Conference Room, Herefordshire Council Offices, Plough Lane, Hereford, HR4 0LE on Friday 14 October 2022 at 2.30 pm

Committee members present in person and voting: **Councillors: Paul Andrews, Chris Bartrum, Tracy Bowes (Vice-Chairperson), Barry Durkin, Jim Kenyon and Jonathan Lester (Chairperson)**

Others in attendance: M Averill (Interim Service Director Environment, Highways and Waste), B Baugh (Democratic Services Officer), M Carr (Interim Statutory Scrutiny Officer), R Cook (Corporate Director - Economy and Environment), Councillor G Davies (Cabinet Member - Commissioning, Procurement and Assets), A Deans (Interim Programme Director – Major Contracts), Councillor J Harrington (Group Leader for Independents for Herefordshire and Cabinet Member - Infrastructure and Transport) and A Rees-Glinos (Democratic Services Support Officer)

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Kath Hey.

2. NAMED SUBSTITUTES

There were no named substitutes.

3. DECLARATIONS OF INTEREST

Agenda item 8 - The Public Realm Future Operating Model: Councillor Paul Andrews and Councillor Tracey Bowes advised that they had non-pecuniary interests due to associations with people who worked with the current provider; and Councillor Jim Kenyon advised that he had a non-pecuniary interest due to an association with someone who sub-contracted for the current provider.

4. QUESTIONS FROM MEMBERS OF THE PUBLIC

No questions had been received from members of the public.

5. QUESTIONS FROM MEMBERS OF THE COUNCIL

No questions had been received from councillors.

6. ROLE AND OBJECTIVES OF THE CONNECTED COMMUNITIES SCRUTINY COMMITTEE

Details of the role of the committee, in accordance with the council's constitution, and the key strategic objectives for the committee were received.

RESOLVED:

That the general role and remit of the scrutiny committee be noted, and the Connected Communities Scrutiny Committee Objectives for 2022-2023 be agreed.

7. CONNECTED COMMUNITIES SCRUTINY COMMITTEE ANNUAL WORK PLAN 2022-2023

The Connected Communities Scrutiny Committee Annual Work Plan 2022-2023, drawn up in consultation with members of the committee, was received.

RESOLVED:

That the Connected Communities Scrutiny Committee Annual Work Plan 2022-2023 be agreed.

8. THE PUBLIC REALM FUTURE OPERATING MODEL

The committee was advised that public realm was part of three cabinet portfolios, these being: Cabinet Member – Commissioning, Procurement and Assets; Cabinet Member – Infrastructure and Transport; and Cabinet Member – Finance, Corporate Services and Planning (the latter member was not able to attend this meeting).

Cabinet Member – Infrastructure and Transport introductory comments included: the contract for the delivery of public realm services was currently with Balfour Beatty Living Places (BBLP) but this item was about the nature of the contract and not the provider; the current contract commenced in 2013, with an initial term of 10 years and with the potential for contract extensions subject to satisfactory performance; it was considered the right time to review the arrangements to ensure that the model was right for Herefordshire; and officers had been requested to look at the options moving forward.

The principal points of the discussion included:

1. A committee member questioned whether there was sufficient time for the development of options and proposals given the need for the council to form a new administration in May 2023. In response, the Cabinet Member – Infrastructure and Transport said that Cabinet did not intend to make a determination at this time, this was about reviewing the model, and the input of the committee would be welcomed.

The Cabinet Member added that each political group had been invited to appoint a representative to a working group.

2. In response to a further question about timing, the Cabinet Member – Infrastructure and Transport commented on the need for assurance that the arrangements provided value for money and that the contract worked for Herefordshire.
3. A committee member said that further information was needed on those aspects where the existing contract was considered lacking or requiring improvement. The Cabinet Member – Infrastructure and Transport commented on the need to understand whether a comprehensive contract was optimal; reference was made to the model operated by Telford and Wrekin Council which had retained technical staff 'in-house'. The Cabinet Member said that the current set up did not necessarily enable the council to monitor it effectively enough.
4. The Cabinet Member – Commissioning, Procurement and Assets commented on the reviews that had been undertaken, including by PricewaterhouseCoopers (PwC), which had identified issues with the council's contract management approach. The Cabinet Member said that, given considerations such as severe

weather events and the experiences of service users, there was the need to review objectives and performance indicators. The Cabinet Member emphasised the need to understand the timescales involved.

A committee member commented on the need for the committee to have access to key information, such as the PwC review, in order to undertake its scrutiny function effectively.

5. In response to a question from a committee member, the Cabinet Member – Infrastructure and Transport said that there was now a dedicated street works team that checked on the activity of utility companies but there was not an equivalent internal team for checking the works undertaken in connection with the public realm contract.

The Interim Service Director Environment, Highways and Waste outlined the process-driven approach of BBLP to checking its own works and making applications for payment, and said that the council's contract management team examined a small sample of the work undertaken. In response to a further question, the Cabinet Member noted that some authorities, such as Telford and Wrekin Council, had retained road and street works inspectors in-house.

6. In response to a question from a committee member, the Cabinet Member – Infrastructure and Transport noted the potential for certain services to be delivered in other ways but commented on current limitations in terms of deviation from the original agreement.

In response to a further question, the Cabinet Member noted the potential for an internal team to manage relationships with sub-contractors directly but there would be associated costs.

7. The Vice-Chairperson commented on the difficulty to demonstrate value for money through the current arrangements, said that the operating models being looked at should be specified, considered that there was a need for technical staff to undertake monitoring regardless of the model employed, and questioned the implications of moving to a different model, including the employment and financial considerations.

The Interim Service Director said that some authorities employed technical staff in-house but with resource topped up by consultants, reflecting the flexibility needed with capital programmes.

Further details were provided about the quantitative and qualitative compliance checks undertaken by the contract management team, including the use of before and after photographs of repairs undertaken.

8. In response to a question from the Vice-Chairperson, the Interim Service Director commented that technical staff were often local people, whether in-house or a single provider, but larger providers could offer their services to other clients and ensure that staff were fully deployed. The Interim Service Director added that there was no 'best model', with contract and relationship management being key to outcomes.

In response to a further question, the Interim Service Director commented on adjustments to the contract management team to separate the commissioning and management elements, and on recent recruitment into the team. It was acknowledged that there was a need to use technology more in terms of identifying failed defect repairs.

9. The Chairperson commented on the need to explore models being used elsewhere which could be optimised to meet the needs of this county.

The Interim Service Director drew attention to the extract from the Highways Maintenance Efficiency Programme toolkit (agenda page 34) which identified a range of models influenced by increasing employer risk or by increasing provider risk. It was explained that there would always be a need to sub-contract within any model; larger contractors could often obtain more competitive prices for materials and for plant and equipment, supported by well-developed systems. Therefore, the council needed to identify its goals and objectives and how it wanted to deliver on those aspirations, with pieces of work packaged and parcelled out accordingly.

10. The Chairperson questioned whether a future operating model could provide greater flexibility to enable the council to react to certain circumstances, such as the severe flooding events in 2019/2020.

The Interim Service Director said that anything could be contracted but there would be financial considerations. It was commented that larger contractors could often draw upon resources nationally in response to local situations, thereby enhancing resilience.

The Cabinet Member - Infrastructure and Transport commented on: the ability to commission capital works through the existing framework; complications around demonstrating value for money; larger providers could not always provide solutions, such as with the current shortage of ecologists; the need to factor in the cost implications of any change-over period; and the potential for local councils or contractors to work on the network.

11. In response to a question about bringing public rights of way and traffic management services back in-house, the Cabinet Member – Infrastructure and Transport said that it had not gone as well as it should have done initially, partly due to staff retention issues, but he was now more comfortable with the progress being made.
12. A committee member drew attention to the statements in the report on risk management, 'The one off funding required to develop and implement the FOM [Future Operating Model] has not been identified or secured' (paragraph 48 iii), and on legal implications 'External legal Advice has been obtained regarding the contractual issues and options detailed in this report. Once the council has a clearer position regarding the FOM further legal and contract advice will be obtained to ensure any changes to contract with BBLP or move to new contractual arrangements do not put the council at risk' (paragraph 47). In view of these positions, a concern was expressed about the timing of the review given the limited information available.

The Cabinet Member – Infrastructure and Transport said that this item provided an early opportunity to comment, a further item would be needed, and the appropriate financial and legal mechanisms would be put in place.

In response to a question about the contractual arrangements, the Interim Service Director said that the next phase would be to look at the various models and to identify potential costs of delivery.

The committee member also drew attention to the statement in the report 'The outcome of local elections in May 2023 may result in a reversal of any Decisions'

(paragraph 48 ii) and re-iterated the need for more detail to ensure that value for money was secured and decisions were robust.

13. A committee member noted that the current provider deployed staff in a flexible way in order to undertake road gritting efficiently.
14. In response to questions from a committee member, the Cabinet Member – Commissioning, Procurement and Assets advised that: the PwC report had focused on contract management and had made various recommendations; the report had not considered the quality and longevity of the materials being used but it was clear that challenge from the council was under resourced; there had been conversations with the current provider about services which could be delivered through other arrangements but legal opinion had highlighted risks around potential breach of contract given the limited degree of flexibility currently; and disputes had financial and staffing implications, therefore there was a need to adhere to the relevant processes and timelines.

The Interim Service Director advised that the current end date for the contract was 31 August 2024 and there was an application for a two year extension which was being considered.

In response to a question, some of the risks associated with further variance of the existing contract were outlined.

15. A committee member commented on the need for timely communications with staff about any potential changes. The Interim Services Director noted that communications with staff and interested bodies, such as local sub-contractors, would be essential to maintaining effective relationships.
16. In response to a question from a committee member, the Cabinet Member - Infrastructure and Transport provided a brief overview of complications experienced with a capital scheme in Lugwardine and said that the work would be reviewed to check whether anything should have been anticipated or avoided.
17. A committee member emphasised the need for appropriate communications with local ward members. The Chairperson questioned whether any particular operating model was better in terms of enhancing communications. The Interim Service Director commented that communications were managed by the contractor in some authorities or in-house in others, and it was for the council to determine the level of control and the frequency of communications.

The Cabinet Member – Infrastructure and Transport noted that the current provider managed communications both through media and with local councils, and acknowledged that this could work better. Using road closures and diversions as an example, the Cabinet Member commented that liaison in advance with local councils and with locality stewards could avoid unnecessary problems.

The Chairperson said that ultimate responsibility should sit with the council and this should form a cornerstone of the communications strategy.

The Vice-Chairperson said that communications were often made public before the local ward member or the local council were made aware, despite their depth of knowledge of particular areas and local events.

18. The Vice-Chairperson commented on: the value of flexibility; the need to demonstrate value for money to the public; there was not enough information on the potential operating models to scrutinise currently; many local councils were

proactive and could deliver works to a high standard; and there were many good people working for the current provider.

19. In response to a question from the Chairperson, the Cabinet Member – Infrastructure and Transport commented that locality stewards were introduced by BBLP but in-house arrangements could be explored. It was noted that the locality stewards were highly effective and were a good point of contact with the public, and the scope of their activities could also be considered.
20. A committee member drew attention to the identified risk ‘Lack of interest from suppliers’ (paragraph 48 vii) and questioned whether this had been tested. The Interim Service Director said that, even if the model was a good fit, there was always the risk that suppliers were already fully committed and, whenever the council did go to the market, there was a need to be confident that potential suppliers were in a position to respond to the offer.
21. The Interim Service Director explained the difference between Highway Safety Inspections and the activities of locality stewards, adding that the former sat best with the contractor undertaking the work in his view.
22. A committee member said that BBLP employees did a good job and it was important to consider the most appropriate inspection arrangements. The Interim Service Director commented that the checks would depend on the scale of the work being undertaken. The Cabinet Member – Infrastructure and Transport commented on the need to ensure that there was appropriate constructive tension.
23. The Chairperson, noting that sign making used to be undertaken locally, questioned whether the scope of the future operating model could consider sources of income for the council.

The Cabinet Member - Infrastructure and Transport commented on the potential of in-house sign making in terms of re-use of materials, speed of delivery, and commercial opportunities.

The Corporate Director – Economy and Environment said that ‘all options should be on the table’, including the potential for revenue streams.

The committee members suggested potential recommendations in respect of income stream generation, flexibility for local councils to undertake certain works, the need for more information including on the models being considered, and the timescales for the decisions on the future operating model should include sufficient time for all interested parties to be made aware of the alterations or changes.

At the end of the discussion, the Statutory Scrutiny Officer summarised the key observations and conclusions and this informed the resolution b) below.

The Chairperson noted the establishment of a cross party member working group but expressed concern about the potential to move forward within the short window of time before the election cycle and commented that there should be scope to include the views of local councils about the future operating model.

In response to a comment, the Cabinet Member – Infrastructure and Transport said that an ungrouped councillor would be invited to the working group.

RESOLVED: That

- a. The committee has noted and commented upon the council's current model for delivery of public realm services;
- b. The committee has noted and commented upon the council's requirements for a future operating model, and has raised issues about:
 - i. how the options are being drawn up in relation to the new contract
 - ii. the establishment of a cross party member working group to review the current model
 - iii. whether or not the future operating model should consider locality stewards being brought in-house
 - iv. the extent to which the council should be front-facing in communications with the public
 - v. how the future operating model may allow greater commercial opportunities for income generation, such as making signage
 - vi. how the options might consider the possible flexibilities within different models
 - vii. the timing for the development of detailed proposals
 - viii. the particular role that the council may have within the future operating model for contract management
 - ix. the timing of the decision on the future operating model
 - x. work to look at other local authority operating models
 - xi. scope to include the views of local councils about the future operating model
- c. The committee supports the establishment of a cross party member working group to review the current model, and support with selection of a future operating model for delivery of public realm services aligned with the council's long term objectives; and
- d. A further report be made to the committee before final proposals are considered by the Cabinet.

9. DATES OF FUTURE MEETINGS

The dates for scheduled meetings for the remainder of the 2022/23 municipal year were noted, with the next scheduled meeting being [Friday 18 November 2022, 9.15 am](#).

The meeting ended at 4.18 pm

Chairperson



Title of report: General Scrutiny Committee recommendations and the executive responses - update on the planning service

Meeting: Connected Communities Scrutiny Committee

Meeting date: Friday 18 November 2022

Report by: Tracey Coleman, Interim Assistant Director Planning and Regulatory Services

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards)

Purpose

To provide the response to the Connected Communities Scrutiny Committee, the successor committee to the General Scrutiny Committee (GSC), on the executive response to the recommendations made by the GSC on 21 March 2022. The recommendations made by the committee followed the Planning Advisory Service (PAS) Peer Review on the Planning Service in November/December 2020.

Recommendation(s)

That:

- a) The Connected Communities Scrutiny Committee note the executives response to the predecessor GSC recommendations made in March 2022, and**
- b) The committee offer any further constructive challenge, define any further action or recommendations to inform and support the process for the continuing improvements being made to planning services within Herefordshire Council.**

Alternative options

1. There are no alternatives. Scrutiny committees can make reports and recommendations to the executive with respect to the discharge of any functions which are the responsibility of the

executive. The executive are not required to implement the recommendations but do have to consider any recommendations made.

2. The chief executive will notify the relevant scrutiny committee of the response of the executive within two months of receipt of the scrutiny report. If, as in this case, with the cabinet member wishes to extend the deadline a report will be made to the relevant scrutiny committee explaining why this is considered necessary. Decisions of the executive or Council on any scrutiny recommendations will be recorded in the usual way.

Key considerations

3. The PAS Peer Review was carried out in November/December 2020 and a report received in June 2021. The purpose of the Peer Review was “To assess the operation of the Development Management (DM) service encompassing delivery and resourcing, enforcement, Section 106 and how the service has operated remotely during the pandemic.”
4. Following on from the Peer Review there were a number of management changes proposed in regard to improving the council’s planning service. These included the introduction of a number of Interim Directors who are tasked with delivering a transformation review based upon a number of recommendations for change and improvement. The recommendations fell broadly into the following categories to be actioned within the timescales outlined running from the receipt of the report:
 - a. Short Term Priorities to be addressed within 6 months; and
 - b. Medium Term Priorities to be addressed within 12-18 months.
5. In light of the PAS review the GSC invited presentation from the planning service on the ‘Planning Services Improvement Plan’. Following the representations made by the Cabinet Member and the then Interim Assistant Director – the GSC made an additional 19 recommendations for the Executive to consider and respond to. Those recommendations and the detailed responses are set out in Appendix A.
6. This report also seeks to provide an update on progress made, since March 2022, by the service in connection to their improvement journey. An explanatory note is set out in Appendix B.

Community impact

7. The Planning Service should have a positive and beneficial impact on the community through the promotion of sustainable development. Development that enhances and protects the environment, mitigates the impacts of climate change and increases in the local population. The planning service looks to serve the needs of the community in providing the right development in the right locations accompanied by appropriate planning gains. By working toward implementing the recommendations of the Planning Advisory Service Peer Review the Planning Service is better placed to meet the needs of the community it serves.
8. The Local Plan will look to influence and help provide the best possible environment for the care and safeguarding of children who are looked after by the Council and the needs of all children will form a major consideration in determining how the County develops in a sustainable way to ensure that the environment within which we live, work and play is passed onto the next generation in the best state possible.
9. In accordance with the principles of the code of corporate governance, the council is committed to promoting a positive working culture that accepts, and encourages constructive challenge, and recognises that a culture and structure for scrutiny are key elements for accountable decision making, policy development, and review.

Environmental impact

10. The Planning Service seeks to meet the Council's stated environmental objectives and the Local Plan is one of the few statutory frameworks that will help the Council meet its net zero ambitions. In particular the Local Plan will seek to:
 - a) Increase flood resilience and reduce levels of phosphate pollution in the county's river
 - b) Reduce the council's carbon emissions
 - c) Work in partnership with others to reduce county carbon emissions
 - d) Improve the air quality within Herefordshire
 - e) Improve residents' access to green space in Herefordshire
 - f) Improve energy efficiency of homes and build standards for new housing
 - g) Increase the number of short distance trips being done by sustainable modes of travel – walking, cycling, public transport
11. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.

Equality duty

12. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

 - a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
13. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty. However, wherever required and appropriate, our providers will be made aware of their contractual requirements in regards to equality legislation.

Resource implications

14. There are no direct resource implications from this decision. Current and future resource implications are under consideration by the executive and planning service leads.

Legal implications

15. There are no direct implications from the report as the primary decision-makers are the Executive.

Risk management

16. There are no direct risks associated with this decision. The most substantial risks have been considered and assessed as part of the response to the PAS review and improvement journey. Risks will continue to be monitored.

Consultees

17. None

Appendices

- Appendix A - The Executive response to the General Scrutiny Committee recommendations
- Appendix B - Scrutiny Briefing Note
- Appendix C - Minutes from the General Scrutiny Committee, 21 March 2022

Background papers

- [The Planning Advisory Service Review \(November/December – 2020\)](#)

Glossary of terms, abbreviations and acronyms used in this report

1. **The Planning Advisory Service (PAS)** provides consultancy and peer support, learning events and online resources to help local authorities understand and respond to planning reform. PAS is a Local Government Group programme and is directly funded by the Ministry for Housing Communities and Local Government. It helps local authorities to deliver:
 - strong and strategic planning for neighbourhoods and local areas
 - effective development management and good decision making
 - accountable and value for money planning services
2. **Section 106 (S106) Agreements** are legal agreements between Local Authorities and developers; these are linked to planning permissions and can also be known as planning obligations.

Appendix A - The Executive response to the General Scrutiny Committee recommendations

Update on the planning service

On 21 March 2022, the General Scrutiny Committee, having heard the verbal presentation 'Planning Services Improvement Plan', recommended that:

Recommendation a)	A detailed report on the historic handling and recommended future management of the entire Section 106 process be brought back to the relevant scrutiny committee within 3 months.
Executive response	<p>The council commissioned consultants to review and report on the historic handling and recommended future management of the entire Section 106 process. The consultants have produced the following set of recommendations;</p> <p>Infrastructure Planning Team – Structure & Resources</p> <ul style="list-style-type: none"> • With the skills and resources for not just for collection & monitoring, but for longer-term planning <p>The process for agreeing S106s should be revised</p> <ul style="list-style-type: none"> • With more transparency for officers and oversight for members, alongside changes to governance and Local Plan / CIL <p>Governance at an exec & officer level</p> <ul style="list-style-type: none"> • To provide more oversight and transparency, to integrate not duplicate changes to governance <p>Local Plan ‘steering group’</p> <ul style="list-style-type: none"> • To ensure that the spatial strategy is informed by what infrastructure is required – managed and maintained through the IDP <p>An Infrastructure Delivery Plan & Infrastructure Funding Statement</p> <ul style="list-style-type: none"> • IDP will be maintained as a delivery document not a planning document. IFS should have Cabinet approval. <p>Proposal to implementing CIL</p> <ul style="list-style-type: none"> • It will provide more flexibility, it can be twintracked with your Local Plan, and will make it clear how much £ parishes get <p>Procure a new developer contributions data system</p> <ul style="list-style-type: none"> • And set the protocols and role to ensure transparency accountability. Import old data <p>Define a new corporate approach for capital delivery</p> <ul style="list-style-type: none"> • For more oversight at a member and corporate level.

	In the last 5 years over 10 million pounds of s106 money has been received together with significant off site works undertaken by the developers to mitigate developments in the local area.
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Action	Owner	By when	Target / success criteria	Progress
<ul style="list-style-type: none"> Set up a Planning Project Board Review Developer Contributions SPD Capital bid for XACOM dedicated system (or comparable) CIL cannot be adopted until new LP in Place 	Justine Burnett Kevin Singleton Kevin Bishop	2022/23 2022/23 2024/25		

Recommendation b)	Information about the costs of all additional resources brought in to address the planning backlog be circulated to all councillors.
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Executive response	The council appointed 7 planning consultants to deal with the backlog of planning applications. The consultants have so far cost £50k and one is retained to complete outstanding reports. The planning back log has been cleared. The consultants were managed by members of the Development Management Team whilst also undertaking their day to day work.
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Action	Owner	By when	Target / success criteria	Progress
No action required.	Kevin Bishop			

Recommendation c)	Further consideration be given to the capacity of the planning service to meet demand, including the range and level of applications being received.
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Executive response	Meetings have been held on 29 April, 10 May and 9 June 2022 with officers from Development Management to plan for the future proofing of the planning service, including the range and level of applications being received. As a result of these meetings a draft planning service structure has been produced and shared with Ross Cook and Tracey Coleman for consideration. This will form the basis for the transformation of the service.
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Action	Owner	By when	Target / success criteria	Progress
To consider and decide on whether the proposed draft planning structure is acceptable and deliverable. Confidential until staff consultation taken place.	Ross Cook and Tracey Coleman	30 th October 2022		

Recommendation d)	Information be circulated about the quality assurance process and the measures to ensure consistency in the production of planning reports and decisions, including the appropriateness, robustness and enforceability of conditions.
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Executive response

With regards to quality assurance the following practices are in place which ensure consistency in the production of planning reports and decisions;

The council constitution provides for the redirection process whereby ward members can request redirection of a planning application, the requirements of which are set out at paragraph 4.8.18 to 4.8.31 of the constitution.

The ward member is invited to attend a redirection meeting with the Chair and Vice Chair of Planning Committee and the Lead Development Manager which are held on a monthly basis

Delegated decisions on planning applications are signed off by two officers under the scheme of delegation – the case officer and a manager - thereby ensuring quality assurance in the decision making process.

The Development Management Team meet every Monday morning to discuss any matters arising in the functioning of the department. One in four of these meetings is used to report on Performance and any actions required.

The Development Management officers are invited to meet every Friday morning to undertake a Peer-on-Peer review of current planning applications under consideration to ensure consistency in the decision making process.

A Development Management Team meeting is held on a monthly basis to communicate council business and any matters that need to be conveyed to the team with regards to planning matters i.e. update on phosphate credits to release development sites in the north of the county.

With regards to planning conditions, paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

These are referred to as the 6 tests, and each of them need to be satisfied for each condition which the planning officer applies. The planning report lists the conditions which is signed off by two officers who will consider the planning conditions and the 6 tests before authorising the report.

The Development Management Team would like to produce a set of Practice notes/guidance notes on specific subject matters for officers to further improve the consistency of decision making. These would be made available on the council website so that users of the service know what considerations are being applied to different planning matters i.e. sustainable rural tourism. Time and resource will be required to produce these documents. (This is for internal use only)

	<p>The decisions made are fully supported by the appeal outcomes where we sit at around 70% of dismissed appeals. The previous but now redundant national target was 65%.</p> <p>Monitor and review complaints especially those that have been upheld in order to ensure that we learn from our mistakes.</p>			
Action	Owner	By when	Target / success criteria	Progress
Production of practice notes/guidance notes on specific subject matters for officers to further improve the consistency of decision making.	Andrew Banks/Simon Withers/Kelly Gibbons	31 December 2022		

Recommendation e)	<p>A detailed response be provided about the staffing and recruitment challenges, including the reasons why business cases were not received from the service.</p>
Executive response	<p>Detailed business cases were produced and received for all recruitment via Business World by the service managers. These were then signed off by the Lead Development Manager and the Assistant Director. Six planning recovery reports were also drafted from April to October 2021 and shared with Senior Management for approval.</p> <p>Emailed to Interim Director, Neil Taylor on 8 October 2021.</p> <p>This version reviewed and amended version 1.5 and also included:</p> <ul style="list-style-type: none"> ○ A combined Development Management and Strategic Planning Service; ○ A proposed before and after structure; ○ A new Head of Planning role; ○ The relocation of the Building Control team into the Planning Service; ○ Improvements to the Planning Enforcement team; ○ Restoring the planning officer posts as per the establishment listing; ○ Removing the £300k unachievable income target and the £100k unachievable savings target; ○ A one off corporate payment to pay for contractors to clear the backlog of applications; ○ Recommendations to tackle the PAS Review; ○ The recommended level of contractors needed to tackle the growing backlog of applications and enforcement cases; and ○ The recommended number of staff required on fixed term contracts to deliver the Core Strategy within the timeframe required. ○ <p>The previous interim Service Interim Director Florence Churchill was appointed on 29 November 2021 and reviewed the previous business plans. In February/March 2022 Ms Churchill obtained agreement from the Section 151 Officer to engage 7 planning consultants to clear the planning backlog. The new Service Interim Director, Tracey Coleman, was appointed on 11th July 2022. She will be reviewing the service and its structure taking into account previous discussions.</p>

<p>The core strategy adoption in 2015 created an influx of applications however since then the requirement to increase income has never been met and the phosphates issue has also hit submissions. The new Local Plan will assist when it progresses to hold weight as it will identify further development opportunities compliant with the Development Plan.</p> <p>If the New Homes Bonus, which is a planning generated income to the council from central government, had been included in the planning budget the service would have provided a significant profit in the last 5 years as it has brought in nearly 11 million pounds.</p> <p>Updating of the Planning ICT system and digital functions (in line with other LPA's) to facilitate more streamlined processes and procedures. The current system is out of date and not supported.</p>				
Action	Owner	By when	Target / success criteria	Progress
Consideration be given to a capital bid or use of the New Homes Bonus to facilitate new ICT.	Ross Cook	30 th October 2022		

Recommendation f)	Options to deliver enforcement action more effectively and efficiently across planning and other service areas be considered.			
Executive response	<p>There was a view that planning enforcement could benefit from better integration with the other regulatory services of the council. Therefore the legal process adopted by the regulatory teams was shared with planning, so that the necessary support would be given. Discussions with an Interim Director and subsequent Interim Director Neil Taylor, affirmed that the planning enforcement team should remain within the planning service.</p> <p>The planning service has invested significantly in Enforcement Officers by having a generic enforcement team this would take away the specialist knowledge base created.</p> <p>Consider options for the future in order to facilitate change.</p>			
Action	Owner	By when	Target / success criteria	Progress
No action required.				

Recommendation g)	The development of a local protocol / charter for communications between members and officers be supported, particularly to improve understanding of the role of local ward members in their communities.			
Executive Response	<p>A workshop, facilitated by an external provider, will be organised between officers and members to understand the role that they both play in the planning function and to help members understand the role of the ward member in their community.</p>			
Action Date to be agreed	Owner	By when	Target / success criteria	Progress
To organise an external workshop	Tracey Coleman	30 September 2022		

Recommendation h)	The update of the Local Plan includes an Infrastructure Delivery Plan.			
Executive response	<p>It is important that infrastructure planning is embedded in the local plan process. National planning policy guidance sets out advice and it is recommended that such advice should be followed. Infrastructure planning will set out the anticipated funding from developer contributions, and the choices local authorities have made about how these contributions will be used.</p> <p>It is anticipated that this work will be addressed as part of the Local Plan. This can only be undertaken at a point where spatial allocations have emerged at least in draft as this will identify where new infrastructure is required. In addition, there will be a need to identify the corporate projects supporting growth to be linked to the SPD. A viability assessment will be produced in order to demonstrate that the allocated sites are deliverable.</p>			
Action	Owner	By when	Target / success criteria	Progress
Commission viability assessment to inform the preparation of both the draft Local Plan and Infrastructure Funding Statement.	K Singleton	Mid-2023	Adoption of Herefordshire Local Plan	Preparation of draft local plan with Infrastructure Funding Statement in 2023.

Recommendation i)	Opportunities be explored to improve public understanding of planning regulations and the planning system, with particular attention given to the content on the council's website and to the potential for planning surgeries, perhaps utilising a virtual meeting platform.
Executive response	<p>The council website contains a significant amount of information in relation to planning regulations and the planning system. It relies on users of the service to self-serve in the first instance before making contact with the council. Consideration is given to how much of the planning process is understood by the public.</p> <p>Particularly with regards to Neighbourhood Planning, Herefordshire is seen as an exemplar authority, both Department of Levelling Up, Housing and Communities (DLUHC) and Planning Advisory Service (PAS) recommend the information on our website to other neighbourhood planning groups across the country where the provision within their LPA is not as comprehensive. Some other Local Planning Authorities have decided to provide a link on their website to our information and guidance given the praise it receives at a national level.</p> <p>The council website pages enable the following functions (not all listed here);</p> <p>Local Plan 2021 - 2041 – Herefordshire Council</p> <ul style="list-style-type: none"> • Up to date information on the latest stages of the consultation on the new Local Plan • Invitation to comment on the latest stages of the new Local Plan <p>Neighbourhood planning – Herefordshire Council</p> <ul style="list-style-type: none"> • Advice and guidance on Neighbourhood Development Plans • Making a Neighbourhood Development Plans

- Update and progress of Neighbourhood Plans

[Planning services – Herefordshire Council](#)

- Search planning applications
- Apply for planning permission
- Get pre-application advice
- Paying planning application fees
- Finding information on planning appeals

[Planning enforcement – Herefordshire Council](#)

- What is planning enforcement
- What is the enforcement process

[Section 106 planning obligations – Herefordshire Council](#)

- What are planning obligations?
- A manual search of available section 106 monies
- Details of what has been delivered on an annual basis through an Infrastructure Funding Statement

The Government Planning Portal website that has interactive guides and common project examples to assist the public in determining whether planning permission is required. A link is provided through the council website pages for the [Planning Portal](#)

If a user of the service cannot find the answer to their question with all the information that is available there are other forms of contact.

If the user requires a planning search of a property they can contact;

planningdesk@herefordshire.gov.uk

If they have a general planning enquiry they can contact;

planningenquiries@herefordshire.gov.uk

With regards to the request for planning surgeries the planning service has a Duty Officer email which is monitored and responded to on a daily basis by the Development Management officers.

The LPA offer a pre-application advice service for a fee.

Action	Owner	By when	Target / success criteria	Progress
Update the FAQ's on the Council's website to include signposting	Kevin Bishop	30 th December 22		

Recommendation j)	In view of the aspirations of the improvement plan, assurance be provided that there are sufficient resources in place to achieve it.			
Executive response	Meetings have been held on 29 April, 10 May and 9 June 2022 with officers from Development Management to plan for the future proofing of the planning service, including the range and level of applications being received. As a result of these meetings a draft planning service structure will be produced by Ross Cook and Tracey Coleman for consideration. The financial implications of a new structure will need to be considered in the decision making process of approving a new structure. The review will identify the needs			

Action TC	Owner	By when	Target / success criteria	Progress
To ensure the financial implications are considered and approved in any decision taken on future service delivery.	Ross Cook and Tracey Coleman			

Recommendation k)	A letter be sent to government to highlight the increasing pressures in the children's and adults' directorates and the need for adequate funding to ensure that economy and environment services are not impacted disproportionately.			
Executive response	Corporate Directors to decide funding in relation to funding pressures.			
Action	Owner	By when	Target / success criteria	Progress
Budget Implications	Ross Cook			

Recommendation l)	A review be undertaken of the pre-application advice service, including consideration of charging and value for money, the effectiveness of the service to achieve preferred outcomes, and how it meets the expectations of stakeholders.			
Executive response	A review is already under way by the Lead Development Manager into discretionary charging which includes the pre-application advice service, Tracey Coleman is guiding the process.			
Action	Owner	By when	Target / success criteria	Progress
No action required.				

Recommendation m)	A review be undertaken of the challenges associated with untidy land / derelict sites, particularly in terms of expediting action and bringing forward appropriate development where possible.			
Executive response	<p>The council already investigates and enforces against untidy land by way of section 215 of the Town and Country Planning Act 1990 which provides for the power to require proper maintenance of land;</p> <p>(1) If it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under this section.</p> <p>(2) The notice shall require such steps for remedying the condition of the land as may be specified in the notice to be taken within such period as may be so specified.</p> <p>The council has recently taken direct action at 32 Hospital Cottages, Burghill to clear a garden that was considered to affect the amenity of the area.</p> <p>The challenge associated with untidy land is that there is no budget allocated for direct action to remedy the breach of planning control. The cost of the work when direct action is required is placed as a charge on the land and it may be sometime before the land is sold for the council to recoup the monies. The cost of the work may also be disproportionate to the value of the land.</p> <p>The LPA have a duty to take into account public Interest this includes financial cost versus harm.</p>			
Action	Owner	By when	Target / success criteria	Progress
Request budget allocation for dealing with direct action as a result of non-compliance with Section 215 untidy land notices and explore as to whether third party tendering can be used to ensure best value for money for the work to remedy the untidy land.	Tracey Coleman	2022/2023		
Recommendation n)	That councillors be provided with a clear, concise and jargon busting overview of the key legal orders, such as those made under Section 106 and Section 215 of the Town and Country Planning Act, including a glossary of the key terms and powers that are available.			
Executive response	<p>The Herefordshire Local Plan Core Strategy has a Glossary of Terms at pages 168 to 179;</p> <p>Adopted Core Strategy Glossary of Terms (herefordshire.gov.uk)</p> <p>With regards to Neighbourhood Planning, Guidance Note 18 contains a Glossary of planning terms;</p> <p>Glossary of planning terms (herefordshire.gov.uk)</p>			

<p>With regards to planning enforcement the council has an adopted Planning Enforcement Policy which details the action the council has available (including section 215) to deal with breaches of planning control;</p> <p>Planning supplementary enforcement policy (herefordshire.gov.uk)</p> <p>The Planning Enforcement Policy is currently being reviewed with the intention of producing an Enforcement Local Plan. This is going through the requisite Governance processed.</p> <p>With regards to section 106 the council has an adopted Planning Obligations Supplementary Planning Document. The SPD aims to provide greater clarity for developers, applicants and the community. It also aims to speed up the processing of applications and provide a clearer framework for assessing requirements and for calculating contributions. It plays an important role in ensuring community and infrastructure needs are fulfilled as part of new development.</p> <p>Planning Obligations Supplementary Planning Document (herefordshire.gov.uk)</p>				
Action	Owner	By when	Target / success criteria	Progress
No action required.				

Recommendation o)	The Environment Act 2021 be looked at closely in order to empower the council's services and government be encouraged to progress the enabling regulations.
Executive response	<p>The Environment Bill received Royal Assent on 9 November 2021, meaning it is now an Act of Parliament.</p> <p>Mandatory Biodiversity Net Gain (BNG) as set out in the Environment Act applies in England only by amending the Town & Country Planning Act (TCPA) and is likely to become law in 2023. The Act sets out the following key components to mandatory BNG:</p> <ul style="list-style-type: none"> • Minimum 10% gain required calculated using Biodiversity Metric & approval of net gain plan • Habitat secured for at least 30 years via obligations/ conservation covenant • Habitat can be delivered on-site, off-site or via statutory biodiversity credits • There will be a national register for net gain delivery sites • The mitigation hierarchy still applies of avoidance, mitigation and compensation for biodiversity loss • Does not change existing legal environmental and wildlife protections <p>The timelines for introduction of mandatory BNG are dependent on a number of factors. The below is our current understanding of the likely timetable towards mandatory BNG.</p>

<p><i>Autumn 2021:</i> 9 Nov - Environment Bill gets Royal Assent - now the Environment Act</p> <p><i>Winter 2021/22:</i> Government consultation on BNG statutory instruments and regulations - closed 5 April 2022</p> <p><i>Spring 2022:</i> Biodiversity Metric 3.1 released and Government response to consultation</p> <p><i>Spring 2023:</i> BNG site register and statutory credits sales platform go live</p> <p><i>Winter 2023:</i> Biodiversity net gain expected to become mandatory for all TCPA developments</p> <p>The council are aware of their mandatory requirements with regards to BNG and will be looking at the resource implications with regards to its introduction.</p>				
Action	Owner	By when	Target / success criteria	Progress
No action required.				

Recommendation p)	A review be undertaken of how current regulations and restrictions are being utilised in order to protect the environment and to enable the council to respond to the climate and ecological emergency.
Executive response	<p>The Herefordshire Local Plan Core Strategy 2011 – 2031 contains policies on climate change and ecology which are considered when determining a planning application;</p> <p>SS6 – Environmental quality and local distinctiveness</p> <p>SS7 – Addressing climate change</p> <p>LD2 – Biodiversity and geodiversity</p> <p>SD1 – Sustainable design and energy efficiency</p> <p>SD2 – Renewable and low carbon energy</p> <p>SD3 – Sustainable water management and water resources</p> <p>SD4 – Waste water treatment and river water quality</p> <p>The council has published a Climate Change Compliance Checklist to be submitted with planning applications;</p> <p>Climate change compliance checklist (herefordshire.gov.uk)</p>

	<p>This checklist has been prepared in order for applicants to demonstrate to decision makers that the policies have been complied with, in that sustainability measures have been incorporated in development proposals where possible. It should be submitted by the applicant as supporting evidence of compliance with the climate change mitigation criteria of policy SD1, supporting the objectives of policy SS7.</p> <p>The council has also published a Biodiversity & Ecology measures compliance checklist to be submitted with planning applications; Biodiversity and ecology compliance checklist (herefordshire.gov.uk)</p> <p>All new applications for development (including revised applications or those at Reserved Matters stage) which affect nature conservation sites, habitats and important species will need to complete the checklist, to demonstrate that the relevant ecological information has been submitted as supporting evidence of compliance with the biodiversity criteria of policy LD2, supporting the objectives of policy SS6.</p> <p>The council are producing a Supplementary Planning Document to promote higher building standards through setting out best practice guidance for improving building performance, reducing energy use in buildings, enhancing the external environment, improving accessibility, and reducing energy and waste in the construction stage.</p> <p>The document details recommendations to drive up environmental standards of buildings in Herefordshire, consistent with the council's recognition of the climate and ecological emergency and our vision for a zero-carbon, nature-rich Herefordshire.</p> <p>The document does not introduce a new policy but is designed to provide supplementary guidance on the adopted Core Strategy environmental quality policies. It will be a material consideration in the determination of planning applications.</p> <p>Consultation on the Environmental Building Standards Supplementary Planning Document ran from Wednesday 2 March to 13 April 2022. The representations are being considered.</p>			
Action	Owner	By when	Target / success criteria	Progress
No action required.				

Recommendation q)	Local ward members are involved more actively in the preparation of heads of terms for planning obligations.			
Executive response	<p>The new council Constitution was approved by full council on 20 May 2022. The following paragraphs relate to the ward member involvement of the heads of terms;</p> <p><i>4.8.3 All members will be informed by email on the submission of a new planning application in their ward.</i></p> <p><i>4.8.4 All applications will proceed and will be determined under delegated powers unless they fall within the category of applications automatically to be referred to committee or are redirected as provided for under the redirection arrangements in these rules.</i></p> <p><i>4.8.5 In addition:</i></p> <p><i>(a) the case officer will telephone the ward member (and/or where necessary arrange a meeting) to update the ward member on the processing of the application and any comments received.</i></p>			

<p><i>(b) as part of this initial conversation the case officer will also identify to the ward member whether an application triggers the need for a section 106 agreement in accordance with the council's adopted Planning Obligations Supplementary Planning Document.</i></p> <p><i>(c) in the case of applications requiring a Section 106 agreement the case officer will have a subsequent conversation/meeting with the ward member to ensure that local mitigation measures are appropriately incorporated. As part of this process officers and members will be guided by the council's adopted Supplementary Planning Guidance and the evolving schedule of local needs co-ordinated by the planning obligations manager.</i></p> <p>Anyone (including Town/parish councils) making an online representation to a planning application are invited to put forward their views on infrastructure needed to mitigate the impact of the development. The form states, 'If the council were minded to approve this application what infrastructure would you like to be considered from the section 106 contribution'.</p> <p>The council write on an annual basis to all Town/parish councils to ask them to submit their S106 infrastructure 'wish lists'. These are used to inform heads of terms. We would encourage ward members to encourage their Town/Parish councils to respond to the request so that local infrastructure requirements can be considered.</p> <p>The Planning Obligations are required when (a) they are necessary to make the development acceptable in planning terms, (b) directly related to the development and (c) fairly and reasonably related in scale and kind to development. The 'wish lists' which town and parish councils provide help inform this process and are used by the Planning Obligations Manager to create the Heads of Term for a development. Local ward members are provided with the Heads of Term and invited to comment</p>				
Action	Owner	By when	Target / success criteria	Progress
No action required.				

Recommendation r)	The Re-thinking Governance Working Group be invited to give further consideration to a stronger role for the local ward member in the redirection procedure.
Executive response	<p>The Re-thinking Governance Working Group have concluded their work with the new council constitution being approved at full council on 20 May 2022. The redirection procedure is set out at paragraphs 4.8.12 – 4.8.31.</p> <p>Paragraph 4.8.15 states;</p> <p>Ward councillors may choose to ask that sensitive or controversial applications be redirected for a decision by the Planning and Regulatory Committee. A ward councillor for the purpose of this redirection procedure is the ward councillor and any councillor whose ward is materially affected by the application.</p> <p>The following paragraphs in the constitution set out the redirection procedure for ward members;</p> <p>4.8.28. A councillor requesting the redirection of an application should always provide sound planning reason(s) for doing so based on the circumstances and material planning considerations of the proposal.</p> <p>4.8.29 Any such request should be made in writing to the case officer and the development control manager.</p>

	<p>4.8.30 All requests for redirections will be discussed by the service director, regulatory (or their delegate) with the chairperson of planning and regulatory committee together with the member who has requested the redirection. A decision whether to accept the redirection will be made by the service director, regulatory (or their delegate) on the basis of guidance set out in these rules and the circumstances and material planning consideration of the case. The decision will be confirmed in writing. In the chairperson's absence, the vice chairperson will be consulted.</p> <p>Planning is a Quasi-judicial process for officers and Planning Committee members to decide and therefore sits separate to the cabinet processes.</p>			
Action	Owner	By when	Target / success criteria	Progress
No action required.				

Recommendation s)	<p>Clarification be provided about what customers can expect in terms of communication and liaison from the planning service, including the frequency and timeliness of responses.</p>			
Executive response	<p>The planning service will respond to customer contact in accordance with the council standards;</p> <p>Telephone contact: we will normally respond within five working days, even if a holding response is needed whilst further investigation takes place. This could involve leaving a message and three attempts to make contact if a message cannot be left.</p> <p>Written contact: A response, if needed, will take within 10 working days unless there is a separately stated timescale. The council will use electronic messaging including email as the default response to a query. However if a letter is the requested method of contact then the council allows 15 working days response time to allow time for postage.</p> <p>With regards to representations made to a planning application these will be considered by the planning officer in determining a planning application.</p> <p>Lockdown has impacted on officers and managers are aware and working with them together with support from other agencies to support mental health and well-being. Getting the planning teams back into plough lane offices is an important factor in resolving some of these issues together with enhanced visibility of officers as a result. The informal meetings which often took place in the atrium at Plough Lane is an important area that I am keen to re-introduce.</p>			
Action	Owner	By when	Target / success criteria	Progress
No action required.	KB			

Appendix B - Scrutiny Briefing Note

Background

This note has been prepared in order to assist Members of Scrutiny on the background to the responses of some of the questions put before officers.

Policy Formulation

New policy formulation will need to be adopted in conjunction with the update and adoption of the Local Plan (LP). The Local Planning Authority (LPA) are unable to bring forward new planning policy outside of this process. This also means that no changes can be made to spatial allocations within masterplans at the current time.

Until such time the Council has an Infrastructure Delivery Plan (IDP) which provides for the infrastructure necessary to support the proposed allocations within the emerging LP. Progress toward a new Community Infrastructure Levy (CIL) will not be able to proceed until the LP is agreed. This is because a viability assessment will be needed to demonstrate that the CIL charge is viable. Therefore until the spatial allocations are made, post reg19 (LP adoption) a CIL is not possible.

Planning Obligations

The Council adopted a Planning Obligations Supplementary Planning Document (SPD) in 2008, which was accompanied by a Sustainability Appraisal. The SPD was consulted on in accordance with the Council's Statement of Community Involvement. The policies imbedded into the SPD (S2(9) & DR 5) were approved by the Inspector at the Public Inquiry for the Core Strategy in 2015.

Planning Obligations are sought during the determination of planning applications. Development proposals should not produce a financial or environmental burden on existing infrastructure or the environment. When a planning application is assessed, consideration has to be given to how any impacts resulting from the proposed development can be mitigated. Mitigation is carried out by a combination of both planning conditions and developer contributions. This can either be in full or a percentile contribution towards mitigation measures. For example, a capital project such as cycling improvements which is not fully funded but in the longer term contributes to mitigation measures.

In order to secure contributions any such project will need to be costed and justified in terms of need in relation to lack of existing capacity.

Contributions towards infrastructure must meet the test as set out in Reg 122¹ of the Community Infrastructure Levy Regulation 2010. Which requires it to be:

- Necessary to make the development acceptable in planning terms.
- Directly related to the development.
- Fair and reasonably related in scale and kind to the development.

¹ This regulation applies where a relevant determination is made which results in planning permission being granted for development. See: <https://www.legislation.gov.uk/ukxi/2010/948/regulation/122>

During the determination of a planning application the planning officer consults all statutory consultees, such as Highways and Education for example. The statutory consultee makes an assessment of the applications and advises the Planning Authority of its support or objection, or whether mitigation measures are needed and if so when, during the course of the development they are required to be instated.

These requirements are set out in the Planning Officer's report, providing the justification in detail and are included in the Heads of Terms agreement. The allocation will then either be determined under delegation or by members of the Planning Committee. Following determination the Planning Officer works with the Council's Planning Lawyer to lawfully set out the requirements in a S106 legal agreement or a Unilateral Undertaking whichever the most appropriate. The wording on the majority of occasions is significantly influenced by the statutory consultee's request. During the process there is often significant negotiation on the detail of the wording and payment phasing and trigger points involving lawyers on both sides.

The Planning Authority will monitor the payment of contributions. It is then the responsibility of each statutory authority, such as Highways, Health or Education, to ensure that the contributions are spent at the correct time on the required infrastructure. The Local Authority are only able to require funds to be retained pending the provision of these services for a set number of years - unusually no more than 10 and in most cases significantly less. Failure to spend the monies within the allocated time period results in the LPA being required to return the funding to the developer.

Impact on planning application submissions

The Planning Department's application target is historical. Since this time there has been an assumption of year on year growth or maintenance of numbers of applications. There is no evidence to suggest that this is the case on a national level or even a regional level. Indeed I understand that recent survey figures (yet to be released) will show that Herefordshire are in the top 50 LPA's in England & Wales in relation to number of applications. We are waiting for the detailed information to come out later this year. The Planning Inspectorate's recent figures have shown a slowdown of application submissions in the region of around 10% throughout England & Wales.

On a more local level Herefordshire Council has significant issues with the constraints on certain geographical areas due to issues with phosphate within certain water catchment zones. This has created significant restrictions on the determination of applications in certain areas of Herefordshire, even though we now have a small amount of phosphate credits which have only just become available to offset against new developments as a consequence of the wetland project at Luston. Taking into account the cost implications of submitting a planning application, applicants for Major applications within the impacted areas may continue to hold back on their developments until there is a clear pathway for delivery. This, therefore is also having an impact on the submission of applications that generate very large receipts from processing fees.

Whilst considering the implications of cost versus income, it is important to note that over the past five years the LPA has secured £10m in developer S106 contributions

and a further £11m in New Homes Bonus payments from government. It is also important to note that whilst application income is vitally important to the delivery of the service, officers in Planning also work closely with the Housing Team to ensure the delivery of new homes - including affordable and specially adapted homes which meet the specific needs of communities across Herefordshire as well as contributing on an ongoing basis to Council Tax income.

The LPA also charge for 'pre-application advice' to developers which increases the likelihood of their applications having a smooth passage through the planning process by identifying and addressing likely issues at the earliest stage. However, we have seen a reduction in the take-up of this service in most recent months and we will be considering our charges for this service and how we can improve take-up as part of the transformation review of the service.

We will also be looking to implement the use of Planning Performance Agreements where applicants for significant major schemes enter into an agreement at the pre-application stage through to signing of a S106 legal agreement. We will advise Councillors accordingly once we have a process drafted for detailed consideration.

Communication and Working Practices

It is now two and a half years since the Council went into lockdown and new working from home practices came into force. Over a period of time this has had an impact on how we communicate with each other and, whilst officers have continued to perform their duties to the best of their ability, it will be beneficial to review our practices and procedures, and to take stock of how we can communicate more efficiently with our customers, members of the public and elected Members and ensure our officers continue to support and learn from one another on the job.

This will also include a health check on our decision making processes including training for members of the Planning Committee and ensuring that junior members of staff get the training they need.

Improving our ways of working will also reviewing the software systems which support service delivery. The current system used by both Planning and Building Control is out of date. The Council have recently reviewed new systems which assist officers in managing applications and enable a smarter and more streamlined process. The current and future needs of the planning service are being fed into the current work on developing a digital strategy for the council and ensuring the planning service has procedures and systems which support flexible and integrated working within the service and across to statutory services elsewhere is now a priority.

Minutes of the meeting of the General scrutiny committee held in The Conference Room, Herefordshire Council Offices, Plough Lane, Hereford, HR4 0LE on Monday 21 March 2022 at 10.15 am

Committee members present in person and voting: Councillors: Sebastian Bowen, Tracy Bowes (Vice-Chairperson), Barry Durkin, Jonathan Lester (Chairperson), Louis Stark and David Summers

Committee members participating via remote attendance: Councillors: William Wilding

Note: Committee members participating via remote attendance, e.g. through video conferencing facilities, may not vote on any decisions taken.

Others in attendance: B Baugh (Democratic Services Officer), S Bennett-Matthews (Head of Law and Legal Business Partner Economy and Place), J Burnett (Senior Project Manager), Michael Carr (Interim Statutory Scrutiny Officer), F Churchill (Interim Service Director Economy and Regulatory Services), J Coleman (Democratic Services Manager), R Cook (Corporate Director - Economy and Environment), Councillor L Harvey (Cabinet Member - Finance, Corporate Services and Planning) and J Preece (Democratic Services Technical Support Officer)

55. APOLOGIES FOR ABSENCE

Councillor William Wilding was unable to attend the meeting in person but participated via remote attendance.

56. NAMED SUBSTITUTES

There were no substitutes present.

57. DECLARATIONS OF INTEREST

There were no declarations of interest.

58. MINUTES

The minutes of the previous meeting were received.

RESOLVED: That the minutes of the meeting held on 27 January 2022 be approved as a correct record and be signed by the Chairperson.

59. QUESTIONS FROM MEMBERS OF THE PUBLIC

No questions had been received from members of the public.

60. QUESTIONS FROM MEMBERS OF THE COUNCIL

No questions had been received from members of the Council.

61. UPDATE ON THE PLANNING SERVICE

The Cabinet Member - Finance, Corporate Services and Planning commented that: there had been issues with the Core Strategy before the formation of the administration; it had taken time to make management and policy changes, especially in the context of flooding events and the Covid pandemic; interim appointments had been made to provide leadership and direction; there was at least another year of work to undertake on the transformation journey; and the interest of the scrutiny committee was welcomed.

The Corporate Director, Economy and Environment explained that: a review of the service had been undertaken and an action plan had been developed; and, in addition to the Local Plan, work was being undertaken on the Economic Plan and the Hereford City Centre Masterplan. An apology was given for the absence of a formal report for the committee to consider.

The Interim Service Director, Economy and Regulatory Services delivered the presentation '[Planning Services Improvement Plan](#)' which included the headings: Peer Review; Short Term Recommendations; Medium Term Recommendations; Planning Service Metrics; Current Issues; S106 – Training and Other Aspects; Planning Policy; Development Management; Enforcement; Planning Committee; Planning Recovery Plan; Proposed Training Programme; and Next Steps.

The principal points of the discussion included:

1. In response to a question from the Vice-Chairperson, the Interim Service Director acknowledged that there had been issues with: the timeliness and completeness of communications from officers; the backlog of validated but unallocated planning applications (this had reduced from nearly 400 to around 100 applications); the redirection arrangements; the structure of the service, particularly in view of anticipated changes to the planning system; and the treatment of Section 106 and other developer contributions.
2. A recommendation was proposed in relation to the management of the Section 106 process (recommendation a) below).
3. In response to points made by a committee member about their own experiences, the Interim Service Director commented on: the [Infrastructure Funding Statement](#) which detailed the use of developer contributions; the development of a Communications Protocol to outline how member enquires would be prioritised and approached; and the Enforcement Local Plan would set out priorities for enforcement action and associated timescales.

For the purposes of clarity, the Chairperson emphasised that planning enforcement was not a discretionary service and there was a duty to investigate, whereas 'Enforcement *action* is discretionary' (National Planning Policy Framework, Section 59).

4. A recommendation was proposed in relation to the additional costs incurred to address the planning backlog (recommendation b) below).
5. On matters relating to repeat breaches of planning controls, reference was made to a recent Parliamentary Private Members' Bill, [Planning \(Enforcement\) Bill](#).

Later in the discussion, the Interim Service Director clarified that the local planning authority could not use its powers to determine applications in a punitive manner based on the previous behaviours of certain applicants.

6. Assurance was sought about the capacity of the planning service to meet demand, and about the quality assurance process to ensure consistency in terms of reports and decisions. Related recommendations were proposed (recommendations c) and d) below.

Later in the discussion, the Interim Service Director explained that planning decisions did not create a precedent, but the authority was required to be consistent in its decision-making. It was commented that reports were checked by the lead development management officer and quality assurance could be reviewed further.

7. In response to a question, the Cabinet Member explained the situation with the removal of long-term vacancies from departmental budgets across the organisation and advised that an adequate business case for recruitment in the planning service had not been forthcoming until recently.

A recommendation was proposed to request a detailed response on this point (recommendation e) below).

8. In response to a question, the Cabinet Member commented on the difficulty to recruit some specialists, such as ecologists, and acknowledged the impact on the determination of some applications. It was recognised that it was important to size the service correctly and to get the right mix of specialists to provide technical support to the planning officers.

9. A recommendation was proposed in relation to considering a more joined up approach to enforcement across different service areas (recommendation f) below).

10. The Chairperson commented that decisions not to pursue enforcement action on certain conditions could embolden some developers to continue poor practices and could undermine public confidence in the service, and made observations on the need for realistic and robust conditions which could be enforced.

In response to a question, the Interim Service Director confirmed that Legal Services provided support on enforcement, a need for further training for officers on investigatory skills had been identified, and there was a need to give reasons for imposing conditions, and for conditions to be enforceable.

11. A committee member drew attention to the 'Peer Review' slide, 'The review also commented that the trust between Members and Officers needs to improve', and said that work was also needed on the relationships with parish councils. The Interim Service Director said that communication was the biggest issue and reiterated that a Communications Protocol was being developed.

The Chairperson commented that local ward members had a positive role to play in helping members of the public to understand the planning process, and officers should be aware that this was a resource that they could utilise and should support.

A recommendation was proposed in relation to the protocol and improving understanding of the role of local ward members (recommendation g) below).

12. A recommendation was proposed in relation to the production of an Infrastructure Delivery Plan (recommendation h) below).

13. The Chairperson questioned what more could be done to improve public understanding of the planning system. The Interim Service Director said that the [Planning Portal](#) provided interactive guides on permitted development rights and noted the need to ensure that there were appropriate links and information provided on the council's own website.

A recommendation was proposed in relation to opportunities to improve public understanding (recommendation i) below).

14. A committee member commented on the importance of economy and environment services to residents and, whilst recognising the pressures in the other directorates, expressed concern that only 16% of the budget was allocated to this broad area of public service.

A recommendation was proposed to seek assurance that there were resources in place to achieve the improvement plan (recommendation j) below).

A recommendation was also proposed to highlight the increasing pressures to the government (recommendation k) below).

15. In response to a question, the Interim Service Director explained that planning fees were set nationally by the government. It was noted that there was a paid for service in terms of planning performance agreements for major development proposals. The Interim Service Director said that it was widely acknowledged that planning fees did not cover the costs of the service.

16. The Cabinet Member advised that additional investment was being made in technical services and there had been adjustments in terms of income expectations from planning applications in the recently approved budget. Comments were also made about social care pressures, the implications for non-statutory service areas, and the consequences of government policy for the funding of local government.

17. There was a discussion about pre-application advice, including charging, value for money, and effectiveness, with a related recommendation proposed (recommendation l) below). The Corporate Director commented on the intention to review traded services across the directorate.

18. In response to a question about enforcement action in relation to untidy and derelict sites which adversely affected local amenity, the Interim Service Director said that, under Section 215 of the Town and Country Planning Act (1990), local authorities could require landowners to tidy their sites, but could not compel them to carry out development.

It was suggested that a review be undertaken to explore what else could be done and a related recommendation was proposed (recommendation m) below).

19. In response to a question from the Vice-Chairperson, the Interim Service Director considered that officer caseloads were about average for the region, although there were variations depending on the type of authority and the nature of the development proposals, with an average caseload of 70 active cases per officer.

20. In response to comments about the declared climate and ecological emergency, the Interim Service Director advised that the Environment Act 2021, subject to enabling regulations, would provide further tools, obligations, and targets; adding that training would be provided for members in due course.

21. Further to paragraph 18 above, a committee member commented on the potential to issue a completion notice to require a development to be finished within a specified period. Reflecting on comments made by officers in attendance, the Chairperson emphasised the need to review this matter in the context of Section 94 (Termination of planning permission by reference to time limit: completion notices) of the Town and Country Planning Act 1990.

Later in the meeting, the Head of Law and Legal Business Partner Economy and Place confirmed that completion notices could be issued but it was understood that they were rarely used.

22. The Interim Service Director advised that planning permissions could not be extended but developers could reapply; a brief overview was provided of the circumstances in which repeat applications might be considered vexatious.
23. A committee member queried a banner being shown that applications were being held and awaiting allocation to a planning officer. The Interim Service Director said that this would be addressed as the backlog was dealt with and an update would be provided in due course.

The Chairperson, commenting on frustrations expressed by members of the public and planning agents, questioned the degree of confidence in the level of engagement and customer care from officers. The Interim Service Director said that this was being considered as part of the review of the service.

24. In response to a question from the Vice-Chairperson, the Interim Service Director advised that the strategic policy team and the neighbourhood plan team were now within one directorate, and expressed a personal opinion that planning may work better if other areas, such as ecology and conservation, were under a direct management arrangement.
25. A recommendation was proposed in relation to councillors being provided with an overview of the key legal orders (recommendation n) below).
26. A committee member questioned why two previous planning recovery plans had not been actioned. The Cabinet Member advised that the proposals that were brought forward were considered inadequate.
27. Further to paragraph 13 above, a committee member suggested that the content on the council's website could be improved as a means of supporting potential applicants and reducing demands on officers. The Chairperson also suggested that the possibility planning surgeries, whether physical or virtual, could be revisited. These points were subsequently incorporated into an earlier recommendation (recommendation i) below).
28. A committee member suggested that a review be undertaken of how existing regulations and restrictions were being utilised in the interests of environmental stewardship and carbon reduction.

In response to a question, the Interim Service Director explained that further supplementary planning documents may need to be produced to respond to the requirements of the Environment Act, such as biodiversity net gain and local nature recovery strategies.

Related recommendations were proposed with a view to empowering the authority to achieve its objectives (recommendations o) and p) below).

29. An overview was provided of the wellbeing support that was available to officers.

[Note: there was a short rest break]

30. The Chairperson noted the intention to invite a representative of the Planning Inspectorate to attend a future meeting of the relevant scrutiny committee.

31. In response to a comment from a committee member, the Interim Service Director said that a robust definition of 'sustainable development' was awaited from government. The committee was advised that the current Core Strategy was not in alignment with the Environment Act or with recent changes to the National Planning Policy Framework, and a new Local Plan was in development.

32. A committee member commented on the difficulties for residents to obtain planning permission for developments to enable them to support family members, with care and other needs, close to their own homes. The Interim Service Director commented that, generally speaking, the personal circumstances of applicants were not material considerations in the determination of planning applications. The Chairperson commented on the potential to reduce the financial burden on care services and questioned whether future policies could help to enable ancillary developments. In response, the Interim Service Director commented on the challenges associated with controlling the original intended use into the future.

At the conclusion of the discussion, the Corporate Director: welcomed the positive comments that had been made about planning officers; commented on the review of resources and structures across the directorate; recognised the need to ensure that the right processes were in place, particularly in terms of timely internal and external communications, and the right support was available to planning officers; noted the value of further member and officer training; acknowledged that there may be opportunities to enhance the content on the website, access to advice, and the pre-application offer; and acknowledged the role of local ward members.

The Chairperson said that it was important to note that planning could be a difficult job and the committee appreciated the hard work of officers, especially given the additional pressures in the last couple of years.

[Note: it was agreed that the meeting should continue beyond three hours]

The committee then considered and adjusted the recommendations identified during the meeting, including other recommendations arising from the discussion in respect of the involvement of local ward members (recommendations q) and r) below), and what customers could expect in terms of communication and liaison (recommendation s) below).

Resolved: That it be recommended to the executive that:

- a) **A detailed report on the historic handling and recommended future management of the entire Section 106 process be brought back to the relevant scrutiny committee within 3 months.**
- b) **Information about the costs of all additional resources brought in to address the planning backlog be circulated to all councillors.**
- c) **Further consideration be given to the capacity of the planning service to meet demand, including the range and level of applications being received.**

- d) Information be circulated about the quality assurance process and the measures to ensure consistency in the production of planning reports and decisions, including the appropriateness, robustness, and enforceability of conditions.**
- e) A detailed response be provided about the staffing and recruitment challenges, including the reasons why business cases were not received from the service.**
- f) Options to deliver enforcement action more effectively and efficiently across planning and other service areas be considered.**
- g) The development of a local protocol / charter for communications between members and officers be supported, particularly to improve understanding of the role of local ward members in their communities.**
- h) The update of the Local Plan includes an Infrastructure Delivery Plan.**
- i) Opportunities be explored to improve public understanding of planning regulations and the planning system, with particular attention given to the content on the council's website and to the potential for planning surgeries, perhaps utilising a virtual meeting platform.**
- j) In view of the aspirations of the improvement plan, assurance be provided that there are sufficient resources in place to achieve it.**
- k) A letter be sent to government to highlight the increasing pressures in the children's and adults' directorates and the need for adequate funding to ensure that economy and environment services are not impacted disproportionately.**
- l) A review be undertaken of the pre-application advice service, including consideration of charging and value for money, the effectiveness of the service to achieve preferred outcomes, and how it meets the expectations of stakeholders.**
- m) A review be undertaken of the challenges associated with untidy land / derelict sites, particularly in terms of expediting action and bringing forward appropriate development where possible.**
- n) That councillors be provided with a clear, concise and jargon busting overview of the key legal orders, such as those made under Section 106 and Section 215 of the Town and Country Planning Act, including a glossary of the key terms and powers that are available.**
- o) The Environment Act be looked at closely in order to empower the council's services and government be encouraged to progress the enabling regulations.**
- p) A review be undertaken of how current regulations and restrictions are being utilised in order to protect the environment and to enable the council to respond to the climate and ecological emergency.**
- q) Local ward members are involved more actively in the preparation of heads of terms for planning obligations.**

- r) **The Re-thinking Governance Working Group be invited to give further consideration to a stronger role for the local ward member in the redirection procedure.**
- s) **Clarification be provided about what customers can expect in terms of communication and liaison from the planning service, including the frequency and timeliness of responses.**

62. WORK PROGRAMME

It was noted that the Council had recently approved a revised constitution ([minute 47 of 4 March 2022](#) refers) that would result in the reorganisation of the current three scrutiny committees into five scrutiny committees from 20 May 2022; this being the last meeting of the General Scrutiny Committee. Therefore, it was decided that consideration of potential agenda items be deferred to a future, informal work programming workshop.

The meeting ended at 1.20 pm