

## **DEVELOPMENT CONTROL: ANNUAL REPORT FOR 2007/08**

**Report By: Head of Planning Services**

### **Wards Affected**

County-wide

### **Purpose**

1. To inform members about Development Control performance for 2007/08 and prospects for 2008/08.

### **Financial Implications**

2. None.

### **Background**

- 3 The purpose of this report is to set out a summary of the Development Control Team's achievements in 2007/08. This report is intended for use as a reference document to inform Members of current trends in Development Control and continues the sequence of 6-monthly reports to the Planning Committee.

This report is quite different from the Annual Monitoring Report which is prepared by the Forward Planning Team as a statutory requirement under the new regulations for the Local Development Framework.

### **Principal Outputs**

These are grouped under four headings:

- A. Pre-application Enquiries
- B. Planning Decisions made
- C. Appeals
- D. Enforcement

#### **A. Pre-application Enquiries**

4. The Team continues to deal with over 2,000 pre-application enquiries annually. Some of the enquiries are relatively trivial but some took nearly as long as a planning application itself to deal with. Where there has been a formal exchange of correspondence the details are recorded on the MVM database. Additionally, over 1000 email enquiries have been made to the [planningenquiries@herefordshire.gov.uk](mailto:planningenquiries@herefordshire.gov.uk) email address. These were previously dealt with by the Planning Receptionists at Blueschool House, but they are now dealt with by planning officers in the "Back office". Pre-application enquiries will be an increasing area of work following the introduction of Planning Application Requirements (Local) and the new 1-APP application form and

related processes as reported to the Committee on 29<sup>th</sup> February 2008. Active consideration is being given to schemes for charging for pre-application advice.

**B. Planning Decisions Made**

5. The most important Development Control outputs have been the BVPI indicators (Note: they are due to be replaced from 1<sup>st</sup> April onwards – see paragraph 9 below). These feed directly into the departmental and directorate Service Plans and count towards the Council’s CPA rating. The most significant for performance monitoring is BV 109, the speed of processing planning applications.
6. The out-turn figures for 2005/06 , 2006/07 and the first 11 months of 2007/08 are as follows:

<b>Table 1</b>				
<b>BVPI 109 – Speed of Processing Planning Applications</b>				
<b>BV 109 figures</b>	<b>Target</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>
Major applications %age determined in 13 weeks	60%	61%	75%	68%
Minor applications %age determined in 8 weeks	65%	74%	83%	80%
Other applications %age determined in 8 weeks	80%	82%	91%	89%

7. The step change in performance between 2005/06 and 2006/07 has now stabilised with results for “minor” and “other” applications stabilising at around 80% and 90% respectively. The out-turn for major planning applications continues to be affected by the number of Section 106 agreements required and is more variable as a result. However, overall, all three targets have been met, with a margin to spare, and that has contributed directly to the Environment Directorate going from a two-star to a three-star service for CPA purposes. Additionally, the elections in May 2007 resulted in many applications being held up until the programme of Committees resumed in June.
8. The Planning Delivery Grant has now stopped and is being replaced by a Planning and Housing Delivery Grant. Development Control performance is no longer rewarded financially for meeting targets. However, failure to meet the minimum national targets may result in some grant money available being abated. It is therefore important that at least the minimum national targets continue to be achieved.
9. The Government has announced a new set of National Indicators to replace the Best Value Performance Indicators with effect from April 2008. BVPI 109 is due to be continued in the form of NI 157 with two variations: firstly there is no explicitly stated minimum target, and secondly “County Matters”, i.e. those applications such as those for minerals and waste which are determined by County and Unitary authorities, have their own separate measurement – with a target determination date of 13 weeks. There will be a continuing need to maintain and monitor performance against NI 157 (speed of processing planning applications) but there is also a need to develop our own set of local indicators to monitor and manage the performance of the development control within the overall remit of Planning Services and our work towards the Council’s strategic objectives.

**Delegation**

- 10. In 2005/06 88% of planning applications were determined under delegated powers. In 2006/07 that figure remained stable at 88%. In 2007/08 it has risen by one percent to 89%.

**Recommendations**

- 11. Planning Committees do not always follow recommendations. In work with other local planning authorities the Audit Commission has used two thresholds of concern; both measuring the number of applications determined contrary to Officer's recommendation as a percentage of decisions on all applications (delegated and committee):  
 Upper threshold 2%  
 Lower threshold 0.5%  
 Performance outside these two thresholds would be a matter of concern.
- 12. In 2005/06 the percentage of overturned recommendations for all committees together was 1.2%, i.e. more-or-less midway between the two concern thresholds. In 2006/07 this figure increased to 2.1%. In the first eleven months of 2007/08 this figure has risen to 68 out of 2791 total determinations giving a percentage of 2.4% and now should be considered as a matter of concern. The consequences of approving proposals contrary to recommendation does appear to raise issues with the policies in the Unitary Development Plan. Where permission is refused contrary to recommendation it creates difficulties in defending subsequent appeals, and that is reflected in the appeal statistics below. Further monitoring of this trend is anticipated with the Chairmen's Group.

**C. Appeals**

- 13. The Authority's success rate with planning appeals is a national Best Value Performance Indicator although the target level is set locally and the national BVPI is concerned only with appeals against refusals of planning permission. There are a variety of other appeal types as seen below. This indicator is due to be dropped in the forthcoming National Indicator set.

Year	Appeals allowed	Total Appeals determined	%age allowed
2005/06	28	104	27%
2006/07	22	102	22%
2007/08	32	88	36%

- 14. The national Average performance against this BVPI has remained steady at around 33%.
- 15. The out-turn shown in the above table is a very serious drop in performance compared with the previous two years. The Council has had an exemplary appeal success rate hitherto and it is therefore important to draw lessons from this change for the worse. The single most noticeable feature is the high level of appeals against refusals which were contrary to officers' recommendation. Of the 32 upheld appeals in 2007/08 seventeen of them concerned refusals in this category. Where such appeals are dealt with by public inquiries consultants are used to give the Council's case the best

possible support, but it remains difficult to defend decisions which appear on their merits to be weak cases. Where such appeals have been dealt with by written representations or hearings planning officers normally defend the council's decision themselves, sometimes with local member support, but such appeals normally have a much lower success rate and, in 2007/08 there have been a noticeably higher number of refusals contrary to officer recommendation than in previous years. (See also the section of Recommendations above).

- 16. In accordance with BV 204 the above data concerns only appeals against refusals of planning permission. There are various other types of appeal decisions which are also key outputs for the Team. One of the most significant is Enforcement Appeals – this too is a very important quality outcome. In this area the Council has been much more successful so far, with 18 enforcement appeals being determined sixteen were dismissed – the percentage of enforcement appeals allowed = 11%.
- 17. By comparison the most recent published national figures are:

<b>Table 3 - Enforcement Appeals – National Success Rates</b>	
<b>Year</b>	<b>%age appeals allowed</b>
2004/05	24%
2005/06	24%
2006/07	23%

In this context the Enforcement Appeals performance can be seen to be exemplary. Indeed, in comparison with national figures it can be seen that, of 94 English local planning authorities which had dealt with 10 or more enforcement appeals, Herefordshire Council came 10<sup>th</sup> overall for enforcement appeal success rates.

- 18. Eight other appeals have been determined in 2006/07 so far as follows

<b>Table 4 - Other appeal types determined 2006/07</b>		
<b>Type</b>	<b>Number</b>	<b>Upheld/Dismissed</b>
Appeal against Hedgerow Protection Notice	3	3 dismissed
Agricultural Notification	1	1 dismissed
Advertisement appeals	4	1 upheld/ 3 dismissed
Appeals Against Refusal of Lawful Development Certificates	3	2 upheld/1 dismissed
Listed Building Consent	2	1 upheld / 1 dismissed

- 19. If all appeal types are considered together the overall success rate is 38 appeals upheld out of 113 in total, i.e. a figure of 34% which is around the national average.
- 20. There has been two awards of costs against the council in 2007/08.

**D. Enforcement**

- 21. There are no national Best Value Performance Indicators for planning enforcement. A new Planning Enforcement Policy was brought into operation in March 2007 which includes a requirement for reporting on Enforcement activity to this Committee. Since April 2006 enforcement activity has been monitored on a monthly basis and the tables

below set out the results for the first eleven months of 2007/08. The final tables for the whole of 2007/08 will be circulated at the meeting.

22. In the first eleven months of 2006/07 a total of 547 new enforcement enquiries have been received and 537 cases have been closed.

No apparent breach (not development)	96
No apparent breach (permitted development)	87
Not expedient to enforce	87
Compliance achieved through negotiation	174
Planning permission granted	84
Passed on to other Service Areas	9
<b>Total cases closed</b>	<b>537</b>

Planning Contravention Notices	77
Breach of Condition Notices	15
Enforcement Notices	25
Listed Building Enforcement Notice	1
Section 215 Notices	2
Stop Notices	1
Prosecutions	2
Default Action	2
<b>Total Number of Formal Actions</b>	<b>125</b>

- 15 All the Area Sub Committees have commented on the number of retrospective planning applications being submitted. Accordingly, since April 2006 a specific check has been kept on these. In the period April 2007 to March 2008 a total of 158 retrospective planning applications have been received as a result of enforcement action. These applications have, between them, generated £42,475 in planning application fee income. Whilst the number of applications may seem quite high, it may be of interest to note that the planning system has always allowed for retrospective applications and, indeed, good enforcement practice specifically affords developers the opportunity to remedy a breach of control by applying for permission. It is, perhaps, worth noting that retrospective applications have a lower success rate than other planning applications: only around 68% of retrospective planning applications have been approved in 2007/08, compared with 81% for all applications.

**RECOMMENDATION**

**THAT:**

**The report be noted, subject to any comments Members may wish to make to the Cabinet Member, Environment.**