

Task & Finish Group Report

**Planning System Review –
Development Control and the
Operation of the Constitution**

**For consideration by the Overview &
Scrutiny Committee – April 2012**



**Task and Finish Group Report
Planning System Review – Development Control
and the Operation of the Constitution**

Background

1. In January 2010 Herefordshire Council implemented new constitutional provisions for planning (development control). Overview and Scrutiny Committee in July 2011 considered that it was timely for a scrutiny review to explore the effectiveness of the constitutional changes and to make recommendations with regard to any future modifications and/or amendments. The review would also include the way planning applications are dealt with by Herefordshire Council from the registration of the application to the final decision. It therefore commissioned a Task and Finish Group to undertake a 'Planning System Review- Development Control and the Operation of the Constitution', and agreed a scoping statement for that review. The agreed terms of reference of the task and finish group were:
 - To explore member understanding of and engagement in the arrangements introduced in January 2010
 - To examine and ensure that all planning criteria are robust and will inspire public confidence in the council operating an efficient, timely, fair, robust, open and transparent system of determination based on good practice and effective decision making.
 - To examine effectiveness and performance of the Planning Committee arrangements since January 2010
2. The full Scoping Statement for the review is set out in Appendix 1
3. This report addresses the 5 key questions from the scoping statement including commentary based on the responses to the member questionnaire; comments upon a number of other planning related issues identified during the review and sets out a number of recommendations
4. The Task and Finish Group have not looked at:
 - The determination of individual planning applications;
 - the working relationships between individual officers and individual members; and
 - The working relationships between ward members and parish councils.
5. The Task and Finish Group comprised of Councillors: PJ Watts (Chairman); KS Guthrie; J Hardwick; R C Hunt; Brig. P Jones CBE; MD Lloyd-Hayes and were supported by: Mr A Ashcroft - Assistant Director, Economic, Environment & Cultural Services(Lead Support Officer); Mr K Bishop - Development Manager Northern Localities (Planning), (Support Officer); Mr P James (Democratic Services Officer).

6. Prior to the start of the review the Group were provided with a background information pack (see Appendix 2) and this has been supplemented by a number of further documents. Between July 2011 and March 2012 the group carried out research; convened meetings and interviews and undertook a 'walk through of the planning system' to gather as much background information and seek as many views as was required to make recommendations. The information gathering process also included a questionnaire to fellow members and was based on the 5 key questions in the scoping statement. The Group were disappointed with the low level of response from members considering that planning is a vital part of their ward work. The results of the questionnaire and comments received can be forwarded to the Cabinet Member if requested.

The 5 Key Questions

Question 1 Have there been any changes to the working relationship generally between officers and members?

Member Questionnaire

7. Responses to the question were: 5 Very Good; 17 Good; 0 No Change; 0 Poor; 0 Very Poor. Comments were positive but suggested there was still room for improvement.

General

8. While the officer/member working relationship under the previous arrangements for planning was considered to be good the current constitution has provided an extra stimulus to further improve that relationship and put in place some additional formality to govern the exchange of information.
9. A degree of concern has been raised that when case officers inform the ward member(s) that an application had been received the case officer didn't always provide an initial indication including (under delegated powers) of whether the case officer was minded to recommend that the application be approved or rejected. This made it difficult for the ward member(s) to judge whether the degree of local opinion was being taken into account and whether to seek to invoke provisions in the constitution for the redirection of an application to Planning Committee. The Group have been informed that since commencing the review this aspect has been addressed with enhanced officer training.
10. On receipt of a major, strategic or controversial planning application the case officer will brief the ward member(s) for the ward concerned. If deemed appropriate the ward member(s) of adjacent wards will then be briefed. It has been identified that benefit could be gained in briefing both at the same time.

Recommendation 1

The Monitoring Officer be requested to prepare a report to the Audit and Governance Committee to prepare proposals to amend the Constitution to reflect that, on receipt of a major, strategic or controversial planning

application, benefit could be gained from briefing both the Ward Member(s), and where appropriate adjacent Ward Members, at the same time.

Question 2 How can the Council improve the way the public understands the Planning system in Herefordshire Council

Member Questionnaire

11. A range of comments were received mainly suggesting greater clarity or more explanation concerning the processes involved was needed.

General

12. The Group received a draft of a flow chart illustrating the process and considered that a simplified version (Appendix 3) would help the public in understanding how the planning application system worked. The chart could also indicate what level of involvement Town & Parish Councils have in the consideration of applications.
13. Previously the Council's website provided access to planning policy documents and sign posted users to the UK Planning website for details on planning applications. The UK Planning website provided limited information and was outside the Council's control.
14. With the introduction of the long awaited in-house scanning of planning documents, and their uploading to the Herefordshire Council Website, the Group have been informed that a greater range of information will now be available. The new system will ensure that a wide range of information concerning an application can be down-loaded to the individual planning file and that a comprehensive web-based file is then available to all users. During the latter period of undertaking the review the new planning web pages have become operational.
15. The Group appreciate that in addition to planning applications the planning system involves a wealth of plans; strategies, policy documents consultation documents etc. many of which can be confusing to the general public. The Group consider that any information, including planning information, must be presented clearly with minimal use of acronyms. It should also be structured so that planning information can be navigated in an intuitive way from the home page.
16. Consideration should be given to publicising the various aspects of the planning service for example an article in Herefordshire Matters.
17. Elected Members, whether Herefordshire or Town & Parish Councillors, are in the community talking to their constituents and attending meetings and, as mentioned elsewhere in this report, it is important that they are adequately trained and understand their role in the system so that a clear message is conveyed to the public.

Recommendation 2

That the Council's planning website be designed to provide the maximum clarity and ease of use.

Recommendation 3

Opportunities should be taken to explain to the public in plain English about the range of services offered by the Planning Service and how the public can interact with the Service.

Recommendation 4

The Group consider that all councillors should attend training with regards to the use of the planning web site, where it will be used "live" for demonstration purposes.

Question 3 How have requests for redirection of application to Committee been handled, and what are the areas of tension?

Member Questionnaire

18. The comments received seem to indicate a general acceptance of the redirection system, however, further training on the detail of the system would be appreciated. Questions were raised regarding where the 'final decision' to redirect rests and the timeliness of dialogue between the case officer and ward member(s) concerning applications.

The Constitution

19. In accordance with the Constitution (para 4.8.4) many planning applications are delegated to the Chief Executive and determined by planning officers acting under the Chief Executive's Scheme of Delegation. Paragraph 4.8.4.2 of the constitution provides that Ward Member(s) may choose to ask that sensitive or controversial applications be 'redirected' for a decision by the Planning Committee. Redirection will generally be justified when set against para 4.8.4.5 of the constitution which principally related to:

- Unusual or sensitive planning issues;
- Unusually high level of public interest
- Significant change in planning policy

20. The Group consider that the criteria 'Significant change in planning policy' must also include any reference's, to the LDF, Town and Parish Plans and Neighbourhood Plans – emerging from the Localism Act 2011

21. The procedure for redirection is set out at 4.8.9 of the constitution

Statistics

22. The Group have been provided with statistics for the 2011 calendar year to 29 November indicating that 32 applications for redirection had been received. Of those 20 had been accepted and 12 had been declined. While this was far fewer than the previous year's total of 40, it was thought that the

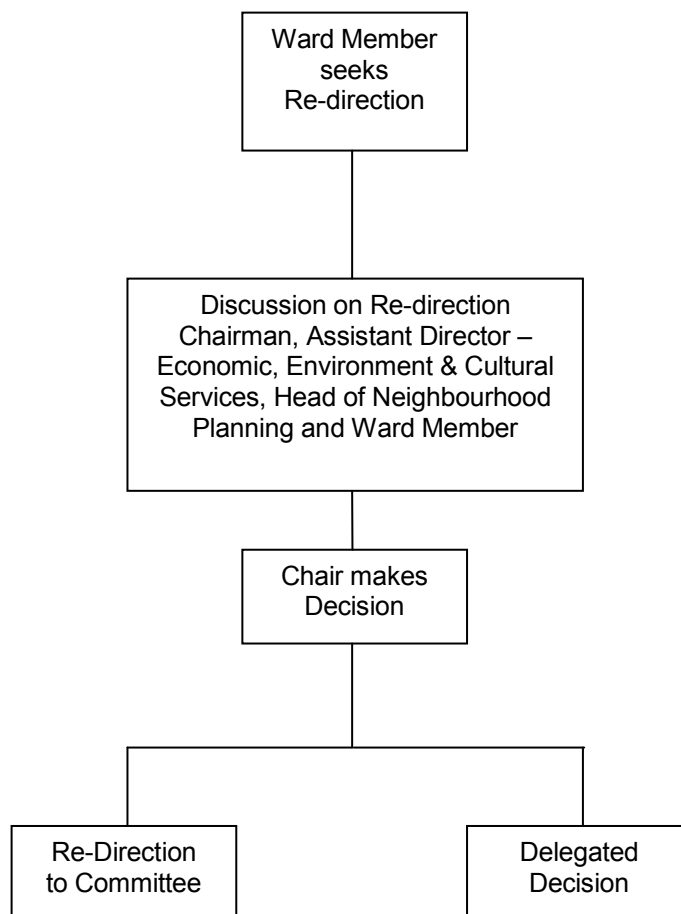
quality of the application for redirection had been higher as Members had become more familiar with the redirection process.

General

23. The Group have considered the current wording in the constitution; how the system has improved and how this relates to the range of comments received from Members. Under the current Constitution the final decision to redirect an application to the Planning Committee is made by the Assistant Director Economic, Environment and Cultural Services.

24. The Group are of the opinion that a request for redirection should continue to be submitted to the case officer, that request should then be discussed between the Chairman and the Assistant Director Economic, Environment and Cultural Services or the Head of Neighbourhood Planning. The Chairman and or officers will then discuss the matter with the Ward Member. The final decision whether to redirect should then be made by the Chairman of the Planning Committee acting apolitically, as this would reflect the democratic process.

25. New Proposal



Multi-member Wards

26. On occasions Councillors representing multi-member wards may have a differing view over an application. If one member in a multi-member ward requests a redirection then the application for redirection is processed in accordance with the redirection process. The Group agreed that members, whether in multi-member wards or with adjacent ward members, need to apolitically work together to ensure that contentious issues are discussed and a possible compromise is identified. The Group agreed that this is easier to discuss at a meeting with the Case Officer than by correspondence.

Recommendation 5

The Monitoring Officer be requested to prepare a report to the Audit and Governance Committee to prepare proposals to amend the Constitution to reflect that the Chairman of Planning Committee, or in his absence the Vice-Chairman, makes the final decision on whether a planning application is redirected to Planning Committee.

Recommendation 6

The Planning Guidance to officers be amended to reflect that where the Case Officer is aware of differing views between the local Ward Member(s) concerning a particular application, then all appropriate ward members be invited to discuss those views with the Chairman and Case Officer in an apolitical manner with a view to reaching a consensus.

Question 4 Are there ways of raising the profile of ward members in relation to planning matters?

Member Questionnaire

27. A number of comments suggest including ward member details in the letter to the applicant.

General

28. The Group noted that the profile of the Ward Member must evolve as the implications of 'Localities Working' become clearer. Individual Members need to ensure that they keep up to date on planning procedures to ensure that they are able to convey accurate details to their ward constituents. Ultimately it is up to the individual Member how their public profile is portrayed.

Question 5 How effective is the Council in communicating Planning Procedures to the public?

Member Questionnaire

29. Responses to the question were: 0 Very Good; 7 Good; 13 Poor; 1 Very Poor; 2 unable to comment. A range of comments were received mostly suggesting there was still room for improvement.

General

30. The Group agreed with the results of the member questionnaire. It was appreciated that many members of the public probably only get involved in the planning process when they submit a planning application of their own or wish to object to or support an application. It is therefore essential that the information they receive is clear and easily accessible. The new planning website should make information on planning applications and strategic documents more accessible.
31. During the course of the review the Group were made aware that the Planning Advisory Service (PAS) were undertaking a national customer satisfaction survey. At a local level this involved PAS sending over 600 postcard questionnaires to local planning applicants and planning agents. The Group considered that the results would provide an independent opinion of the service. The Planning Advisory Service has recently released their report and the local results have been presented to the Group. (Appendix 4) The Group noted that Herefordshire was above average in all 6 of the questions and are of the opinion that Herefordshire's results were favourable when compared against its benchmarking group.

Recommendation 7

That consideration be given to enhancing the direct link from the home page of the Council's website to the planning application web pages.

Member questionnaire issues not covered above

32. In the questionnaire Herefordshire Members were also asked 'how would you rate your level of understanding of arrangements for dealing with planning applications and engagement in the planning procedure?'
33. Responses to the question were: 8 Very Good; 10 Good; 5 not so good; 0 not at all good; 0 unable to comment. Comments seem in the main to be that Members feel that there is a good level of understanding of the subject but refresher training, principally on practical rather than theoretical matters, would be appreciated particularly for those members not on the Planning Committee.
34. Members were also asked 'overall what do you think of the current arrangements for dealing with planning applications?'
35. Responses to the question were: 5 Very Satisfied; 10 Satisfied; 8 Slightly dissatisfied 0 Very dissatisfied. A range of comments were received relating to the redirection system; the part played by Town & Parish Councils in the planning system; decisions made under delegated powers and a lack of individual ward based knowledge on the Planning Committee.
36. Many of the key issues identified in response to the above two questions are considered elsewhere in this report.

Other Issues Considered

37. During the course of the review the following issues have also been considered:

Decisions against officer Recommendation

38. The Group considered instances when the Planning Committee had decided applications against the officer recommendation. It was agreed that while this was perfectly permissible it could be very confusing for members of the public particularly when unsubstantiated by valid planning grounds.

39. The Group consider that it should be perfectly feasible for any member, or members, who may be minded to vote or speak against officer recommendation, to consult with the case officer prior to the meeting to discuss and formulate, if possible, a case for challenging the officers that was supported by valid planning grounds. In Committee the member, or members, would then consider the case and if still minded to vote against the recommendation they could then present their reasoned case, which may then form the basis of any recommendation. The Group consider that introducing this practice would ensure that any decision against recommendation would: give greater clarity to the reasoning for the decision, be presented in a professional manner, and help maintain the Councils reputation.

Recommendation 8

The Monitoring Officer be requested to prepare a report to the Audit and Governance Committee to prepare proposals to amend the Constitution to reflect that a member(s) who may be so minded to vote against an officer recommendation must wherever possible consult with the Development Manager prior to the Planning Committee to prepare a written response using sound planning terms for submission at the Planning Committee. Therefore 4.8.2.10 must be deleted from the constitution.

Herefordshire Council Member Training

40. Following the local Council elections in May 2011 training on planning issues was offered to Herefordshire members. The Group considered that training was essential as it:

- Assists the local member in their ward work;
- Ensures that the local member can confidently and authoritatively contribute to Town or Parish Council meetings or other public meetings;
- Enables the member to act as a substitute for a member on the planning committee
- portrays a professional image to the public and upholds the reputation of the Council

41. Having considered the results and comments arising from the member questionnaire the Group are very conscious that all members of Herefordshire Council need to keep up to date with planning issues.

42. The Group also urge that training be given on how to access and use the new web based planning information system.
43. The Group considered occasions when a Herefordshire Councillor may also be a Town or Parish Councillor (dual hatted) and concluded that clarification of the separate roles should be included in any general planning training sessions.

Recommendation 9

All Members of the Council to be given refresher training on the planning system, particularly in the areas of: accessing and using the new planning website; pre-determination, clarification of the dual hatted role of some members, and the redirection process.

Town & Parish Council Training

44. The Group appreciated that a degree of training on planning issues had been provided to Town & Parish Councillors by Herefordshire Association of Local Councils (HALC) and that the Planning Service had responded to invitations from individual Town or Parish Council's to give presentations on planning issues and process. However, the Group were also aware that there was still a degree of confusion or frustration within some Town & Parish Councils over their role in the process; what was expected of them and why Herefordshire Council didn't always appear to take account of their input.
45. The Group are aware that further changes to the planning system will arise from the Localism Act and the Community Infrastructure Levy and this will provide an opportunity for further professional training to be given to members of Town & Parish Councils. The Group have been informed that a degree of training in these areas had commenced.
46. The Group also considered it appropriate that a short planning guidance note be provided to the Clerks and Planning Committee chairs of Town & Parish Councils to be used as a reminder of their Councils role in the process and the aspects they are invited to comment on.
47. In common with the Herefordshire members, the Group also urge that training be given to Town & Parish Councils on how to access and use the new web based planning information system.

Recommendation 10

In view of the enhanced responsibilities arising from the Localism Act Town & Parish Councils should take the opportunity to provide further training for their members on the planning system including guidance on using the new planning website.

Recommendation 11

That a short planning guidance note be provided to Clerks and Planning Committee Chairs of Town & Parish Council's for use as a reminder of their Council's role in the planning process and the aspects they are invited to comment on when relevant committee's are in session.

Charging for pre-application advice

48. The Group briefly questioned the introduction of charging for pre-application advice, as set out in the 'Pre-Planning Application Advice Service Guidance Note' and available from the Council's web site. The Group noted that charging had been agreed by Cabinet on 30 June 2011 (report on Income Proposals & Charging Proposals) and was in line with the majority of other authorities. The Group have been informed that since the introduction of the charges there had been a reduction in the number of abortive enquiries and this had made it possible to ensure an increased level of service/guidance to genuine applicants. The charging of a fee had now been accepted and the service was being used by local agents who generally appreciated the quality of the advice. Customers appreciated that pre-application advice could pre-empt, in a cost effective way, any major problems when submitting their application. In addition the fee was also providing an income stream to support work which previously had been free.

Retrospective Planning Applications

49. The issue of retrospective applications can create a high degree of public unrest as it is seen as flouting the planning procedures. The Group noted that for a variety of reasons, whether intentionally or by accident, some development works were commenced before a planning application had been submitted or granted. This in itself is not a criminal act, however, Herefordshire Council in common with other authorities have been lobbying government to reverse this to make enforcement action easier to undertake. The Group have been informed of the procedures in place concerning retrospective applications and advised that in many cases officers in the planning service may already be investigating such cases and that enforcement action was taken where appropriate.

50. The Group noted that the level of planning fees was set nationally but that the Council were proactively lobbying for fees to be set at a local level. In relation to retrospective application fees the Group appreciated that there was a difference between persistent offenders i.e. those that deliberately went ahead with development knowingly they should have applied for permission, and those making a genuine mistake and the Group considered that this should be kept in mind should the level of planning fees be set locally.

Recommendation 12

Should Herefordshire Council be in a position to set the level of planning fees then a degree of flexibility should be built into the fee structure to penalise retrospective applications but acknowledge that genuine mistakes are sometimes made.

Planning Enforcement Issues

51. The Group discussed a number of issues relating to planning enforcement and noted that Herefordshire Council follows government guidance contained in Planning Policy Guidance 18 (PPG18). Some authorities take a differing view to its interpretation – more relaxed or more extreme – which may then relate to the level of resources that authority devoted to enforcement activity.
52. The Group considered whether the public and Town & Parish Councils understood the enforcement process and timescales. The Group were aware that in many instances the public perception was that enforcement action either wasn't being undertaken or that it was exceedingly slow. The Group fully appreciated that enforcement wasn't as clear-cut as the public may think. The Council's Enforcement Team had to collect evidence and build a legal case to support any action and due to the complexity of the statutory process some cases could take years to conclude. In some instances enforcement action had commenced and a new planning application had been submitted thereby putting the enforcement on hold until the new application had been determined. The Group appreciated that while there was no legal requirement for the Council to undertake planning enforcement, the Enforcement Team were operating within the resources available and therefore prioritising cases accordingly.
53. Ward Councillors should receive timely notification of enforcement cases in their ward, however, the Group suggest that this isn't always the case and this may need to be included in the revised Planning Enforcement Policy.
54. The Group agreed that further training was needed, for both Herefordshire and Town & Parish members, on how the Planning Enforcement Policy (currently being updated) was applied and what 'tools' were available in the 'enforcement tool kit' to tackle problem cases.

Recommendation 13

Planning Enforcement Officers must ensure that Ward Members receive regular updates throughout the course of an enforcement investigation or action associated with their ward.

Recommendation 14

In addition to the training set out at recommendations 9 & 10, Herefordshire members and Town & Parish Council members should also receive training on the Planning Enforcement Policy.

The Localism Act

55. During the course of the review the Localism Act has reached the statute book. While some parts have been enacted other parts have not and guidance is awaited. The Act contains provisions on a wide range of services delivered by local authorities, or in which councils might have an interest. Planning, housing, and governance are all covered. The Group are aware that the implications for the planning service and governance have still to be assessed and plans made for their implementation. The Group hope that any areas of the Act open to local interpretation will be guided by the recommendations in this report.

Recommendation 15

That the implementation of provisions in the Localism Act, open to local interpretation and covered by this report, be guided by the recommendations in this report.

Recommendation 16

The Group recommends that all Councillors attend a planning seminar on how the planning and governance implications of the Localism Act are likely to impact on their work as Herefordshire Councillors and as Ward Members.

The Council Constitution

56. The Group have made a number of recommendations which when accepted will necessitate amendments including deletions e.g. 4.8.2.10, to the various parts of the Council's Constitution to ensure the document as a whole is consistent.

TITLE OF REVIEW:	Planning System Review – Development Control and the Operation of the Constitution
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SCOPING

Reason for Enquiry

To explore the effectiveness of the new Constitutional provisions for Planning (development control) matters introduced in January 2010 and to make recommendations with regard to future modifications and/or amendments, to also include the way planning applications are dealt with by Herefordshire Council from registration to the final decision

Links to the Community Strategy

The review contributes to the following objectives contained in the Herefordshire Community Strategy, including the Council's Corporate Plan and other key plans or strategies:

This review relates to the themes of promoting self-reliant local communities and the long term outcome of enhanced local democracy and community engagement and the theme of commissioning the right services and the long term outcome of streamlined working practices.

Summary of Review and Terms of Reference

Summary

The review is to consider the effectiveness of the operation of the Constitution in relation to development control matters since January 2010

Terms of Reference

- To explore member understanding of and engagement in the arrangements introduced in January 2010
- To examine and ensure that all planning criteria are robust and will inspire public confidence in the council operating an efficient, timely, fair, robust, open and transparent system of determination based on good practice and effective decision making.
- To examine the effectiveness and performance of the Planning Committee arrangements since January 2010.

What will NOT be included

- The determination of individual planning applications.
- The working relationships between individual officers and individual members.
- The working relationships between ward members and parish councils.

Potential outcomes

To

- Identify areas where the 2010 changes are yet to be fully embedded.
- Propose detailed modifications/amendments to improve or streamline working arrangements of planning applications by the planning committee.

Key questions

To

- Have there been any changes to the working relationship generally between officers and members?
- How can the Council improve the way the public understands the Planning system in Herefordshire Council
- How have requests for redirection of application to Committee been handled, and what are the areas of tension?
- Are there ways of raising the profile of ward members in relation to planning matters.
- How effective is the Council in communicating Planning Procedures to the public.

Cabinet Member (s)

Councillor DB Wilcox

Key Stakeholders/Consultees

- Chairman/Vice Chairman of the Planning Committee (past and present).
- All Ward members.
- Development Manager/Area Team Leaders.
- Public

Potential Witnesses

- Chairmen of Planning Committee (past and present).
- Ward Members who have been successful or unsuccessful in requests for redirection of planning applications.

Research Required

Sample feedback from members.

Number of applications reported to Committee/length of meeting.

Number of requests for redirection (by month/ward etc.)

Webcasts

Potential Visits

To

- High merit in visiting a similar authority with a similar system in operation.

Publicity Requirements	
Launch of Review	
During Review	
Publication of the Review and its recommendations	
Herefordshire Matters	
Timetable	
<i>Activity</i>	<i>Timescale</i>
Collect current available data for circulation to Group prior to first meeting of the Group.	By Mid August
Confirm approach, programme of consultation/research/provisional witnesses/meeting dates.	First meeting of the Review Group. By End August??
Collect outstanding data	By mid September
Analysis of data	By mid to end September
Final confirmation of interviews of witnesses	By End August
Carry out programme of interviews	By end September
Agree programme of site visits	n/a
Undertake site visits as appropriate	n/a
Present interim report to relevant scrutiny \Committee, if appropriate.	TBC
Final analysis of data and witness evidence	By end November 2012
Prepare options/recommendations	December 2012
Present Final report to Relevant Scrutiny Committee	16 January 2012
Present options/recommendations to Cabinet (or Cabinet member (s))	17 January 2012
Cabinet/Cabinet Member (s) response (within two months of receipt of Group's report)	By Mid March 2012
Consideration of Executive's Response by the Overview and Scrutiny Committee	As soon as possible after the response is received.
Monitoring of Implementation of agreed recommendations (within six months of Executive's response)	September 2012

Members	Support Officers
Councillors: (Chairman of Review Group) Councillor P Watts	Lead Support Officer (Independent of the Service being Reviewed) Andrew Ashcroft - Assistant Director Economic, Environment & Cultural Services
Councillor K Guthrie Councillor J Hardwick Councillor RC Hunt Councillor Brig P Jones CBE Councillor MD Lloyd-Hayes Councillor GA Powell	Democratic Services Representative(s) Paul James
	Other support Officers Kevin Bishop – Development Manager Northern Localities (Planning),
Additional members of the Review Group	--

Documents in the initial pack or received during the review.

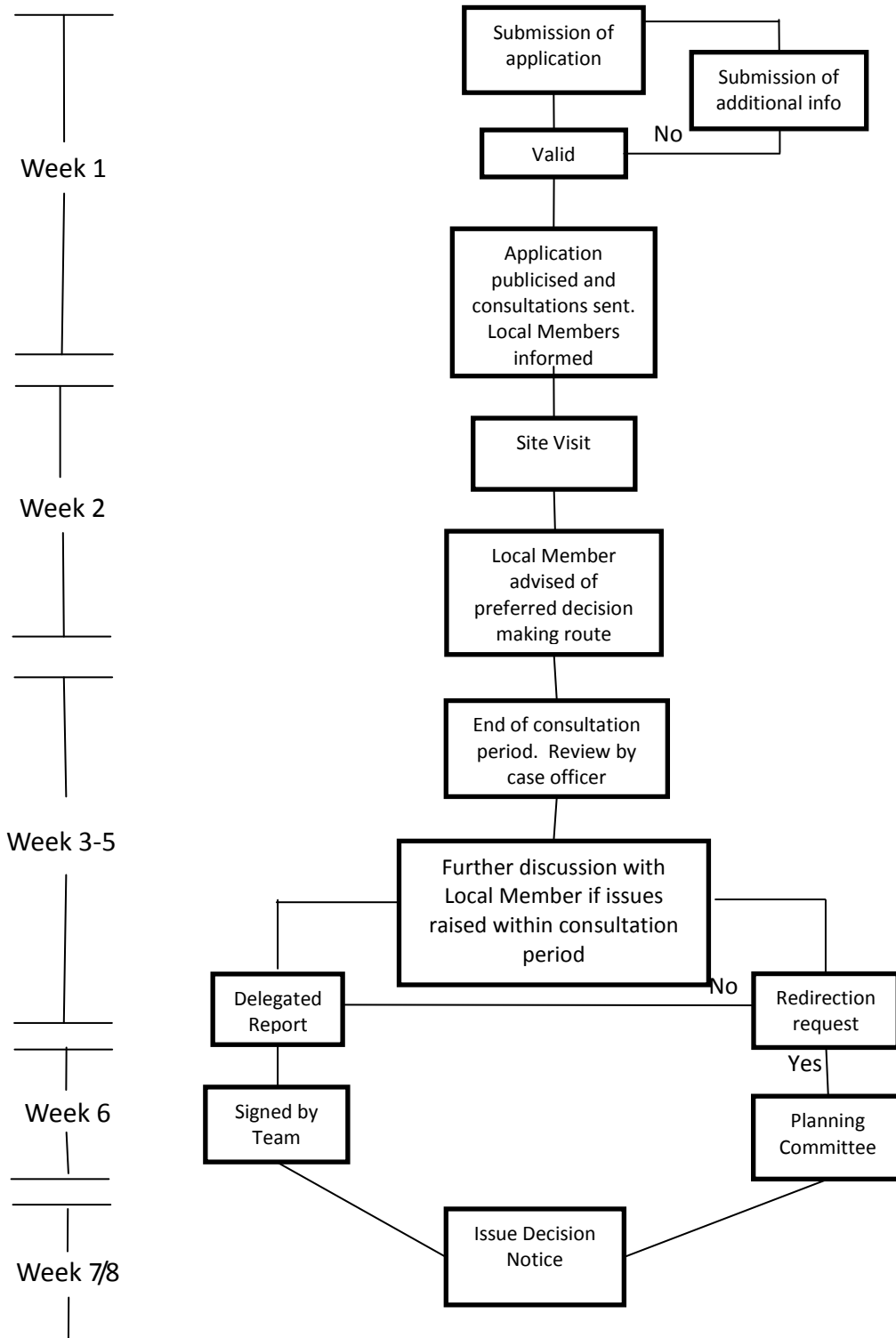
Initial Pack

1. The New Planning System
2. Revised Chief Executive's Scheme of Delegation
3. Development Management Statistics
4. Table of Planning Applications received
5. Flow chart identifying Decision Making Process
6. Registration Process
7. Web site information
8. Guide to Making Representations on Planning Applications
9. Public Speaking at Planning Committee

During the Review

10. Extract from Council Constitution Function Scheme concerning determining applications;
11. Statistics on the number of planning applications.
12. Pre-Planning Application Advice Service Guidance Note.
13. Results of the questionnaire to Members.
14. Local results from the Planning Advisory Service (PAS) national questionnaire.

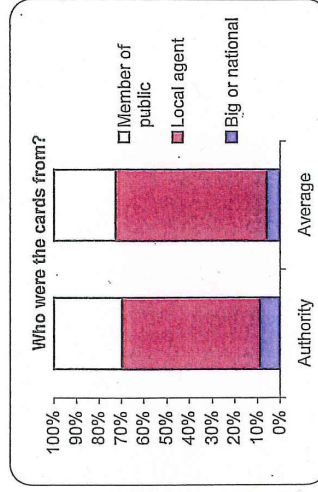
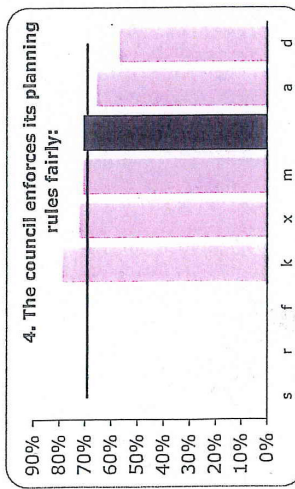
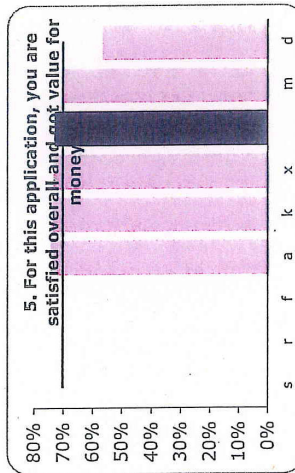
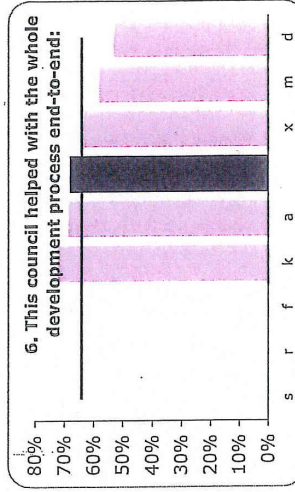
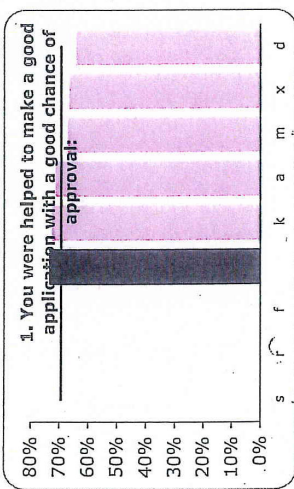
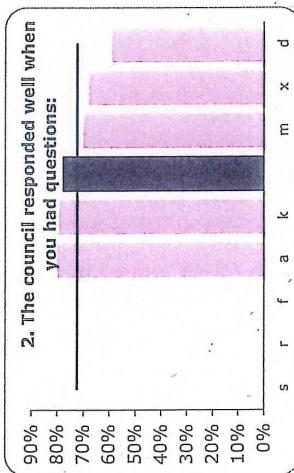
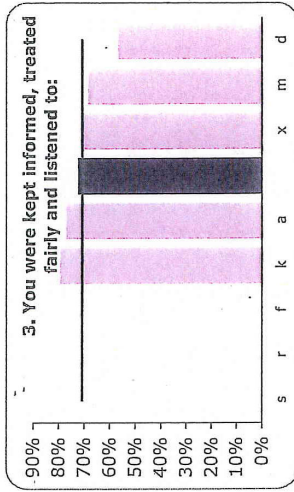
Processing of Planning Application



Extract from Planning Advisory Service Customer Satisfaction Report

CUSTOMER SATISFACTION - Comparison of Post-Card Scores.

Respondents with refused applications have been removed from the calculation of averages, as they had a disproportionate effect on scores. So, the calculation of satisfaction is only based on permitted applications.



m = Cornwall Council
 d = Forest of Dean DC
 a = Malvern Hills DC
 x = North Somerset DC
 k = Shropshire Council
 s = West Berkshire Council
 f = Wychavon DC
 r = Wyre Forest DC

_____ = average