

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