

WAVERLEY BOROUGH COUNCIL

ENVIRONMENT OVERVIEW AND SCRUTINY COMMITTEE
13 NOVEMBER 2017

EXECUTIVE - 28 NOVEMBER 2017

Title:

**PLANNING DEVELOPMENT CONTROL: PERFORMANCE AGAINST
GOVERNMENT TARGETS AND DEVELOPMENT CONTROL
IMPROVEMENT PLAN**

[Portfolio Holder: Cllr Chris Storey]

[Wards Affected: All]

Summary and Purpose:

This report provides an update on the Council's latest performance against the Government's targets for speed and quality for planning applications and appeals. It also presents the outcome of the Review of the Development Control Function that followed the Cratus Strategic Review. The Development Control review is included as Annexe 1.

The report includes recommendations for the improvement of the Service as a consequence of recent performance but also taking into account the conclusions of the Service Review. The recommendations include alternative timescales for implementation which vary depending on the availability of resources to carry out identified tasks.

Resource/Value for Money Implications:

Details of costs are included in the report. The 2018/19 Local Government finance settlement consultation indicates that the payment of New Homes Bonus could be directly linked to the Council's performance on appeals (quality).

The Government has indicated that Planning Authorities will benefit from a 20% increase in planning fees by the end of 2017. A further 20% increase may also be awarded to authorities that demonstrate compliance with criteria yet to be agreed by Government. This increase will help enable additional resources to be employed to implement this Plan.

Legal Implications:

All the relevant legal implications emanating from this report are comprehensively assessed and set out in the report and nothing further therefore requires to be added.

Planning Performance

1. As part of the Growth Agenda targets have been set by Government for Local Authorities in relation to both speed and quality for determining planning applications. Since the beginning of 2017, these relate to virtually all types/scale of application (split by major and non major).
2. The current targets are:-

Speed: no fewer than 60% of Major applications to be determined within their statutory target time (or extended timescale to be agreed with the applicant)

No fewer than 70% of Non-Major applications to be determined within their statutory target time (or extended timescale to be agreed with the applicant)

Quality: no more than 10% of major decisions should be overturned (allowed) at appeal as a % of the total of major decisions made.

No more than 10% of non- major decisions should be overturned (allowed) at appeal as a % of the total of non- major decisions made.

Under-performance against the targets is connected to the Government's "special measures" regime. Local Authorities that under perform are capable of becoming designated under S62A of the Town and Country Planning Act (as amended) with the effect that powers of determination are effectively withdrawn and applicants are entitled to apply directly to the Secretary of State (PINS) for determination of applications.

3. Under most recent data which will be assessed by Government in 2018, Waverley's performance against these four indicators is as follows:-

Speed of Applications	Target	Numbers of Decisions made in time	Number of total decisions	%
Major	≥ 60%	131	134	97.76%
Non-major	≥ 70%	3396	3481	97.58%
Quality of applications (appeals allowed) (April 2015 to March 2017)		Number of total decisions	Number of appeals allowed	%
Major (current)	≤ 10%	125	8	6.4%
Final possible performance for time period including appeals not yet determined and refusals not yet appealed but having regard to the Farnham Neighbourhood Plan.	≤ 10%	125	13	10.4%
Worst case scenario including appeals not yet decided and refusals not yet appealed.	≤ 10%	125	20	16%
Non-major (current)	≤ 10%	3475	41	1.18%

Note:- Quality time period reflects that for application decisions by LPA not appeal date.

Comments on performance

4. The Council's current performance on speed of dealing with Major and Non-Major applications is excellent. This reflects careful project management and effective use of pre-application discussions to frontload the process when possible.
5. Similarly, the Council's current performance on Non-major appeals is well within target and does not give cause for concern. However, the Council's current performance on Major appeals is of significant concern. Against a threshold of no greater than 10% of appeals should be allowed, the Council's latest performance is 6.4%. Taking into account outstanding major appeals that could be allowed, including current refusals that could be appealed, the performance level could rise to 16%, clearly above the threshold for 'Special Measures'.
6. These outstanding appeals are:-
 - WA/2015/0771 - Land at Waverley Lane, Farnham
 - WA/2014/0391 - Land at Lower Weybourne Lane, Badshot Lea
 - WA/2015/1484 - Land to rear of Bindon House, Monkton Lane, Farnham
 - WA/2015/1381 - Sachel Court Mews, Alfold, Cranleigh (Springbok)
 - WA/2016/1224 – Land at South of Junction with Upper Old Park Lane, Folly Hill, Farnham
 - WA/2016/0339 - Tongham Road, Runfold, Farnham
 - WA/2016/1234 - Baker Oates Stables, Gardener's Hill Road, Wrecclesham
 - WA/2016/1323 - Farnham Park Hotel & Restaurant, Hale Road, Farnham
 - WA/2016/2456 - Land at Green Lane Farm, Green Lane, Badshot Lea
 - WA/2016/2116 - Chanrossa The Green, Horsham Road, Ewhurst
7. It is anticipated that those appeals within the Farnham Neighbourhood Plan area should be dismissed (7 in total). However, this clearly cannot be absolutely guaranteed since the Inspector (or Secretary of State) still needs to exercise the planning balance in each case.
8. Analysis of major allowed appeals has revealed the following key reasons for decisions:-
 - 5 year Housing Land Supply (5 YHLS) and the National Planning Policy Framework (NPPF) "tilted balance" in favour of development. This must be read alongside an absence of legal clarity regarding the application of policy guidance within the NPPF, which has, to a certain extent been clarified in a recent Supreme Court decision.
 - Visual impact and other matters of judgement
 - The absence or out of date nature of planning policy/Local Plan.
9. It should be noted that the main reasons for lost appeals relate largely to the out of date nature of the current Local Plan rather than the source of decisions i.e. Committee versus delegated decisions. It is anticipated that as progress is made on Part 1 and then Part 2 of the Local Plan, the Council will be able to demonstrate even better certainty of deliverability on sites in relation to the 5 YHLS and this should translate into improved success on major appeals.

10. The Government's guidance on "Improving planning performance" November 2016 states the following in relation to compliance with performance thresholds.

"25. before any designations are confirmed, local planning authorities whose performance is below one of the thresholds will be given an opportunity to provide clear evidence to justify corrections to any data errors and to set out any exceptional circumstances (supported by evidence) which, in their opinion, would make a designation unreasonable. A period of at least two weeks (as specified by the department) will be allowed for this and all such arguments will be taken into account before final decisions are made. Requests that exceptional circumstances should be considered are judged against two general tests:-

- (a) whether the issue affects the reasonableness of the conclusions that can be drawn from the recorded data for the authority, over the assessment period: or
- (b) whether the issue had a significant impact on the authority's performance, for reasons that were beyond its control.

26. The Secretary of State may also consider any exceptional circumstances which in his opinion would make a designation unreasonable. For example, the Secretary of State will take into account before confirming any designation whether he or she has made directions relating to or intervened in the local authority's Local Plan during the 24 month assessment period and considers that the intervention is likely to lead to an improvement in the speed and/or quality of the authority's decision making in the year following the assessment period."

Costs of Appeals

11. In addition to concerns regarding performance on major appeals and implications for 'special measures', the costs associated with defending such appeals, with appropriate technical consultants and legal representation through Counsel, are significant. Appeal costs associated with the defence of appeals over the last 2 years, have amounted to approximately £450,000. The Council has also had costs awarded against it in some circumstances where Inspectors have concluded the Council has behaved unreasonably. In a similar 2 year time frame to that of the above performance statistics, the Council has also paid out £51,000 of costs to appellants.

Implications of performance/costs

12. Measurement of Waverley's performance in respect of the targets has a number of implications:-

- Performance on speed and quality (non majors) is excellent .Waverley has complied with and significantly exceeded all three indicators
- In relation to major appeals, whilst the Council is currently complying with the indicator, going forward, there is a need to take urgent action to ensure avoidance of "designation" and "special measures"

- There is a need for Member training/officer workshops to reinforce the new target thresholds and implications for not meeting
- It is suggested that performance indicators are included on Planning Committee agendas
- Members should engage the pre-application process effectively to ensure all possible concerns are raised as early as possible to avoid unnecessary refusals
- Members need to recognise and engage the 'presumption in favour of sustainable development' (tilted balance) where it applies to avoid indefensible refusals.
- The Council needs to continue to progress Part 1 of the Local Plan as quickly as possible to provide a firmer basis for Plan led development and avoid the tilted balance on otherwise harmful development.

Development Control Improvement Plan

13. Aim 16 of the Cratus Strategic Review Plan identified the need for a Review of the Planning Service: in particular consider the following concerns:-

- Workload pressure;
- Recruitment and retention difficulties;
- The quality and accuracy of committee reports;
- The quality of pre-planning advice;
- The need to ensure applicants understand the Council's design standards;
- The need to consider external expert advice, including legal advice.

14. The Scope of the Review did not cover the effectiveness or resilience of the Council in terms of compliance with performance thresholds or the Special Measures regime, but largely concentrated on identifying and supporting more effective customer service and communication. In April 2017, Ransford Stewart of Stewart Consultants was appointed to carry out a review. This included:-

- Survey of applicants and Parish Councils regarding their satisfaction with the Planning Service
- Open invitation to Members to discuss issues and concerns (4 members took up an open invitation)
- Workshop with relevant Members, the Leader and Senior officers
- Identifying key themes

15. The key findings were:-

- A need for improved communication – keeping applicants informed, telling people about the Service, intelligence sharing with members and parishes
- Improvement of processes – flexing processes to respond to volume and complexity. Committee procedures and reports
- Staff – selection, recruitment and training

16. The Improvement Plan with, recommended actions, is attached at Annexe 1.

17. Officers have refined the Plan and inserted additional actions to reflect the overarching challenges of the need to meet Government targets and minimise costs in the light of budgetary pressures.
18. The Consultants' report suggested the need for additional staff resources to be allocated to support roll out of the actions with associated timescale; specifically, the report estimates that the Plan would require the whole-time commitment of two FTEs for successful implementation within the identified timescale.
19. The revised Plan includes recommended priorities for the actions (particularly having regard to the issues raised in the Section above on planning appeals performance and costs) and also options for timescales for implementation taking into account the availability of additional resources to support the Plan; or alternatively the option of seeking to implement it within existing resources.
20. The Plan includes a "RAG" annotation to illustrate progress on actions.
21. Since the publication of the original Draft Plan by Stewart Consultants, the Development Control Manager, Peter Cleveland, has resigned. The DCM post clearly has a critical overarching Project Management role for the implementation of the Plan. Urgent action is being taken to fill this post on an interim and longer term basis. The timescale for completing actions may be affected by the unintended interruption caused by this key vacancy while an appropriate permanent successor is appointed. In addition, discussions are continuing in respect of the most appropriate replacement IT system to support priority objective 2.

Recruitment and Retention

22. Whilst the Service Review and Improvement Plan did not make recommendations in relation to recruitment and retention of staff, Members will be aware that other initiatives have been put in place corporately to support these matters, including introduction of a bespoke pay scale for Planners and the ability to award a "Golden Hello" for difficult to fill posts. These have helped stabilise staffing in the Team for over a year or so, although recently a number of new vacancies have arisen as part of routine turnover.

Environment Overview and Scrutiny Committee

23. The Environment Overview and Scrutiny Committee considered this report at its meeting on 13 November 2017, and its comments and observations are set out below:
24. The Committee welcomed the report which they felt was reflective, open and transparent. The Committee made the following observations and recommendations:
 - Better communications were needed with Members about applications coming forward (eg at pre-application stage) so that there is an opportunity to input at an early stage; this was especially important for Parishes in the process of developing their Neighbourhood Plans who could find their planning undermined by applications submitted that they were not aware of.

- A forward plan of delegated decisions about to be made would be helpful for Members, as a last chance to call-in an application. The issue was raised particularly in relation to an application just under the threshold for Joint Planning Committee (<25 dwellings) that was approved under delegated powers.
- There was a feeling that applications were coming to Joint Planning Committee too soon, with too much information still outstanding or circulated in late updates which didn't allow Members time to take in the additional information, or ask questions.
- Notwithstanding the risk of failing to meet quality targets on major applications, it was important that the ability of Members to debate the merits of planning applications in public in the Council Chamber was not constrained. Members should not be 'running scared'.
- The Committee endorsed the recommendation for training for Officers and Members to support good decision-making. There were mixed views about including the performance against Government indicators within Planning Committee agendas, but on balance the Committee supported this recommendation.
- The Committee supported the recommendations in relation to the adoption of the Improvement Plan as the detailed service improvement plan, and the continued review of the timescales for implementation.
- The Committee felt that it would be helpful to Officers to have a 'Member Reference Group' with which they could consult on the detailed actions within the Improvement Plan, to ensure that they satisfied the requirements of Members, and to monitor progress. The Committee agreed to establish a Working Group to support Officers in the delivery of the Improvement Plan.
- The Committee felt that it was important the delivery of the Improvement Plan was resourced as a priority, and should not have to wait for the anticipated increase in Planning fees. There was a risk and a cost to not delivering the service improvements expeditiously, and the Committee recommends to the Executive that additional project management resource for 6-months should be procured.

Recommendation

It is recommended that

1. training for officers and members in relation to supporting the Council's compliance with Government appeals (quality) target be put in place;
2. performance against Government indicators be included within all Area Planning Committee agendas;
3. the Development Control Improvement Plan be adopted as the detailed service improvement plan for Development Management/Control;

4. the timescales for achievement of workstreams in the Improvement Plan be kept under review, taking into account the availability of resources to support implementation of the Plan;
5. regular updates on progress with the Plan's actions be discussed and agreed with the Planning Operations Portfolio Holder and a full update be reported to Executive in six months time (April 2018); and
6. authority be delegated to the Head of Planning Services, in consultation with the Planning Operations Portfolio Holder, to vire the additional income spending of the raised income from the expected increase in Planning fees to support implementation of the Development Management Improvement Plan and other appropriate improvements to the Service.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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