

# Planning Committee

**2.00pm, Wednesday, 14 October 2020**

## **Legal Review of Council Planning Processes - Implementation and Resource Impacts**

**Executive/routine**

**Wards**

**All**

**Council Commitments**

### **1. Recommendations**

1.1 It is recommended that Committee:

- 1.1.1 agrees the proposed implementation of the recommendations of the Legal Review as set out in Appendix 1; and
- 1.1.2 notes the resource impacts identified in Appendix 1.

**Paul Lawrence**

Executive Director of Place

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# Report

## Legal Review of Council Planning Processes - Implementation and Resource Impacts

### **2. Executive Summary**

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- 2.1 This report sets out how the recommendations of the Shoosmiths Legal Review of Council Planning Processes are being implemented and addressed and the resource impacts of doing so.
- 2.2 Some of the recommendations require Committee input. A workshop was held on 8 October 2020 to discuss these.

### **3. Background**

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- 3.1 On 24 October 2019, the Council approved a Motion submitted by Councillor Mowat which called for two things. This was subsequently referred to Planning Committee:
  - 3.1.1 a report detailing planning appeals from major sites which have been allowed; and
  - 3.1.2 an independent review of these decisions to determine whether the Council's approach to determining these sites aligns with national and local policy.
- 3.2 The Council's Head of Legal and Risk appointed Shoosmiths to undertake the review. It was decided that a firm outwith the Council's appointed legal framework should be tasked with the review, in order to be assured of a completely independent approach.
- 3.3 Shoosmiths undertook a process of interviewing relevant Council officers in Planning, Committee and Legal services and reviewed relevant policies and associated documentation.
- 3.4 The Shoosmiths report was reported to Planning Committee on 2 September 2020. At that meeting Committee agreed the following motion:
  - 3.4.1 Calls for a further report on how the recommendations of the Shoosmiths Report are to be addressed and implemented or rejected in two cycles; said report should set out resource implications of implementation and cross reference to any actions that have already been taken under the Planning

Improvement Plan; changes to the management of DM Sub Committee should be discussed with Councillors at a workshop.

## **4. Main report**

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- 4.1 There are 22 recommendations in the Shoosmiths report. These are set out in Appendix 1 and cover the following topics:
  - 4.1.1 Dealing with difficult applicants;
  - 4.1.2 Supervision and Support for Planning Officers;
  - 4.1.3 Correspondence submitted prior to the DM Sub-Committee Meeting;
  - 4.1.4 Debrief Process;
  - 4.1.5 Preparation of reports to the DM Sub-Committee;
  - 4.1.6 Legal advice (sought by planning officers);
  - 4.1.7 Legal advice (provided by in-house solicitors); and
  - 4.1.8 Elected members and the DM Sub-Committee.
- 4.2 Appendix 1 sets out how these recommendations will be addressed and implemented. Broadly it is intended to implement them in full. However, there are some matters that require input by Committee members. A workshop was held on 8 October 2020 with members to discuss these.
- 4.3 It is recommended that the proposed implementation of the recommendations of the Shoosmiths report as set out in Appendix 1 is agreed by Committee and that the resource impacts are noted.

## **5. Next Steps**

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- 5.1 Once agreed, the implementation of the recommendations will be incorporated into actions within the Planning Improvement Plan. These will be reported to Planning Committee as part of six- monthly update reports on the Improvement Plan.

## **6. Financial impact**

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- 6.1 As a result of the key recommendations in the Shoosmiths' report, an additional Planning Solicitor is being recruited, with resultant financial impact. Further resource implications resulting from the implementations of the recommendations will be contained within existing budget.
- 6.2 The remit for the independent review sought to identify areas of potential risk of financial impact to the Council from planning appeals and judicial reviews. Implementation of the recommendations will reduce that risk.

## **7. Stakeholder/Community Impact**

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7.1 An improved planning process will benefit planning applicants.

## **8. Background reading/external references**

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- 8.1 The full confidential report for Elected Members is made available via secure means.
- 8.2 Report to Planning Committee of 2 September 2020 on [Legal Review of Council Planning Processes](#)

## **9. Appendices**

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9.1 Appendix 1 - Proposed Implementation of Legal Review Recommendations.

## Appendix 1 - Proposed Implementation of Legal Review Recommendations

Ref	Recommendation	Proposed implementation	Resource Impacts
<b>Dealing with difficult applicants:</b>			
4.13 (i)	if it is identified that an applicant may be challenging in a negative sense senior planners should be deployed to either handle the application or support the case officer in their handling of it.	This recommendation will be implemented and incorporated as part of the Leadership and Management Theme of the Improvement Plan.	There is likely to be a positive impact which results from reducing the officer resource utilised in dealing with difficult applicants.
4.13 (ii)	If an applicant or their agent acts in an unacceptable manner towards any officer of the Council, then they should be excluded from any meetings involving officers that occur in connection with the application. In place of the applicant, professional advisors could be asked to attend meetings on their behalf.	This recommendation will be implemented and incorporated as part of the Leadership and Management Theme of the Improvement Plan.  Consideration will be given to updating the Planning and Building Standards Customer Charter to set out the expectations for customer interactions.	None - Incorporated as part of ongoing improvement actions.
<b>Supervision and Support for Planning Officers:</b>			
4.14 (i)	The allocation of major applications to case officers should be thoroughly considered, having regard to the nature and scale of the proposed development and the experience and skill-set of the case officer.	These recommendations are already partly implemented as part of the Performance theme of the Improvement Plan with a fortnightly cycle of management meetings on caseload and time performance monitoring now in place. Further work will be done by the management team to bolster this.	None - Incorporated as part of ongoing improvement actions.
4.14 (ii)	Senior managers should regularly review the applications being dealt with by their teams to identify where additional support or supervision may be required. Where necessary, senior management should be deployed to assist with the progress of applications.		
4.14 (iii)	Resourcing levels should be kept under constant review, particularly in teams that deal with a high-volume case load.		

Ref	Recommendation	Proposed implementation	Resource Impacts
<b>Correspondence submitted prior to the DM Sub-Committee Meeting:</b>			
4.15 (i)	New guidelines or procedures should be developed to ensure that material correspondence is properly considered by planning officers and by elected members before an application is determined.	Written procedures will be developed with input from Committee members via a workshop and with legal advice to ensure fairness to all parties with an interest in the relevant planning applications.	Additional time may be required for the consideration of planning application cases if more applications need to be continued at Committee. This will have a limited resource impact. There may also be an increased risk of appeals being made for non-determination which will result in additional officer time.
<b>Supporting information and internal consultee responses:</b>			
4.16 (i)	Where it does not already exist, the Council should provide clear and unambiguous guidance to applicants that any failure to provide the required supporting information will have an adverse impact on the period for determining the application. Robust pre-application consultation discussions should be used where possible to flush out potential issues and establish what areas require to be examined as part of the Council's consideration of the development proposals.	This will be incorporated into the formal pre application process and embeded with the use of processing agreements. This will be incorporated as part of the Perfomance theme of the Improvement Plan.	This should have a positive impact on resources by helping to speed up the overall timescales for determining applications.
4.16 (ii)	Internal arrangements should be established requiring internal consultees to provide their responses to applications in a considered and timeous manner.	This has already been identified as an action under the Continuous Improvement theme of the Improvement Plan and will be implemented.	This should have a positive impact on resources by helping to speed up the overall timescales for determining applications.

Ref	Recommendation	Proposed implementation	Resource Impacts
<b>Debrief Process: -</b>			
4.17 (i)	Where a planning application is subject to an appeal or legal challenge, it should be mandatory to have a formal debrief among the officers involved in the application.	This will be incorporated into the Performance theme of the Improvement Plan	The resource impacts of debriefing in relation to additional officer time / the cost of any additional legal advice will be outweighed by benefits of improved collective knowledge.
4.17 (ii)	A debrief should be carried out in connection with all major applications that are determined by the Council.	This will be incorporated into the Performance theme of the Improvement Plan	The resource impacts of debriefing in relation to additional officer time will be outweighed by benefits of improved collective knowledge.
<b>Preparation of reports to the DM Sub-Committee: -</b>			
4.18 (i)	The Council should consider a change to its style/model report to the DM Sub-Committee to ensure that all types of development are considered under the appropriate assessment framework.	The format of DM Sub-Committee reports is already under review as part of the Continuous Improvement theme of the Improvement Plan. This recommendation will be progressed in that context.	The resource impact of preparing a new report template will be absorbed as part of the improvement plan. It is anticipated that an improved report will save time in Committee Report preparation. Greater clarity in reports should assist members in decision making.
<b>Legal advice (sought by planning officers): -</b>			
4.19 (i)	A clear procedure or guidance should be formulated so that legal advice is sought by planning officers in appropriate circumstances and at the most appropriate time.	Planning and Legal Services will prepare a framework for the circumstances and time at which legal advice should be sought. This will be incorporated as part of the Continuous Improvement theme of the Improvement Plan.	The impact of preparing this will be outweighed by the consequential reduced risk of legal challenge.

Ref	Recommendation	Proposed implementation	Resource Impacts
<b>Legal advice (provided by in-house solicitors):</b>			
4.20 (i)	Where possible legal advice should be provided in written form. The advice should contain reference to the issue raised, the legal framework relating to it, the application of the law to the circumstances, and a conclusion. Extracts from cases and legislation should not be provided without an explanation as to what the terms mean, and how they would apply to the circumstances.	This recommendation will be progressed by Planning and Legal services as part of the Continuous Improvement theme of the Improvement Plan.	The majority of advice is provided in written form already. It is not anticipated the implementation of this will have any significant resource impact.
4.20 (ii)	It is incumbent on in-house solicitors to ensure that no planning officers leave meetings uncertain about either the legal advice that has been provided, or the next steps in the process.	This recommendation will be progressed by Planning and Legal services as part of the Continuous Improvement theme of the Improvement Plan.	None anticipated.
4.20 (iii)	Where in-house solicitors feel that the questions being asked of them are outside their range of expertise or there are capacity issues then those matters should be referred to panel solicitors.	This recommendation already happens with external solicitors engaged where additional expertise or capacity is required.	No additional impacts.
4.20 (iv)	A solicitor should attend all meetings of the DM Sub-Committee.	Options surrounding this recommendation will be discussed with members of Committee at a workshop and the outcome of this will be taken forward accordingly.	Fully implementing this will impact on the solicitor's time both at Committee and in advance in relation to preparatory work. There is likely to be reduced risk of legal challenge. Recruitment for an additional planning solicitor is currently underway.

Ref	Recommendation	Proposed implementation	Resource Impacts
<b>Elected members and the DM Sub-Committee:</b>			
4.21 (i)	Compulsory training should be provided to each member of the DM Sub-Committee at the time they are appointed. Elected members should be discouraged from participating in the decision-making of the DM Sub-Committee until they have completed the relevant training.	All Committee members are provided with training at present. This recommendation will be discussed with members of Committee at a workshop and the outcome of this will be taken forward accordingly.	No additional impacts.
4.21 (ii)	Any member elected convenor of the DM Sub-Committee should receive comprehensive training and support.	Options surrounding this recommendation will be discussed with members of Committee at a workshop and the outcome of this will be taken forward accordingly.	No additional impacts.
4.21 (iii)	Elected members should receive compulsory training on the role of a planning officer, to ensure that the DM Sub-Committee is aware of the work that they carry out, and the expertise and skills that they possess.	This recommendation is already incorporated as part of training provided to members. This aspect can be amplified as part of the training in 4.21 (i) above. To be discussed with members of Committee at a workshop and the outcome of this will be taken forward accordingly.	No additional impacts.

Ref	Recommendation	Proposed implementation	Resource Impacts
	4.21 (iv) As a general rule, Elected Members unable to attend a site visit should be excluded from participating in the determination of the planning application. A clear exception to the general rule would be where a site visit raises issues of accessibility for any elected member. Further exceptions to this may be where (i) a member is the ward councillor for the application site, and therefore could reasonably be assumed to have sufficient knowledge of the site; and (ii) where an elected member cannot attend the site visit because of competing material demands on their time. Consideration should be given in those circumstances as to whether alternative tools can be utilised to ensure that elected members are familiar with the site – for example, whether it would be possible to have a virtual tour of the site.	Options surrounding this recommendation will be discussed with members of Committee at a workshop and the outcome of this will be taken forward accordingly.	There may be additional resource impacts resulting from any officer time in additional site visits or preparing additional material for Committee
	4.21 (v) The introduction of a form of “pause” mechanism to committee procedures. This would either take the form of a break in proceedings for a prescribed period of time at the instance of a planning officer, solicitor, or clerk. This would enable officers to clarify factual issues or planning matters with members.	Options surrounding this recommendation will be discussed with members of Committee at a workshop and the outcome of this will be taken forward accordingly.	None.
	4.21 (vi) Where the DM Sub-Committee takes a decision that is contrary to the recommendation of the Chief Planning Officer, members should be reminded that they can only overturn that recommendation for proper planning reasons. A procedure should be introduced to enable individual members to check the proposed reasons for their prospective decision with planning officers and/or solicitor at the end of the debate section, before the committee moves to a vote. This would help ensure that the committee is effectively exercising its planning judgment and that its decisions are supported by proper planning reasons.	Options surrounding this recommendation will be discussed with members of Committee at a workshop and the outcome of this will be taken forward accordingly.	This should have a positive impact on resources by helping reduce the risk of a successful planning appeal or legal challenge.