

Planning Committee

2.00pm, Wednesday, 26 February 2020

Legal Review of Council Planning Processes

Executive/routine
Wards
Council Commitments

1. Recommendations

- 1.1 It is recommended that Planning Committee:
 - 1.1.1 Notes the progress that has been made on the requested Independent Review and the anticipated timescales for its completion; and
 - 1.1.2 Approves that the completed review be reported to the soonest possible Committee meeting following receipt by the Council's Head of Legal and Risk of the report by the independent solicitor, being no later than the Committee on 5 August 2020.

Stephen S. Moir

Executive Director of Resources

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Report

Legal Review of Council Planning Processes

2. Executive Summary

- 2.1 This report seeks approval for a further period, until no later than 5 August 2020, to complete the independent Review and report on the findings and recommendations. To properly complete the requested review, and to also take this opportunity to review Councils broader practices in planning assessing applications, an independent solicitor who has the necessary planning expertise has been appointed.
- 2.2 The independent solicitor is in the process of examining cases from the last few years, the Council's internal processes and interviewing a comprehensive range of relevant officers. The independent solicitor is currently due to report his findings to the Head of Legal and Risk by 31 March 2020.
- 2.3 The detailed report on the review required by the Council motion of 24 October 2019 will be informed by these findings and will be presented to the Committee by the Head of Legal and Risk, if possible, on 13 May 2020, but failing that on 5 August 2020.

3. Background

- 3.1 The Council, in accordance with officer recommendation, refused West Craigs Planning Application 16/04738/PPP for up to 1400 houses on 20 April 2017. The decision was appealed to the DPEA (appeal number PPA-230-2207). After substantial written and hearing procedure the DPEA granted the appeal on 26 September 2019. In addition, the DPEA, on 3 October 2019, unusually awarded almost full expenses against the Council for the entire appeal.
- 3.2 At the Meeting of full Council on 24 October 2019 Councillor Mowat made the motion that:
"Council:
Notes with concern the decision against the Council in the Claim for an Award of Expenses in the Appeal PPA-230-2207 which found that: -
 - "the council has acted in an unreasonable manner resulting in liability for expenses,
 - although the committee report is correct it does not fairly or accurately reflect the terms of the application,
 - it was unreasonable for the council not to advise members of the purpose for which the greenbelt land was included and in short this was a case that should have never come to appeal"

Considers this an extremely serious finding against the Council and calls for a report detailing planning appeals for major sites which have been allowed; and for an independent review of these decisions to determine whether the Council's approach to determining these sites aligns with national and local policy."

- 3.3 At the Council meeting Councillor Mowat clarified that:
 - 3.3.1 the independent review could mean an internal review conducted by a different department (and directorate) from Planning;
 - 3.3.2 the results of the independent review should be reported to the planning committee in 2 cycles time;
- 3.4 The Council Motion was passed unamended.
- 3.5 The Legal and Risk Division of the Resources Directorate was requested, as a division independent from Planning, to report back to Planning Committee on the Independent Review.
- 3.6 This meeting of 26 February 2020 is the Planning Committee occurring 2 cycles after the Council meeting of 24 October 2019.

4. Main report

Scope of Review

- 4.1 Councillors understood in requesting the independent review that it was critical not to undermine developer and public confidence in individual decisions already taken by the planning authority, particularly where planning permission has already been granted. The independent review will accordingly use a sample of cases for major sites as a basis for its overall findings and recommendations for how the planning authority handle and determine applications in the future. To ensure this the findings of any independent review in relation to any single specific major cases will remain confidential.
- 4.2 The Head of Legal and Risk considered the qualifications required to effectively carry out the independent review requested. It was considered that an expert in planning and the legal issues pertaining to planning was required. In addition, it was considered critical that the expert was not someone engaged in providing legal advice to the Council's Planning Service, nor someone that has acted for developers in any of the recent major site applications. To meet this remit, it was considered appropriate to appoint an independent solicitor, who is a planning law partner in private practice, to carry out an independent review and report back to the Council's Head of Legal and Risk.
- 4.3 There will be an financial impact for appointing an independent solicitor. To ensure best value, the Executive Director of Place was consulted about the scope of this appointment and it was agreed that it would be useful for the scope of the review to be widened:
 - 4.3.1 to encompass the broad range of planning applications handled by the Planning Service; and

- 4.3.2 to consider how the identification and processing of high-risk applications can be improved;
- 4.4 This broader appointment scope is considered to represent Best value, as it:
 - 4.4.1 should enable the Council to improve its identification of high-risk applications, so that limited resources can be better focussed to effectively manage any associated risks;
 - 4.4.2 reduces the risk that issues with the Planning Authority's current approach to applications sitting just outside the ambit of the review identified in the motion are not identified and addressed;
 - 4.4.3 enables the Independent Solicitor's Review Report to be used to inform whether any broader improvements and reforms are necessary across the wide range of planning applications handled by the Planning Service.

Progress

- 4.5 An Edinburgh based planning law Partner was given detailed instructions on 28 November 2019. They have been given a deadline of 31 March 2020 to report back to the Head of Legal and Risk with their findings and recommendations. Such a period was considered necessary to give them enough time to gather and consider all the relevant information, conduct all necessary interviews and prepare the detailed report.
- 4.6 An initial meeting took place between the appointed solicitor and senior representatives of Legal, Place and Planning on 16 December 2019 to answer initial questions.
- 4.7 Since 16 December 2019, the Council's Chief Planning Officer and Senior Planning Solicitor have endeavoured to clarify any questions the appointed solicitor has and to provide him with all additional materials he requests in a timeous fashion.
- 4.8 During the course of the last month the appointed solicitor has carried out interviews with officers that he considers relevant to concluding his review. This has encompassed a wide range of personnel including planning officers, senior planning officers, Planning Team Managers, Committee Report Editing Managers, the Chief Planning Officer and Council Solicitors.
- 4.9 The Appointed solicitor remains on schedule to conclude his review and report to the Council's Head of Legal and Risk by 31 March 2020.

5. Next Steps

- 5.1 On receipt of the independent appointed solicitor's report, the Council's Head of Legal and Risk will consider its findings and recommendations and then report them to Committee.

- 5.2 The Council's Head of Legal and Risk will endeavour to compile and submit a detailed Report to address Councillor Mowat's approved Council Motion to the next Planning Committee meeting following receipt of the independent appointed solicitor's report but in any event no later than 5 August 2020.

6. Financial impact

- 6.1 There will be a financial impact in appointing an independent solicitor to carry out this comprehensive review. However, this is considered to be a necessary expense to ensure that a truly independent and comprehensive review is carried out by someone with the correct skills and experience.
- 6.2 The review should enable the Council to improve its identification of high-risk applications, so that limited Council resources can be better focussed to effectively manage risk.
- 6.3 Improving processes as a result of this review has the potential to reduce the prospect of successful appeals and related claims of expenses for Council Planning Decisions.

7. Stakeholder/Community Impact

- 7.1 If improvements can be made to processes as a result of this review, there is the potential to improve public confidence in future individual Planning decisions. For public confidence to be improved, it will be important to consult with relevant stakeholders and the community on any proposed changes prior to finalising and implementing them. The detailed report will contain recommendations on how any such consultation can best be carried out.

8. Background reading/external references

- 8.1 [West Craigs Planning Application Report \(Application number 16/04738/PPP\) dated 19 April 2017](#)
- 8.2 [DPEA Intentions Notice \(appeal number PPA-230-2207\) dated 30 April 2018](#)
- 8.3 [DPEA Decision Notice \(appeal number PPA-230-2207\) dated 26 September 2019](#)
- 8.4 [DPEA \(appeal number PPA-230-2207\) Award of Expenses Against the Council dated October 2019](#)
- 8.5 [Council Minute 24 October 2019](#), Item 18 – Claim for an Award of Expenses in the Appeal PPA-230-2207 - Motion by Councillor Mowat

9. Appendices

- 9.1 None.