

24 March 2015

Ordinary Council

Modern Planning Report

Report of: *Gordon Glenday, Head of Planning and Development*

Wards Affected: *All*

This report is: *Public*

1. Executive Summary

- 1.1 In this report are proposals for improved delivery of the Council's planning services for recommendation to full Council, where necessary
- 1.2 The proposals focus on the current system of delegation of decisions of planning applications and enforcement cases and sets out an alternative process as explained in the Appendices to this Report.

2. Recommendations

- 2.1 That all planning decisions to be delegated to the Head of Planning except for those retained to the Planning and Development Control Committee, or referred to as set out in the revised delegation arrangements and call-in referral protocols.**
- 2.2 The replacement of the weekly list production by email alert of validated applications and method of call-in of planning applications by Ward Members, Parish Councils or Chair /Vice Chair to Committee.**
- 2.3 That enforcement issues be determined having regard to the Planning Enforcement Plan when adopted.**
- 2.4 That revised planning protocols, delegation arrangements and other Constitutional changes to implement the above be adopted.**

3. Introduction and Background

- 3.1 The planning system has changed considerably since the 1980's; the thrust of current government thinking is a 'positive and proactive'

approach by local planning authorities when engaging with applicants and an emphasis on finding solutions to problems, encouraging the delivery of sustainable development. A modern planning service no longer seeks to restrict or 'control' development but to manage the process from the conception of a scheme at pre-application stage, to its delivery and compliance. Public participation entails a service to the public as well as applicants for permission, and use of technology is essential to achieve efficiency at moderate cost.

- 3.2 Planning decisions are currently delegated to officers only if they are reported first to members via the production of a published 'weekly list', a procedure which entails additional work and curtails available time. This system dates back to the early 1980's and is heavily process driven. In order for a decision to be issued within the government's target of 8 weeks (or 13 for a major application), an officer's recommendation must be ready for publication at least 10 days in advance of the target date and up to 21 days. This puts the Council at a self-imposed disadvantage in improving its performance, and out of reach of the top quartile of best performing authorities in the Country. A common complaint from users of the planning service is that they have not been given opportunity to address the issues raised in reasons for refusal during the planning assessment period; equally, the opportunity for promoting good design, wider community engagement or exploring benefits that a development may offer is missed.
- 3.3 The current scheme of delegation constrains officer time, incurs production costs and hinders a positive approach to problem solving. Conversely, the national planning system places great weight on good quality pre-application discussions and front loading of applications; local planning authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage (para 189 NPPF, 2012). Because of the inflexibility of the current delegation process, valuable officer resource is focused not on pre-application stage, but on producing a recommendation driven disadvantageous target dates.
- 3.4 The current method for Member call-in relies on the publication of an officer's recommendation within a public document. At present only once a recommendation is published can a Member call-in the application to the Committee. This exposes Members to lobbying from objectors, applicants and agents and results in the call-in of applications which may be based on personal and subjective preferences rather than recognised national planning policy principles. This is wholly undesirable for Members of the Committee, who are required to keep an open mind on applications and be fair to both applicants and objectors. In any event, Committee Members should refer such approaches to other Ward Members.

- 3.5 Ward Councillors who are Members of the Planning Committee may attend pre-application meetings and ask questions but express no views on proposals. Thereafter Ward Councillors who are members of the Committee should remain impartial on applications which may come before the Committee. Concerns from residents should be passed to the case officer by Committee Members should not come to a firm view on such applications.
- 3.6 The Council's adopted Statement of Community Involvement refers to call in by Parish Councillors and Ward Councillors but is not transparent about the process. In Wards where there are Parishes it is hoped that there will be liaison between Borough Councillors and Parish Councils on applications which raise concerns. The Protocol recommended separates the roles of Ward Councillors who are Members of the Committee and as such may not call-in applications, and other Ward Members who may take a firm view on a particular application and if that Member considers there are Planning grounds for Call- in, complete a Pro Forma accordingly (Appendix D – example of completed pro forma).
- 3.7 As set out in the next section, Members who have an e-mail alert may notify local residents but should explain the governance issues for contacting Ward Councillors if residents have particular concerns. Members who have taken a firm view or championed a position for or against an application and signed Call in pro forma which has been accepted should not be a member of the Committee deciding the application or substitute for a Member of the Committee for the determination of that application.
- 3.8 The Chair of the Committee is appointed by Council has wide powers and responsibilities. Only the Chair can call-in applications from any ward in the Borough, after discussion with the Head of Planning- in his absence the Vice-Chair can act. It is proposed that the Vice-Chair should also have power to refer applications from a Single Member Ward if the Member is a Member of the Planning Committee.
- 3.9 Public opinion by itself is not a material planning consideration. The reasons for debate at the Committee should be for planning reasons of policy, development plan interpretation or evidence based concerns.

4 Issue, Options and Analysis of Options

- 4.1 The issue is one of improving the planning service through the streamlining of processes and procedures and the provision of a fully reviewed and updated pre-application service.
- 4.2 In order for officer resource to be able to focus on problem solving it has been necessary to identify the options for delegation of planning decisions in the most cost efficient way commensurate with good service to Members, applicants and public.

- 4.3 The option identified is to cease production of a weekly list and replace this with the daily email alert to Members of valid applications made within their Ward. This would be before the publication of applications on the public access system. Members will be able to note the validity and communicate but the opportunity for call-in pro forma completion for referral to Committee should rest with Members not on the Planning Committee. The option recommended is to revise the period for call-in of an application from day of validation to 7 days following the close of neighbour consultation. Appendix A of this report outlines the process for Member email alert, Appendix B details the call-in process and Appendix D example of completed pro forma.
- 4.4 The extended call in period will allow Members to enter into discussion with officers and raise issues which have been raised by their constituents with officers, prior to any formal recommendation.
- 4.5 A formal request for call-in will be agreed with the Chairman of Planning (or Vice Chairman in absence) following a discussion with the case officer and or Team Leader or Head of Planning. In Wards where there are Parish Councils it is hope there will be liaison if call-in is to be triggered.
- 4.6 The option relies on both Members and officers engaging in early dialogue and a proactive approach to problem resolution. The suggested option priorities Member notification of a new application and before it is publicised either on the Council's web site or via neighbour notification.

5 Reasons for Recommendation

- 5.1 The Council has a foundational basis for its Planning Service in historical constitutional arrangements, some of which date back to 1982. The need for review and update is urgent, therefore, as there is increasing risk of challenge from working with such out-dated procedures.
- 5.2 The removal of the weekly list will enable Members to get involved with applications at a much earlier stage in their process and work positively with officers as they make their technical assessments. The removal of the weekly list will result in efficiency savings

6 Consultation

- 6.1 Discussions with staff have been held in the preparation of this report. A draft of this report was sent to all Members of the Council on Monday 9 February.

7. References to Corporate Plan

- 7.1 Proposals in this report support the Modern Council theme of the Corporate Plan in making efficiencies and savings, while improving service delivery to customers.
- 7.2 The planning service itself supports the Prosperous Borough theme by its promotion of quality development and growth.

8 Implications

Financial Implications

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- 8.1 There are no specific financial implications in this report, although a review of the pre-application service and fees and charges is presented, subject to approval of this report.

Legal Implications

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- 8.2 Last year, the Openness of Local Government Bodies Regulations 2014 came into force. These require certain decisions made under delegated powers to be recorded and published on the web site when the effect of the decision is to grant a permission or licence, affect the rights of an individual, or award a contract or incur expenditure which, in either case, materially affects the Council's financial position. The written record required to be maintained for six years must contain:

- (i) The decision date
- (ii) The decision itself;
- (iii) The record of the decision itself;
- (iv) Any alternative options (if any) considered and rejected, and
- (v) Any declaration of conflict of interest by a member of the Council where express authorisation is being exercised.

For the great majority of the decisions made under the Planning statutory regime, items (i) – (iii) are already being done and do not have to be repeated, but items (iv) and (v) are still required to be added to the written record and published on the website subject to exceptions if confidential or containing exempt information.

- 8.3 The Call-in referral is not considered to be a decision under the Openness Regulations being rather a request for an internal procedure. However, openness and transparency are essential to public confidence by applicants and residents or other affected parties, and a pro forma setting out policy or evidence-based issues for examination is considered good practice and desirable to avoid possible criticism of inconsistency.
- 8.4 The recording of decisions on Planning Enforcement will be affected by the Openness Regulations as mentioned in the Enforcement Plan which has been through public consultation.
- 8.5 The changes in delegation, if approved will need to be programmed for report to the Council meeting on 25 March 2015.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

- 8.6 No other implications are identified.

9 **Background Papers**

- 9.1 Appendices to this report

10 **Appendices to this report**

- Appendix A – Member Notification e-mail alert
- Appendix B – Referral to Committee by call in procedure
- Appendix C – Protocol/ Guidance Note
- Appendix D – Example of completed pro forma

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Modernising Planning Service Report

Appendix A – Member Notification and Open Dialogue processes

Description of technology support systems:

Uniform – Planning application processing system

Planning Portal – Website where electronic submission of planning applications can be made

Public Access – Website where planning applications can be viewed, tracked and comments can be made

e-mail alerts – this is an internal system to provide Members with information for consideration. This may be tailored to member requests and allow for briefing updates on proposed decisions. Any response is a matter for the Member concerned

Dialogue:

Protocol and Pro formas – These are constitutional requirements in the interest of good governance

Pre-application meetings – Ward Councillors may attend with officers but any discussion between officers and Councillors is after the developer has left. The meetings are confidential. The formal advice of the Council as Planning Authority can be disclosed as Environmental Information, in accordance with guidance of the Information Commissioner.

Parish Council meetings – Parish Councils are statutory consultees for their areas and may have such meetings with applicants for Planning Permission, or with objectors or the public at large as they think fit

Informal meetings – Members of the Planning and Development Control Committee declare under the adopted Local Code of Conduct contacts with objectors and applicants and must not be biased in favour or against an application. Ward Councillors who take a firm advance position on an application should not be part of the Committee determining the application. Informal meetings can be very positive in resolving issues and reducing costs and uncertainty. Good practice is for an officer to attend.

Site meetings – These are in advance of the Committee meeting to enable the Committee to be informed of the existing situation and site context of all applications.

Enforcement enquiries or complaints – Enquiries or complaints may be made in confidence.

Objectives:

The Council seeks to adopt best practice of transparency, fairness and efficiency. All elected Members have public responsibilities and as Ward Councillors take up planning concerns for enforcement, attend pre-application development meetings with officers and are able to call-in planning applications for determination by Committee. Positive dialogue may reduce costs and uncertainty. Members of Planning Committees are trained and are bound by codes of conduct which apply only to Planning matters and may need in some circumstances to distance themselves from dialogue on matters which may come before the Committee.

Brief Overview:

Planning applications are received on a daily basis and are either manually entered on to the Uniform system or if they are submitted via the Planning Portal they are automatically entered on to Uniform. Once a planning application is received and entered, a validation process is followed ensuring that all the information has been provided in order to validate the application, following National guidance. If further information is required, a letter is sent via e-mail to the applicant or their agent requesting the missing information in order to make the application valid.

Once a valid date is entered on to Uniform the application is now published on Public Access, the submitted documents should be viewable the same day if not the following working day.

Process:

1. At first you will need to register on Public Access, of which guidance notes and training will be provided. Once you are registered, a search of valid planning applications within your ward will be undertaken and saved. A search would need to be saved in order for you to receive daily e-mail alerts of any new valid planning applications within your saved search criteria.
2. Planning applications always have a valid date entered before neighbour notifications are undertaken and this would result in you being notified of a valid planning application before the local residents are notified.
3. If you would like to receive an e-mail alert of any valid applications within the Borough or on a particular site, this is also possible, by saving a further search.
4. At present the e-mail alerts are sent at 9pm daily.
5. The inputting of the valid date is mandatory when validating a planning application and therefore it is unlikely that you will not receive an alert of a valid planning application.

6. The same day, if not the following day, the planning application documents should be viewable on line.
7. You can also track the progress of any planning application. Tracking the progress will then provide you with e-mail alerts on status updates throughout the progress of the planning application i.e such report writing and decision outcome.

APPENDIX A

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APPENDIX A

Modernising Planning Service Report

Appendix B – Member Call in process

Description of systems:

Uniform – Planning application processing system

Planning Portal – Website where electronic submission of planning applications can be made

Public Access – Website where planning applications can be viewed, tracked and comments can be made

Brief Overview:

From receiving the e-mail alert notification through Public Access, as a Ward Member, you will be given a specific length of time to discuss your concerns with the allocated planning officer. Having identified an application that you wish to refer to committee, you must contact the planning officer to alert them to your interest, which will be recorded against the application on the Uniform system. A formal request for call-in will be agreed with the Chairman of Planning (or Vice Chairman in their absence) following completion of the proforma.

Process:

1. From receiving the e-mail alert notification through Public Access, as a Ward Member, you will be given an extra 7 days from the Neighbour Consultation Expiry date to call in the planning application to Planning Committee.
2. The Neighbour Consultation Expiry date is viewable on Public Access and a further 7 days would be your expiry date from the initial neighbour consultation.
3. If neighbours are not notified and a site notice is displayed, then your extra 7 days will be from the Latest Site Notice Expiry date.
4. Having alerted your interest in an application with the planning officer, this will be recorded on the Uniform system (internal part only) for our records.
5. In some instances concerns could be addressed by negotiated improvement via amended plans. If any revised plans are submitted and you have raised concerns with the planning officer, you will be contacted to inform you of any revisions. If further neighbour consultations are undertaken due to revisions, your expiry date will not be extended.

6. If you decide to call in the planning application to the next available planning committee, you must have discussed your planning reasons with the planning officer and submitted the completed pro forma, sent to referrals@brentwood.gov.uk and also cc in the planning officer.
7. The referral mailbox will be checked daily. The decision to accept or reject the referral shall be made by the Chair or the Committee (or Vice Chair in their absence) after discussion with the Case Officer or Head of Planning and Development. You will be informed of the outcome of the referral request.
8. If no call in or concerns have not be raised to the planning officer, once your expiry date has passed, the application will be determined with delegation to the Head of Planning and Development.

Following implementation, production of the weekly informer list and planning decision list will cease, as these can also be obtained from Public Access.

Timeline of events:

Based on a standard 8 week application (56 days).

- | | |
|----------|--|
| Stage 1 | Application received |
| Stage 2 | Application validated, Member alert |
| Stage 3 | Neighbour consultation commences |
| Stage 4 | Neighbour consultation ceases |
| Stage 5 | Member call in date expires |
| Stage 6 | No pro forma call in received, decision can then be issued |
| Stage 6a | Pro form received and verified by Chair, case goes to next available committee |

Appendix C

PROTOCOL/GUIDANCE NOTE ON THE REFERRAL OF PLANNING APPLICATIONS TO COMMITTEE

- Only the Chair of the Planning and Development Control Committee can refer applications across the Borough, after discussion with the Head of Planning and Development. In the absence of the Chair, the Vice-Chairman may exercise this discretionary power. The Vice-Chairman may also act at the request of Single Ward Members who are also Members to the Committee.
- Ward Members not on the Committee (or not intending to participate in the decision) can refer applications to Committee after discussion with the Case Officer. A Member of a Parish Council, authorised by the Parish Council, may also refer applications within the Parish after discussion with the Case Officer. Referrals should be made using the Pro forma indicating the Policy context, relevant issues and any procedural concerns. Any disclosable interest should be declared. The decision to accept or reject the referral shall be made by the Chair of the Committee (or Vice-Chair in his absence) after discussion with the Case Officer or Head of Planning and Development.
- Referrals should not be made simply to allow an applicant or agent to address the Committee, or in the case of subsequent applications within two years of a previous refusal without material alterations.
- When a referral has been made and accepted as valid, the Member or Parish Council representative involved shall be advised of the date of the Committee meeting, may attend and, if so, shall be entitled to address the Committee but not vote.

GUIDANCE

Statutory provisions

Section 70(2) Town and Country Planning Act 1990 requires that the Local Planning Authority - the Committee or an officer acting under delegated powers - in dealing with an application shall have regard to provisions of the development plan, so far as material to the application, any local finance considerations so far as material to the application and to any other material considerations. This section must be read together with Section 38(6) Planning and Compulsory Purchase Act 2004. This provides that, if regard is to be had to the development plan for the purpose of any determination to be made under the planning acts the determination must be made in accordance with the provisions of the development plan unless material considerations indicate otherwise.

To be material considerations must be planning considerations. The requirement to have regard to "any other material considerations" means not only that all relevant matters are taken into account, but also the decision may be invalid if based upon a consideration which is not material.

Accordingly, at the time of decision it is important that all material decisions must be known to take them into account. Responses to consultation, even if late, must be taken into account to the extent that they raise new material planning considerations. A distinction must be drawn between considerations which are potentially material but are not relevant in the case of the particular application: examples include ecological issues under the Habitats Directive which are evidence based

Examples of material considerations (explanatory wording to be added – is this list sufficiently complete?)

- Relevant Government Policy
- Existing Use
- Effect on neighbouring properties
- Presumption in favour of sustainable development
- Loss of visual amenity

- Design
- Heritage
- Highways
- Noise
- Previous decisions
- Fairness
- Permitted Development
- Human Rights
- Flooding
- Crime and Fear of Crime
- Financial Matters
- Trees
- Noise
- Personal Hardship
- Parking
- Precedent /Consistency

Pre- application meetings are confidential. Ward Councillors may attend and ask questions (whether Members of the Planning Committee or not) but must not express views on the proposal to the developer applicant. The Information Commissioner Guidance is that the formal advice of the Local Planning Authority after pre-application meetings is to be made available free of charge upon requests made under the Environmental Information Regulations.

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APPENDIX A

Cllr: CUR X		Date: 20/2/15
Ward: X		
(Please declare any disclosable interest under the Code if Applicable for contact with applicant or objectors)		
Application Number: 15/XXXXX/FUL	Address: X	Description: X
Policy context:	Criteria:	Ward Member's Concerns
Policy Considerations: Choose which are the most relevant policies to the determination of the application specifically criteria where relevant: Please indicate where the application in your view conflicts with policy and why	E.g : CP1 NPPF NPPG GB1 GB2	EFFECT ON SURROUNDING CHARACTER
Main issues arising from application, supporting documents and responses to consultations	Site context and impacts:	Ward Member's Concerns:
Relevant considerations e.g. : a) Design and Access statement b) Amenity issues c) Harm to interests of acknowledged importance d) Other impacts and mitigation e) Sustainability f) Other	E.g. Impact on visual or residential amenity Design and living standards Site specific mitigation Trees Sunlight/overshadowing Health and safety/crime fear Highway safety and traffic	DENSITY
Procedures	Consistency of decision making	Ward Member's Concerns
Relevant history Pre- app advice		SIGNIFICANT LOCAL CONCERN

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APPENDIX A