

Executive and Council Report

Ward(s) affected: All

Report of: Joint Strategic Director: Place

Joint Strategic Director: Transformation and Governance

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Review and implementation of the recommendations of the Planning Committee Peer Review – findings of the working group

Executive Summary

Councillors will be aware that the Council had originally scheduled a Planning Committee Peer Review to be undertaken by the Local Government Association (LGA) with the Planning Advisory Service (PAS) in March 2020, but this was postponed due to the Coronavirus pandemic. The Peer Review was rescheduled and took place in early November 2020, following which the LGA published their final report which included 12 recommendations for the Council to consider. The LGA's report was circulated to all councillors at the time, and a copy is attached as **Appendix 1** to this report.

The LGA had recommended that the Council should set up a Task and Finish joint officer/ member group led by an independent, senior, well-respected person to take the Peer Review recommendations and other improvement needs forward, and to take advantage of viewing the operation of other Planning Committees to aid learning.

In January 2021, the Executive agreed to establish the Planning Committee Review Working Group with following terms of reference:

'To consider the LGA Planning Committee Peer Review recommendations and other improvement needs, and make recommendations as appropriate to the Executive, Planning Committee and full Council.'

The working group met on six occasions to consider the 12 recommendations. A report from the working group setting out details of their discussion against each recommendation and the working group's own recommended response to each of the recommendations is attached as **Appendix 2**.

As most of the recommendations arising from the review affect the operation of the Planning Committee, this report was referred to that Committee for comments at its special meeting held on 7 February. The Committee's response to each of the working group's recommendations is also included in **Appendix 2**, which the Executive and Council are asked to consider.

The Planning Committee also commended the adoption of recommendation (2) below.

Recommendation to Council:

- (1) That Council considers the Planning Committee's recommendations in response to the recommendations of the Planning Committee Review Working Group, as set out in **Appendix 2** to this report.
- (2) That, subject to the approval of the recommendations, full Council agrees to a regular review of the processes and practices referred to therein to be led by the Executive Head of Planning Development, in consultation with the relevant lead councillor and Chairman of the Planning Committee.

Reasons for Recommendation:

To modernise the operation of the Planning Committee and to review and update all associated processes and procedures.

Is the report (or part of it) exempt from publication? No

1. Purpose of Report

1.1 To report on:

- (a) the findings and recommendations of the Planning Committee Review Working Group which has been discussing the specific recommendations made by the LGA Peer Review of the Planning Committee; and
- (a) the recommendations of the Planning Committee in response to the working group's recommendations.

2. Strategic Priorities

- 2.1 This proposal to update various processes accords with the Council's strategic framework. The decision making of the Planning Committee affects the three strategic priorities that create the Council's vision.

3. Background

- 3.1 A planning committee peer review was commissioned and undertaken by the Local Government Association and the Planning Advisory Service. The report on this was published in November 2020 and included a series of recommendations. The report is attached as **Appendix 1**; however, the specific recommendations are set out below:

- **R1:** Provide greater certainty in planning process by ensuring decision making conforms with planning policies and material planning considerations acting on behalf of the whole Guildford community and ensuring that there is clear separation between ward level responsibilities and decision-making role on Committee.
- **R2:** Explore ways to rebuild trust and confidence between officers and Members. Consider running an independently facilitated workshop to be held between officers and Members, separate to the Planning Committee meeting, to better understand their roles, issues and concerns.
- **R3:** Examine ways for Planning Committee and relevant officers to discuss and learn from appeal decisions to ensure that decisions on planning applications are undertaken, on behalf of the whole Guildford borough community, in a fair, impartial and transparent way. The present system tagged onto the end of often long Planning Committees is not conducive to creating a learning atmosphere.
- **R4:** Review Planning Committee reports to see if further explanation can be given on the weight to be afforded to the Local and Neighbourhood Plan policies as well as material planning considerations such as the National Planning Policy Framework (NPPF).
- **R5:** Ensure planning officers and Committee members are more aware of the impact of what a lack of housing delivery has on the weight given to Local Plan policies and kept appropriately updated on the work of the Housing Delivery Board.
- **R6:** Review the opportunity for further guidance in the form of a supplementary planning document to help guide new high quality and sustainable development.
- **R7:** Review the Planning Committee referral system focusing particularly on the Member referral process (7-day procedure) and householder referral system to ensure that applications are not

unnecessarily delayed, and Planning Committee can focus on the strategically more important applications.

- **R8:** Revisit the site visits protocol with particular emphasis on who attends and on ensuring a consistent approach of officers and conduct of members during the site visit.
- **R9:** Review the member overturns process so that alternative motions are raised by Members and advice is provided by officers prior to the officer recommendation vote being made.
- **R10:** Undertake bespoke probity in planning and appeals training for members with a neutral facilitator, for example, someone who has direct experience of being a Planning Inspector.
- **R11:** Review public speaking opportunities for Parish councils and special interest groups.
- **R12:** Examine the possibility of setting up a Task and Finish joint officer/member group led by an independent, senior, well-respected person to take Peer Review recommendations and other improvement needs forward. Take advantage of viewing the operation of other Planning Committees to aid learning.

- 3.2 Following receipt of the LGA/PAS report and recommendations, the Executive agreed, in January 2021, to establish a working group with the following terms of reference:

‘To consider the LGA Planning Committee Peer Review recommendations and other improvement needs, and make recommendations as appropriate to the Executive, Planning Committee and full Council.’

- 3.3 The Working Group consisted of Councillors Chris Blow, Colin Cross, Angela Gunning, Tom Hunt, Marsha Moseley, Susan Parker (replaced by Catherine Young for the last meeting) and Fiona White. An independent person (Mike Holmes) was appointed to chair the working group. The officers who regularly attended consisted of Dan Ledger (the then Interim Head of Place), Delwyn Jones (Senior Specialist Lawyer (Planning Regeneration and Litigation), John Armstrong (Democratic Services and Elections Manager) and Sophie Butcher (Democratic Services Officer).
- 3.4 Meetings of the group have been held since April 2021 to work through the eleven substantive recommendations as detailed in **Appendix 2** and formulate firm conclusions to move forward. Towards the conclusion of this process the Chairman was unable to continue which therefore delayed the production of the final report from early 2022. A meeting was reconvened in July 2022 which nominated Cllr Fiona White as Chairman and to agree the final Group Recommendations. These recommendations, together with a summary of the working group’s discussion on each recommendation, are included in **Appendix 2**.

- 3.5 Most of the suggestions are straightforward; however, attention is drawn to **R7** and **R9** which deal respectively with the process for member referrals of planning applications to committee and the member overturn process. These matters will result in a change to current working practices with the change to the member referral process representing a significant change. However, the original peer review was clear that this process had to be reviewed to a more front loaded and efficient process.
- 3.6 The main principle around the proposed referral process is moving to the start of the application process. This enables early engagement with Members and reduces the burden at the end of the application cycle when late referral to committee occurs. There will be greater certainty to applicants and neighbours and assist with speedier decision making. A copy of the proposed referral process is attached at **Appendix 3**, which includes in highlighted red text the additional Note and additional stage to the process recommended by the Planning Committee.
- 3.7 **R9** recommends changes to the member overturn process. This is more of a minor change to reflect good practice rather than a significant change. The proposed procedure for dealing with the member overturn process, as set out in **Appendix 4**, addresses the Peer Review recommendation.
- 3.8 It is suggested that, if the Council supports the working group recommendations in response to **R1**, **R3**, **R4**, **R5** and **R10**, the Councillor Development Steering Group be invited to implement the proposals as they relate to Member training, in consultation with the Executive Head of Planning Development.
- 3.9 Importantly this report also recognises the need to have a more regular review of key processes and suggests that the Council agrees to the regular reviewing of these practices to be led by the Executive Head of Planning Development, in consultation with the relevant lead councillor and Chairman of the Planning Committee.

4. Planning Performance

4.1 Councillors will be aware that the Council has failed to meet the Government's non-major application speed threshold and, consequently, may face designation.

4.2 The Improving planning performance criteria for designation states that:

'Where an authority is designated, applicants may apply directly to the Planning Inspectorate (on behalf of the Secretary of State) for the category of applications (major, non-major or both) for which the authority has been designated, ...Where an authority is designated for their performance in determining applications for non-major development, applicants for

householder applications and retrospective applications will not be able to submit their applications to the Planning Inspectorate as it is considered these applications are best dealt with locally”.

- 4.3 The criteria stipulate that an action plan will be required to address weaknesses particularly for the determination of householder applications. If the Council is designated, it will potentially lose control over the determination of non-major applications (except Householders) and the fees that accompany them.
- 4.4 In responding to the designation letter we have received it will be extremely important to demonstrate to Government that we are addressing the issues that have contributed to our poor performance and that have been the basis of recommendations in the LGA/PAS Committee Review (November 2020), which is **Appendix 1**, and the PAS Development Management Review (March 2022). A copy of the 2022 report is attached as **Appendix 5**.
- 4.5 Councillors’ attention is drawn, in particular, to recommendations R3 and R7 in the 2022 report at **Appendix 5**, which deal respectively with the suggested removal of the specific delegation to the Executive Head of Planning Development to approve extensions of time in order to allow case officers to agree these with applicants whenever required, and the recommended review of arrangements for referral of applications to Committee by councillors with a view to amending timeframes to ensure call-in requests are made earlier in the process.

5. Corporate Governance Task Group’s Review of the Probity in Planning Handbook

- 5.1 From June 2022, the Corporate Governance Task Group has been reviewing the Probity in Planning (PiP) Handbook (which can be found elsewhere on the Council agenda). The PiP Handbook includes some matters that were covered in the deliberations of the Planning Committee Review Working Group, namely the Member referral process (**R7**), the site visit protocol (**R8**), and the Member overturn process (**R9**).
- 5.2 It was the initial intention of the Task Group to not duplicate the work of the Working Group and to amend the PiP Handbook to reflect the outcome of the deliberations of the Working Group. However, when it became apparent that the incapacity of the independent chairman of the Working Group had significantly hampered progress on the Planning Committee review, which was followed by the departure of the Interim Head of Place at the end of October 2022 leaving certain matters incomplete, the Task Group was able to review these matters as part of its review of the PiP Handbook, with the advice and assistance of the Interim Executive Head of Planning Development.

- 5.3 Consequently, the Member referral process at **Appendix 3** and the member overturn process at **Appendix 4** reflect the outcome of the recent discussions of the Task Group. Although the Working Group has recommended no change to the site visit protocol, the Task Group felt that the guidance in the PiP Handbook could be expanded to reflect the current good practice (see section 20 of the proposed revised PiP Handbook).

6. Consultations

- 6.1 Consultation on the report was not necessary as the working group comprised key councillors, with relevant documentation circulated to the Lead Councillor for Development Management during the review process.
- 6.2 Each of the Working Group's recommendations were considered by the Planning Committee at its special meeting on 7 February 2023. The Committee's comments and recommendations against each of the Working Group's recommendations have been included in **Appendix 2**.

7. Key Risks

- 7.1 The function of a resilient planning committee is a key part of the Council's role as Local Planning Authority, by ensuring that Members understand their function and role in decision making. Poor decision making has considerable risk in terms of financial and reputational damage. Furthermore, if correct legal processes are not followed, the Council could be open to legal challenge.

8. Financial Implications

- 8.1 Changes to the member referral process, as recommended in this report, have the ability to improve financial performance by making the application process more efficient. However, failure to make these changes may have very significant adverse financial implications such as cost of appeals and the council being designated for non-performance.
- 8.2 If the proposal to front load the member referral process, by removing the 7-day notice and replacing it with the proposed 21 day call up to Committee, is not adopted it will have a significantly adverse impact on the timely determination of applications, thus hindering the Council's ability to improve the speed of determination of non-major applications. This would reject Recommendation 7 of the PAS Committee Review 2020 and Recommendation 7 of the PAS Development Management Review 2022 and could lead to designation by the Secretary of State, which would have a significant impact both financially and reputationally on the Council.

- 8.3 Failure to ensure the timeliness and quality of planning decision making, may lead to unnecessary and avoidable appeals or legal challenges, thus incurring potentially significant costs to the Council.

9. Legal Implications

- 9.1 Reviews of this nature are worthwhile to ensure procedures remain updated, legally compliant and include best practice across the board from other authorities and agencies, e.g. the LGA and PAS.
- 9.2 However, potentially, there are also very significant legal implications arising from some of the recommendations. Although most represent procedural matters, as mentioned above, failure to ensure the timeliness and robust quality of planning decision making, may lead to unnecessary and avoidable appeals or legal challenges. In addition, these can in turn lead to added risk, reputational damage and Secretary of State intervention.

10. Human Resource Implications

- 10.1 There are no direct Human Resource implications arising from this report. However, failure to address the recommendations in the Peer Review, particularly recommendation **R7**, could result in designation which would have a negative impact on recruitment and retention of planning officers.

11. Equality and Diversity Implications

- 11.1 This duty has been considered in the context of this report and it has been concluded that there are no equality and diversity implications arising directly from the report.

12. Climate Change/Sustainability Implications

- 12.1 There are no climate change/sustainability implications arising from this report.

13. Summary of Options

- 13.1 It is open to the Council to approve, amend, or not support, the recommendations of the Planning Committee in response to the Working Group's own recommendations.

14. Conclusion

- 14.1 **Appendix 2** sets out the discussions and recommendations of the working group necessary to bring the current process to a conclusion and implementation of the recommendations proposed. Alongside this is a measure to regularly review key processes. These recommendations have been considered and endorsed by and the Planning Committee.

15. Background Papers

None

16. Appendices

Appendix 1: LGA/PAS Planning Committee Peer Review Report

Appendix 2: Review and implementation of the recommendations of the Planning Committee Peer Review – findings and recommendations of the Working Group and the Planning Committee

Appendix 3: Revised Member engagement and process for referral to Planning Committee as recommended by the Planning Committee

Appendix 4: Revised Member overturn process as recommended by the Planning Committee

Appendix 5: PAS Guildford Borough Council Development Management Review March 2022