

Report of the Scrutiny Task Group on its Review of the Administrative Arrangements associated with the Publication and Determination of Planning Applications

1. Background

1.1 At the meeting of the Audit, Crime & Disorder and Scrutiny Committee (AC&DS Committee) held on 5 February 2015, the Committee agreed that it wished to undertake a review of the administrative arrangements associated with the publication and determination of planning applications during 2015/16.

1.2 The Committee agreed the scope of its review in April 2015. It agreed that the investigation should focus on planning administrative processes which supported the publication and determination of validated planning applications, particular reference to be paid to public holiday periods such as Easter and Christmas. Applications concerning telecommunications were included within the scope of the review. Actual planning decisions made or impending were excluded from the review.

1.3 The AC&DS Committee agreed that a task group should be appointed to undertake the investigation. Three Members were appointed in June 2015, Councillors Clive Smitheram (Chairman of the AC&DS and current Member of the Planning Committee), David Reeve (Vice Chairman of the AC&DS Committee) and Humphrey Reynolds (Chairman of the Planning Committee and current member of the AC&DS Committee). Investigation work commenced October 2015.

2. Aim of the Review

2.1 The aim of the task group investigation was to review the Council's administrative processes associated with the publication and determination of validated planning applications in order to identify potential ways in which customer satisfaction with the process could be enhanced.

2.2 Four objectives were agreed:

- Identify the statutory requirements and deadlines of administrative processes associated with the publication and determination of validated planning applications.
- Establish the administrative steps which are undertaken by Epsom & Ewell Borough Council (EEBC) following receipt of a validated planning application and in the lead up to determination either by way of officer or committee.
- Investigate whether any particular issues/considerations in relation to the administrative arrangements for the publication and determination of planning applications arise, in particular around public holiday periods.
- Make such recommendations as considered appropriate for the enhancement of customer satisfaction with the arrangements for the publication and determination of validated planning applications.

3. The Investigation

3.1 In order to inform the review the task group undertook a number of different information gathering exercises. These included meetings with officers at the Council, the Epsom Civic Society and a member of the public who spoke on behalf of a group of local residents who had had first-hand experience of the Council's planning administrative processes. Lastly, the task group wrote to a couple of agents who liaised with the Council's planning department regularly.

3.2 The dates of the information gathering exercises and the task group meetings are set out in Table 1 below.

Table 1 - Task Group Activities Undertaken

	Scrutiny Review Task Group Activity	Date
1.	First Meeting of the Task Group	Tuesday 3 November 2015
2.	Meeting with the Head of Place Development and the Head of Legal & Democratic Services	Tuesday 17 November 2015
3.	Meeting with Epsom Civic Society	Tuesday 24 November 2015
4.	Letters sent to Planning Agents	Thursday 10 December 2015
5.	Meeting with Member of the Public	Tuesday 12 January 2016
6.	Final meeting of the Task Group	Friday 22 January 2016

4. Task Group Findings and Recommendations

4.1 Undertaking this scrutiny review has provided the task group with a greater understanding of the planning administrative processes in place at the Council as well as their impact on users. Throughout its investigation the task group has been mindful of the various legal requirements placed on the Council by planning law, a vast, complex area, and also the need to facilitate public engagement and confidence in the planning process.

Receipt of Planning Applications

4.2 Before any development¹ work can be undertaken in the local area, planning permission is required. Planning permission can take a number of different forms. Two forms of particular relevance to the review are:

¹ Development is defined in the Town and Country Planning Act 1990. Development examples include amongst others, building operations such as structural alterations, construction, rebuilding and most demolition as well as material changes of use of land and buildings.

- **Local authority grants of planning permission.** These encompass applications for full planning permission and outline planning permission;
- **National grants of planning permission by the General Permitted Development Order.** These allow certain work and change of use without the need for a planning application although some permitted development rights are subject to conditions and limitations. In some such cases prior approval will need to be sought from the Council, e.g. installation of telecommunications equipment. (Permitted development is discussed separately in paragraphs 4.18 to 4.25 below.)

4.3 For the majority of applications Epsom & Ewell Borough Council acts as the planning authority for the local area. The Council receives the relevant planning applications either electronically through the Planning Portal, or by hardcopy. On receiving a planning application the Council will first make a decision as to whether the application is valid. The Council aims to complete this process within five working days of receipt of the application. In order to be valid, the Council must have received along with the planning application, necessary plans of the site, all required supporting documentation and the correct fee. If the Council has received correct documentation it will inform the applicant of the application's validity. If not valid, the Council will inform the applicant of what further information it requires.

4.4 Once validated, the Council then has a set period of time in which to make a decision on the planning application, as well as inform the applicant of the outcome (process known as determination). Statutory time limits exist for this decision making process, two statutory time limits are set out in the table below.

Table 2 – Statutory Time Limits relating to Decision Making

Type of Application	Statutory Time limit
Planning applications concerning non major development	8 weeks
Planning applications concerning major development	13 weeks

4.5 The Council does have the ability to agree with an applicant a longer time period within which it should make a planning application decision (relates to those applications requiring local authority grants of planning permission). However, should the Council fail to make a decision within the relevant statutory or agreed time limit and no extension of time has been agreed, the applicant has the right to appeal against non-determination to the Secretary of State.

Who makes planning application decisions?

4.6 Planning application decisions at the Council are made by either the Planning Committee or by officers. The Planning Committee at the Council has determined the level of delegation to officers. This means that it has agreed which decisions can

be made by case officers and which should be decided by the Planning Committee. Applications referred to the Planning Committee include proposals that:

- run counter to established policy and which officers consider should be approved
- involve significant development in the Green Belt
- involve major development
- are submitted by, or on behalf of, Epsom and Ewell Borough Council
- are submitted by, or on behalf of, a Councillor or former Councillor, employee or former employee of the Council, or the spouse or partner of any such person
- are specifically requested by a Borough Councillor.

4.7 The task group did consider whether the list of planning applications which needed to be presented to the Planning Committee appeared appropriate. It concluded that the level of delegation to officers might benefit from being reviewed by the Head of Place Development to ensure that the delegation was still appropriate.

4.8 The task group considered that the Model Code of Good Practice for members of the Planning Committee incorporated into the Constitution in 2007 would also benefit from being reviewed.

Recommendation 1:

That the Head of Place Development review the levels of delegation in place at the Council to ensure that they are still appropriate and reflect current times.

Recommendation 2:

That the Head of Legal & Democratic Services and the Head of Place Development review the Model Code of Practice for Members regarding Planning Matters contained in the Constitution to ensure that going forward it continues to be fit for purpose.

Call-in

4.9 The means by which a Borough Councillor can specifically request that an application be decided by the Planning Committee (last bullet point in paragraph 4.6 above) is known as 'Call-in'. The task group discussed in detail the call-in process and considered how it should best operate.

4.10 The task group first considered whether maintaining the ability of a Borough Councillor to call-in a planning application decision for consideration at the Planning Committee was appropriate. The task group was informed that local authorities in general have different approaches. Some had narrow criteria, only enabling Planning Committee members to call in an application; others had much wider criteria enabling anyone to call-in a planning application. Recognising the importance that local Ward Councillors engage with the planning application process, and that not every Ward had a member on the Planning Committee, the task group considered that the current process in place at the Council, whereby any Council member can call-in a planning application for consideration at the Planning Committee, appeared appropriate. The task group noted that some Ward Councillors were interested in planning matters generally and so took an interest in applications across the borough as a whole, whilst others concentrated solely on those planning applications affecting their own particular ward. The task group also recognised that at times Ward Councillors would be away and so considered it was important for the call-in process to be flexible enough to provide all borough

councillors with an ability to request that a specific planning application be called-in for consideration by the Planning Committee.

Recommendation 3:

That in relation to the planning call-in process, the ability of any councillor to call-in a planning application for consideration at the Planning Committee be maintained and that training on this be provided to all councillors.

4.11 The task group discussed the practicalities associated with call-in. It recognised that given the statutory time limits for determination, the later a call-in was made, the harder it was to action. Consequently, in order to ensure the process ran smoothly, the task group considered that members should be subject to the same statutory period of time within which the public can comment on an application, i.e. 21 days from the date of notification and that the Head of Place Development should include Ward Councillors on the list of recipients to receive a neighbour notification letter. The task group agreed that a member requesting call-in needed to email the case officer and copy in the Planning Development Manager specifying the reasons as to why they were making the request; the task group felt that contentious applications were likely to fall within this scope. The task group considered that councillors would benefit from receiving further training on this aspect of call-in.

Recommendation 4:

A councillor should make a request for call-in as soon as possible after receipt by the Council of a validated planning application, but in any case within the 21-day consultation period.

4.12 Lastly, the task group felt that there was a number of planning application types which needed to be excluded from the call-in process. It agreed that the Head of Place Development was best placed to consider which applications should be excluded.

Recommendation 5:

That the Head of Place Development consider which applications should be excluded from the Call-in procedure.

Publication

4.13 Before a decision is made on a planning application, the Council will take steps to publicise it according to requirements of Article 15 of The Town and Country Planning (Development Management Procedure) (England) Order 2015. Different planning applications are covered by Article 15. Each has its own publication requirements. Two examples of particular relevance to the scrutiny review are provided below.

Applications for major development

Notice by means of:

- a site notice for not less than 21 days or a neighbour notification letter; and
- A newspaper advertisement; and
- Inclusion of information relating to the application on the Council's website.

Standard (non-major) applications

Notice by means of:

- a site notice for not less than 21 days or a neighbour notification letter; and

- Inclusion of information relating to the application on the Council's website.

4.14 The Council will place all validated planning applications on its online database (public access). This database enables anyone to view the information available and comment should they so wish. For residents without internet access, a computer kiosk is available in the Town Hall reception area, plus computers are available in the public library at Bourne Hall.

4.15 Currently the Council produces a weekly list of all validated planning applications received, known as the Canary. This information is circulated to different parties including Borough Councillors. The task group has learnt that this information is used by the Epsom Civic Society to identify new planning matters within the Borough. Epsom Civic Society seeks to encourage civic pride among the residents of Epsom while shaping its future and safeguarding its past². However, the task group has also learnt that there are resource implications for the Council associated with producing these weekly lists and as such the Council is looking to discontinue them. Each week Council officers collate and present the relevant information, a time consuming operation, despite the information being readily available online. The task group understands that a user can receive the same information by searching the Council's public access system online via its website. With growing pressures on Council resources and the need for greater efficiency, the task group consider that the Council should look at encouraging use of the alternative way by which the public can access the information readily.

Recommendation 6:

That the Head of Place Development consider the options by which the information contained within the Council Canary can be accessed in a more cost efficient manner.

4.16 Although no longer a statutory requirement, the Council has a Statement of Community Involvement (SCI). This statement, which was adopted on 4 April 2006, sets out how the Council intends to involve stakeholders and the local community in the Local Development Framework process and the consideration of planning applications. The task group considers that it would be beneficial for the SCI, which is now over 9 years old, to be reviewed. This process would also cover some of the other areas addressed by recommendations in this report.

Recommendation 7:

That the Head of Place Development review the Council's Statement of Community Involvement

4.17 The task group was interested, during this review, to discover whether any particular issues/considerations in relation to the publication of planning applications arose around public holiday periods. The task group has learnt that in relation to one particular planning application, letters of notification were not received by local residents for 6 or 7 days (includes Saturday and Sunday). The task group recognises that the delay in receiving neighbour notification letters does impact on the length of time available for local residents to respond, bearing in mind the statutory time limits. It also recognised that there was potential for this delay to increase over a public holiday period such as Christmas and Easter. As such the Committee wished to re-emphasise that the Council should ensure that it expedites the sending of neighbour notification letters, although it recognises that it is not in control of any delays which occur within the postal system itself.

² www.EpsomCivicSociety.org.uk

National Grants of Planning Permission by the General Permitted Development Order.

4.18 The Town and Country Planning (General Permitted Development) (England) Order 2015 allows certain work and change of use to be undertaken without the need for a planning application, although certain conditions and limitations will often apply.

4.19 Mobile telecommunications are covered by the General Permitted Development Order (Schedule 2, Part 16). Before certain work in this area can be undertaken, the operator must apply to the local planning authority for a determination as to whether prior approval of the authority is required in relation to siting and appearance. The local planning authority has 8 weeks from receipt of a valid prior approval application to make and notify its determination on whether prior approval is required to siting and appearance and to notify the applicant of the decision to give or refuse such approval. If the applicant has not received the determination within this period, permission is deemed to have been granted.

4.20 Guidance in the form of a 'Code of Best Practice on Mobile Network Development in England' is provided to Mobile Network Operators, their agents and contractors as well as local planning authorities. The Guidance states that the '...principal aim of this Code is to ensure that the Government's objective of supporting high quality communications infrastructure is achieved in a timely manner, but in a way that also minimises the potential impact that can be associated with such development.'

4.21 Where a local planning authority receives a prior approval application it must give notice of the proposed development in accordance with the requirements of the General Permitted Development Order, e.g. for certain mobile telecommunications prior approvals either a site notice is to be displayed on or near to the land for not less than 21 days, or notice is to be served on adjoining owners and occupiers. For full and prior approval applications, the Council has in its SCI committed to place an advert in the local Press and to provide notice to all owners or occupiers within a 150m radius. However, the Council will in addition take a view as to whether it would be beneficial to provide notification to other properties. These steps will be in addition to those steps undertaken by the operators themselves. Within the guidance mobile operators have signed up to Ten Commitments, the first of which is to deliver high quality consultation with local communities.

4.22 The task group has learnt that mobile telecommunications technology has evolved and in line with this their associated planning applications have, in general, also evidenced a slight change. With the early advances in technology came a greater need for more base stations and hence new site planning applications. However, operators have been working together to reduce the amount of infrastructure needed. The Code of Best Practice³ highlights that 'operators anticipate largely using existing network infrastructure for the provision of 4G services and are ... similarly upgrading their 2G and 3G network infrastructure to improve capacity and coverage'. It does, however, go on to mention that 'this does not mean that there will not be a need for any new base stations. For example, more base stations will be needed in areas where there has previously been only limited or no coverage, and where coverage and capacity needs to be enhanced in line with Government policy and customer demand.'

4.23 The task group has given detailed consideration to the processes in place which support such applications. It has heard that the Council received only a small

³ Code of Best Practice on Mobile Network Development in England July 2013, page 6.

number of telecommunications applications in more recent years. However, recognising the potential wide interest in such applications the task group considers that the Council could look to make use of a site notice for new telecommunications site applications. This would be in addition to neighbour notification letters and an advert in the local press.

Recommendation 8:

That the Council give consideration to using site notices for planning applications concerning new telecommunications sites in addition to other publication steps undertaken.

4.24 In relation to neighbour notification letters the task group understands that a geographical cut off point will exist somewhere, with potentially one neighbour receiving a neighbour notification letter and another, not. In the SCI the Council has committed to notifying adjoining owners and occupiers within a 150m radius. The task group understands that the Council does give additional thought to each application, but recommends that the Head of Place Development review the conditions of neighbour notification to ensure that the most appropriate steps are being undertaken.

Recommendation 9:

That the Head of Place Development review the current conditions of neighbour notification for telecommunications masts (full and prior approval applications).

4.25 Finally, the task group wished to highlight that the policy which concerned the siting of telecommunications masts on Council owned property (a policy which had been in place for a number of years) might benefit from being reviewed. However, the task group wished to highlight that this observation was in essence outside the scope of its review.

Recommendation 10:

That the Council give consideration as to whether it should wish to review its policy on the siting of telecommunications masts on Council owned land to ensure the policy remains appropriate and fit for purpose.

Concluding Comments

4.26 Looking to the future the task group was keen that the Council sought feedback on its administrative processes associated with the publication and determination of validated planning applications. This would enable it to consider improvements or adjustments as appropriate. As such the task group recommends that the Head of Place Development explore the potential for including a customer satisfaction survey in its administrative processes without increasing the work load of case officers.

Recommendation 11:

That the Head of Place Development explore the potential to include a customer satisfaction survey within its administrative processes.