



Council 17 July 2017

Review of Planning Application Determination Processes

Purpose of report

This report presents for consideration by councillors the proposed approach to the review of processes relating to planning applications that this Council resolved would take place at its last meeting.

1.0 Background

1.1 At the Council meeting on 10 April 2017 it was resolved “*That the processes by which planning applications are determined by the Planning Management Committee be reviewed.*” The resolution did not specify how the review would be carried out, when it would take place or where the outcome of the review would be reported. However, it was made clear that it would not involve reconsideration of the determination of any specific application.

1.2 In order to ensure confidence in the outcome, it is proposed that the review be undertaken by suitably qualified or experienced persons with a thorough understanding of the planning regulatory process. As a result, although mentioned in the discussion at the last meeting, it is not considered appropriate for Internal Audit to undertake the review as they lack the detailed knowledge. It is also not within the remit of External Audit to undertake such a review.

1.3 The Monitoring Officer therefore contacted the Local Government Association to seek advice as to a suitable approach. It was identified that the Planning Advisory Service (PAS) offers a Making Defensible Planning Decisions process which enables councils to review, reflect and learn from some of its past decisions. The process normally involves a half day session with planning committee members and the involvement of a councillor peer and costs in the order of £1,000 to £2,000.

1.4 The objectives for the session are usually:

- Improved decision making to deliver the Council's planning objectives, in line with policies
- Safeguarding the reputation of the council as a responsible decision maker
- Strengthening the processes and justification for making the decisions
- Reducing vulnerability on appeal
- Minimising the chance of cost awards.

Following the session PAS will prepare a short report of discussions, recommendations and actions agreed (see <https://www.local.gov.uk/pas/pas-support/planning-committee-support/making-defensible-planning-decisions> for more details). It should be noted that the process does not involve a re-run of the determination of any past decisions.

1.5 The resolution agreeing the review was made after a councillor highlighted a number of concerns about the consistency of processes in relation to the recent determination of one particular planning application. It is therefore considered that the review should focus on the determination of a sample of applications over the past year by the Planning Management Committee where councillors have questioned the processes applied to their determination. It is proposed that PAS undertake an enhanced version of their process which would:

- consider the effectiveness of the respective roles of officers and councillors in presenting and determining planning applications at Planning Management Committee;

- review the extent to which local and national planning policy is taken into account in the determination process;
 - consider the quality of advice provided to councillors;
 - evaluate the behaviours, attitudes and values of officers and members in relation to Planning Management Committee;
 - recommend measures that will improve and strengthen the processes and justification for decisions.
- 1.6 In addition, it is proposed that consideration is given to the processes and weight given to the following specific factors at Planning Management Committee:
- Neighbourhood Plans
 - Determination during a pre-election period
 - Pre-determination and bias
 - Conservation Officer consultation
- 2.0 **Important issues to consider in relation to the review process**
- 2.1 Transparency. Councillors will clearly wish the review process to be open and transparent. It is therefore proposed that the review report should be published by the council on its website once it has been presented to Planning Management Committee.
- 2.2 Timing. Undertaking the organisation of the review process inevitably will require significant senior planning officer input, including the preparation of background documents, which will inevitably impact on meeting performance targets and other priority planning projects. As noted above, even if it is agreed at this meeting that PAS undertake the review as noted above to carry out the council's resolution, it is unlikely to take place until the autumn as time would be required to get a suitable space in the diary for all attendees.
- 2.3 In addition, as most members will be aware, since the resolution to hold such a review was agreed, the Council has been notified of a potential judicial review of application 16/02119/FUL – Warth Park, Raunds. Papers have been served at the High Courts of Justice specifying the following grounds for Judicial Review:
- The Council unlawfully had regard to an immaterial consideration; namely the risk of an appeal, pursuant to s 78 Town and Country Planning Act 1990 against the refusal of planning permission and the cost risk involved. It took the wrong approach to determining whether or not to grant planning permission.
 - Officers materially misdirected members of the Council's Planning Committee in stating that no weight could be attached to Policy R6 of the emerging Raunds Neighbourhood Plan.
- 2.4 The Council has taken legal advice on the application and will be seeking to resist the claim for Judicial Review. If permission is given by the High Court for the application to proceed then it is likely that the Judicial Review hearing will be in the Autumn. This will involve significant senior planning officer input and it will significantly increase the risk of lowering both planning management performance (and morale) if the two processes were attempted during the same time period. It is therefore proposed that, should the Judicial Review go ahead, the PAS review is not commissioned until the results of the Judicial Review are known.
- 2.5 In the light of the above considerations it is proposed that, if the principle of a Review by PAS is approved, delegation is given to the Executive Director, in consultation with the Leader and Council Chairman to agree a brief and agree a suitable date for the Review, after the outcome of any Judicial Review is known.

3.0 Equality and Diversity Implications

3.1 An initial Equality Impact Assessment has been carried out and all equality and diversity implications are neutral. Neither a positive nor a negative impact has been identified. The Equality Impact Assessment can be accessed as a background document.

4.0 Legal Implications

4.1 As noted above, legal advice is being taken in respect of the request for a Judicial Review. The final brief will also be reviewed by the same legal advisor

4.2 If the Judicial Review goes ahead and succeeds, the current planning permission will be quashed. The council will then have to re-take the decision having rectified the issues highlighted in the outcome of the Judicial Review.

5.0 Risk Management

5.1 The key risk has been identified as the potential impact on determination performance, which it must be noted is currently amongst the highest in the country, and morale of planning management staff as a result of having to undertake work for the PAS review and the Judicial Review at the same time, along with other planning determination activity. It is proposed to mitigate this risk whilst at the same time allowing the fastest possible progress on the review by delegating the agreement of the exact timing of the review.

6.0 Resource and Financial Implications

6.1 The council will need to make additional provision in order to undertake the PAS review. It is proposed that this is funded from the current in-year underspend.

6.2 It is estimated that the council will need to make provision for its legal costs of a minimum of £5,000 if permission is refused for a Judicial Review and there is no application for an oral review, up to an estimated £50,000 should there be a full Judicial Review hearing. Although the council will attempt to recover its costs should the Judicial Review go ahead and fail, it is considered that there is a high risk that full recovery will not be possible. It is likely that the council would be liable to pay the legal costs of the claimant if the council loses the case.

7.0 Constitutional Implications

7.1 There are no known Constitutional implications arising from this report.

8.0 Customer Service Implications

8.1 Planning Management Committee attracts the highest levels of public attendance of any council committee. Any improvements in the process by which decisions are made at the Committee is likely to increase the understanding of the process for those present.

9.0 Corporate Outcomes

9.1 The proposed review will contribute to the delivery of the following Corporate Outcomes.

- Effective Management (of the determination process at Planning Management Committee)
- Employees and Members with the Right Knowledge, Skills and Behaviours for effective planning determination.

10.0 Recommendation

10.1 Council is recommended to:

- a) Approve the principle of the Planning Advisory Service undertaking an enhanced Making Defensible Planning Decisions review to satisfy the resolution agreed at the last meeting.
[Reason: to agree the external persons to undertake the review]

- b) Delegate authority to the Executive Director, in consultation with the Leader and Council Chairman, to agree a suitable date for the review after the outcome of any Judicial Review
[Reason: to enable the fastest possible commissioning of the review and alignment with the outcome of the Judicial Review Process]

- c) Agree that the final review report should be presented to Planning Management Committee and published on the council's website
[Reason: to ensure transparency of the Review]

Legal	Power:	Various including Local Government Act 1972		
	Other considerations:			
Background Papers:		Minutes of March 2017 Council meeting		
Person Report:	Originating	Sharn Matthews, Monitoring Officer, ☎ 01832 742108, ✉ smatthews@east-northamptonshire.gov.uk		
Date: 5/7/17				
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