



**Epping Forest
District Council**

Report to the Cabinet

Report reference: C-003-2024-25

Date of meeting: 28th May 2024

Portfolio: Regulatory Services

Subject: Planning Advisory Service Development Management Committee Review

Responsible Officer: N Richardson/ Service Director (nrichardson@eppingforestdc.gov.uk)

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Cabinet Recommendations/Decisions Required:

- (1) That Cabinet accept the recommendations of the PAS report;**
- (2) That Cabinet agree to delegate authority to Lead Officers, together with the Portfolio Holder, to implement required changes, engaging with relevant Member Committees as appropriate; and**
- (3) That Cabinet agree to the reporting of relevant associated Planning KPIs to Overview and Scrutiny and Planning Committees for monitoring purposes.**

Executive Summary:

The Growth and Infrastructure Act 2013 introduced measures in which the Department of Levelling Up, Housing & Communities (DLUHC) would measure the performance of Local Planning Authorities. One of these measures is on the 'Quality of Majors'. This measure is the percentage of the total number of decisions made by the authority on Major planning applications¹ that are subsequently overturned (allowed) at appeal.

The assessment period for this measure is two years, however the reporting period is nine months following the end of the assessment period to enable appeals to pass through the system and be decided for the majority of decisions on planning applications made during the assessment period.

Therefore, a two-year assessment period ending March 2023 was used for designation decisions in Quarter 1 of 2024, which takes account of applications decided between April 2021 and March 2023 and a 9 month lag to December 2023 for appeals to be decided. The average percentage figure for the assessment period as a whole is used.

The maximum percentage of Major applications overturned at appeal that the Government considers acceptable is 10%. Epping Forest District Council narrowly avoided the threat of designation with 9.8% of Major decisions overturned at appeal following decisions made between April 2021 and March 2023. As a result of this, PAS reached out to the Council in order to assist in risk management in this matter.

¹ Major Applications – For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development it means additional floorspace of 1,000m² or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Reasons for Proposed Decision:

Failure to meet the above target puts the Council at risk of designation. 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 for which the authority has been designated. Therefore, should the Council be designated then applicants for major developments would be able to apply directly to the Planning Inspectorate for a decision. In so doing the Local Planning Authority would not receive any of the planning fees for the application, however a similar level of work would be required by the LPA in advising the Planning Inspectorate.

Therefore, designation would result in several risks, including:

- Financial risks – due to the threat of loss of major planning application fees and the resourcing required to advise the Planning Inspectorate at cost to the Council;
- Reputational risks – due to the Council underperforming and being designated; and
- Risks to resources – since the two above risks will impact on staff morale, retention and recruitment.

Examples of Local Planning Authorities that have faced designation include:

- Lewes District Council were designated in May 2024 for the quality of decision making in respect of applications for major development.
- Bristol City Council were designated in March 2024 for speed of decision-making in respect of applications for non-major development.
- Uttlesford District Council were designated in February 2022 due to failure to meet Quality of Majors KPIs.

Other Options for Action:

Agree alternative measures to reduce the risks associated with the above. Although no alternative options are currently being presented or considered.

No change to the current procedure and planning committee structure, but this increases the risk of designation and taking away planning decision making on Major planning applications from the Council.

Report:

1. The Council has a responsibility to meet the performance indicators set by DLUHC, including those on the 'Quality of Majors'. Whilst the Council is currently performing within the allowed thresholds, it only narrowly avoided the threat of designation in the review of major appeal decisions between April 2021 and March 2023.
2. Due to this, PAS have undertaken a Committee Review in order to assist in reducing this risk of designation. PAS are part of the Local Government Association and run fourteen projects funded by the Department of Levelling Up and Housing, Defra and Natural England. Originally set up by the Office of the Deputy Prime Minister in 2005, PAS have since then focused on helping Local Government play their part in an effective planning system.
3. The review was undertaken by Cllr Linda Robinson, Worcester County Council and Wychavon District Council, and Liz Hobden and Peter Ford, Principal Consultants for PAS. The PAS team gained its evidence for the Planning Committee review from a number of different sources, including:
 - Interviewing a sample of residents' association representatives, parish and town council representatives, and local planning agents and developers.
 - Watching a sample of each of the committee webcasts.

- Holding a workshop with officers and some Members at the council offices on 26 January 2024.
 - Undertaking a desktop study of committee minutes, officer reports, and the council's scheme of delegation and codes of conduct.
4. Following the provision of a draft Development Management Committee Review document, and subsequent comments and correspondence between PAS and the Council, a final Development Management Committee Review document was received on 15 March 2024 (Appendix 1).
 5. The review document reached a number of conclusions, which include the following:
 - Concerns about the robustness of decisions made at the Planning committees.
 - Unusually large number of committees operating and the number (all) of Members who sit on the committees.
 - Very localised opinions being made by Members.
 - Members not always making the best use of officer advice.
 - A concerning absence of any Legal advice that would help Members with improving decision-making, following procedures, reducing the risk of challenge and perhaps temper some of their comments.
 - Lack of consistency since the quality of decision-making varies significantly across the different committees.
 6. The report also raises specific points regarding each individual committee (section 6.0 – pages 9 and 10). Although it should be noted that these conclusions have been reached on the basis of the webcasts viewed.
 7. As part of this report, PAS make seven recommendations (section 3.0 – pages 3 to 5), which are summarised as follows:

Recommendation 1 - Reduce the number of committees to preferably one, but a maximum of two with between 9 and 12 Members on any one committee.

Recommendation 2 - Review the scheme of delegation to ensure that only items that require scrutiny in public are considered by the committee.

Recommendation 3 - Prepare a new set of protocols for the new committee arrangements that considers:

- Officers briefing the Chairman, ideally before the agenda is sent out.
- Arrangements for site visits.
- The role of officers in committees.
- The process of considering each item (clarifying the sequence of officer presentation, speakers, questions to the officers, debate, summarising by the Chair and decision).
- Clarifying the voting procedures (opportunities for Members to propose alternative motions and the officer role in advising Members before votes are taken).

Recommendation 4 - Incorporate an opportunity for a Legal Officer presence at all committee meetings.

Recommendation 5 - Re-introduce a report on performance as a regular item on the committee agendas.

Recommendation 6 - Implement a programme of training for both officers and Members that should in particular include:

- Planning and specialist officer training on presenting skills at the Planning Committee.
- Member training on probity matters relevant to Planning decision-making.
- Bespoke Chairing skills.

Recommendation 7 - Schedule regular meetings between the committee Chairmen and Head of Development Management. This could form part of the Planning Committee chairman's briefings or be a separate meeting if preferred.

8. The review concludes (section 7.0 – pages 10 and 11) that *“Although Epping Forest District Council will not need to respond to the Government concerning its performance on the quality of decision-making for Major planning applications at this stage, it came within 0.2% of having to do so and if there had been an additional Major overturn at appeal, the council would currently be under significant risk of designation. A key contributor to the quality of decision-making is the robustness of decisions made at the Planning committees. We have identified some key weaknesses in the operation of these committees through discussions with key participants in the committee process and our observations by viewing a selection of committee meetings.”*
9. PAS also make it very clear that *“To help the council move forward we strongly recommend that changes be made to the committee structures, including a review of the scheme of delegation and committee protocols. This should be supplemented with a structured programme of training for both Members and officers. PAS could support the council with this.”*
10. Whilst not a formal recommendation from PAS, there was surprise expressed at the ability of Councillors to refer planning applications from the Sub-Committees to DDMC, and from DDMC to the Council, via the Minority Reference Rule. This is not a function at other Councils as a Planning Committee is expected to determine the planning application and not refer it to another body for a decision. Therefore, it is felt that the Minority Reference Rule within the Constitution should be revised as part of this exercise, such that the only referral that can occur is if the Planning Committee pass a motion, by majority vote of the Committee, to refer the application up to the Council for determination.
11. Given the threat of special measures on the Quality of Major Application decisions, plus the Government reducing the Planning Guarantee for non-major applications from 26 to 16 weeks (fee returned if not decided by then, unless there is an extension of time agreed by the applicant), Officers support the PAS report and suggest a reduction in the number of Planning Committees so that they only consider Major and Minor type applications, where a threshold is exceeded.
12. Planning Officers have commenced a comparison exercise with other surrounding Local Authorities and evidence so far reveals that the suggested reduction in the number of Planning Committees would align Epping Forest District Council with surrounding Local Planning Authorities. All of these benefit from a single dedicated planning committee that sit once per month with an appropriate delegated authority that ensures that only planning applications that would have a significant effect on the district are decided at Planning Committee. Some information regarding other authorities committee set up can be found in Appendix 2.
13. Officers are seeking agreement to have authority delegated to Lead Officers, together with the Portfolio Holder, to implement the required changes in accordance with the Councils policies and procedures, including engagement with relevant Member Committees. This would include reporting to a special meeting of Full Council and Constitution Working Group.

Scrutiny Comments

None

Resource Implications:

None

Legal and Governance Implications:

Legal Services have been involved in this process and will continue to advise on any Committee or Constitutional changes.

Safer, Cleaner and Greener Implications:

NA

Consultation / Scrutiny Undertaken:

The draft Development Management Committee Review was circulated to:

Planning Directorate

Democratic Services

Legal Services

The final Development Management Committee Review was circulated and presented to:

Planning Directorate

Democratic Services

Cabinet Members

Background Papers:

NA

Appendices:

Appendix 1: Epping Forest District Council Development Management Committee Review – 15 March 2024

Appendix 2: Committee numbers and delegated authority – Comparison Authorities

Risk Management:

The Council has a statutory duty to meet the performance indicators of DLUHC.

Failure to meet these performance indicators can lead to the Council being designated for their performance in the quality of decision making on major planning applications, that can result in significant financial, reputational and resource risks.

Equality:

An Equality Impact Assessment has been carried out and there is no significant impact.