



Epping Forest District Council

Development Management Committee Review

15th March 2024

1.0 INTRODUCTION

- 1.1 Epping Forest District Council identified that it is potentially under threat of designation under section 62B of the Town and Country Planning Act 1990 due to the quality of Major applications decision-making. Following this review, the 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. The maximum percentage that the Government considers acceptable is 10%. This Planning Committee review will be used by the council as part of its action plan to identify what improvements the council can put in place so that it avoids the threat of designation over the quality of decision-making in the future.
- 1.2 The review was undertaken by Cllr Linda Robinson, Worcester County Council and Wychavon District Council, and Liz Hobden and Peter Ford, Principal Consultants for the Planning Advisory Service (PAS). PAS is part of the Local Government Association (LGA) and provides high quality help, advice, support and training on planning and service delivery to councils in England.
- 1.3 The PAS team gained its evidence for the Planning Committee review from a number of different sources:
 - We interviewed a sample of residents' association representatives
 - We interviewed a sample of parish and town council representatives
 - We interviewed some of the local planning agents and developers
 - We watched the following committees: Area Plans Sub Committee West 8th February 2023; Area Plans Sub Committee South 11th October 2023 and 31st January 2024; Area Plans Sub Committee East 5th July 2023 and 2nd August 2023; Area Plans Sub Committee West 8th February 2023; and District Development Management Committee 19th April 2023 and 13th December 2023
 - We held a workshop with officers and Members at the council offices on 26th January 2023
 - We carried out a desktop study of committee minutes, officer reports, and the council's scheme of delegation and codes of conduct.
- 1.4 As part of our visit to the council offices on 26th January 2024, we also undertook customer service training with officers and used the comments we received through the interviews to inform this training.
- 1.5 The PAS team compared the operation and decision-making at the four committees with best practice from throughout the country as well as the team's own experiences in running and managing Planning Committees.

2.0 CONTEXT AND SCOPE OF THE REVIEW

- 2.1 Epping Forest District Council operates four separate Development Management committees; these are referred to as: Area Planning Sub Committee West; Area Planning Sub Committee South; Area Sub Committee East; and District Development Management Committee. Every councillor who sits on the council is a member of one of the Planning committees.
- 2.2 Members of the Council appointed to each Area Plans Sub-Committee are drawn solely from those representing wards within the area for which the Sub-Committee is responsible. The Members of the District Development Management Committee are elected by the Council at its Annual General Meeting.
- 2.3 The Epping Forest District Local Plan was adopted in March 2023. In addition, the council has two *made* Neighbourhood Plans and another nine are in preparation. The Council was able to demonstrate a five-year housing land supply of 5.4 years at the time of the adoption of the Local Plan (based on a stepped trajectory and including a 20% buffer).
- 2.4 As four separate committees make planning decisions the report will consider matters relevant to all committees and then will comment on any matters that are relevant only to specific committees.
- 2.5 Over the two year period October 2021 to September 2023 the council made 51 Major decisions and 2,912 non-Major decisions. In a national context, this is very close to the national average number of Major decisions whilst the number of non-Majors is in the top 12% of councils.
- 2.6 The review has focused on the operation of the four committees and the conduct of both officers and Members in making sound and defensible decisions. It is particularly important for the council to consider these matters as it is at ongoing risk of designation under S62B of the Town and Country Planning Act. The people we have spoken to about the committees have discussed at some length the effectiveness and quality of the material that Members are given to inform their decisions. In particular, the content of the officer reports and how they reflect the representations received as part of a planning application. We have not reviewed the officer reports in any detail as part of this review, but PAS will shortly publish detailed best practice guidance on officer reports that should assist the council in reviewing the quality of officer reports.

3.0 KEY RECOMMENDATIONS

Recommendation 1

Reduce the number of committees and the number of Members on each Committee. We suggest that preferably there is a single committee, and a maximum of two committees with between 9 and 12 Members on any one committee. We suggest that it is unnecessary for a two-tier committee structure and, if two committees are agreed then they should be differentiated on the basis of agenda management rather than locality.

Recommendation 2

Review the scheme of delegation using the [PAS scheme of delegation](#) guidance to steer the review. The aim of the review should be 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. We suggest that both officers and Members view other best practice Planning Committees (PAS can assist with identifying these) and use the [PAS Planning Committee Protocols](#) guidance. In particular, we suggest that the new protocol considers:

- Arrangements for officers to brief the Chair through the Chair's briefing 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; and
- Clarifying the voting procedures, the opportunities for Members to propose alternative motions and the officer role in advising Members before votes are taken.

Recommendation 4

Incorporate an opportunity for Legal input into the decision-making process. Ideally, this should include a Legal Officer presence at all committee meetings. However, if this is not possible due to the current Legal arrangements, then a risk-based approach should be taken whereby a judgement is made on the requirement of the Legal Officer before and during the meetings.

Recommendation 5

Re-introduce a report on performance as a regular item on the committee agendas. We suggest that this includes summaries of appeal decisions and an update on performance based on the Government performance measures (currently speed and quality of decision-making) plus any local performance measures. This will give the opportunity for officers and Members to celebrate success and consider corrective action when needed. Performance reporting is particularly important at the moment as the council is close to not meeting the minimum performance standards set by the Government on the quality of Majors decision-making

Recommendation 6

Implement a programme of training for both officers and Members on key areas of improvement identified in this report. We suggest training 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; and
- Bespoke Chairing skills – we suggest this may be best achieved through the [LGA mentoring programme](#) as it will need to be focused on individual

requirements.

Recommendation 7

Schedule regular meetings (we suggest fortnightly whilst the council is under threat of designation) between the committee Chairmen and Head of Development Management to enable discussions on upcoming items at committee, relevant issues arising to review and improve committee. Also, to discuss officer performance, appeals and upcoming Planning changes. This could form part of the Planning Committee chair's briefings or a separate meeting if preferred.

4.0 SCHEME OF DELEGATION

- 4.1 Epping District Council is unusual in having four separate committees. It is even more unusual that four committees sit in a district that operates in a two-tier county with county matters being considered by Essex County Council. Whilst the number of non-Major decisions is high in relation to other councils in England, the number of Majors is similar to the national average. The PAS team is not aware of any other council with a similar number of decisions to Epping Forest who have four separate committees and many similarly sized councils will only have one committee.
- 4.2 Based on the period April 2023 to December 2023, 76 planning applications were referred to the committees, but numbers at each committee varied greatly with 37 being referred to the Area Plans Sub Committee South and only 9 to the District Development Management Committee. It is not uncommon for a council to manage this number of items with a single committee sitting.
- 4.3 District Development Management Committee considers "any application referred by an Area Plans Sub-Committee by resolution, by a minority of members of an Area Plans Sub-Committee in accordance with the Council's Rules or where the Sub-Committee is unable to determine the application". This is a very unusual referral and creates duplication when an Area Plans Committee either is not able to make a decision or where some members of that committee are unhappy with the decision. It also causes unnecessary delays and uncertainty in the determination of planning applications. We suggest that neither a two-tier committee format nor a minority reference deferral is necessary for the volume and types of applications received by the council.
- 4.4 Many of the other referral reasons are similar to other councils' schemes of delegation, however, the council may wish to reduce the number of unnecessary referrals by reflecting on the following points:
- There is an automatic referral to the committee based on the size of an application. Many councils would require such referrals to be based on the number of representations received that are contrary to the officer's recommendation as many larger applications are not necessarily controversial.
 - Applications that receive 5 or more objections are referred to a committee. However, as was observed by viewing some of the committees, Members do at times overturn

an officer recommendation for approval and therefore it may be more appropriate for matters to come to the committee if the representations are “contrary to the officer recommendation”. Therefore, applications that are recommended for refusal could also be referred.

- The scheme of delegation allows any planning application to be referred to the committee if the correct referral triggers are met. Some councils restrict the applications that can be referred e.g. excluding householder applications except if referred by the Head of Planning.
- Councillors are allowed to refer any item to the committee without a time limit being imposed. Most councils will impose restrictions on this referral based on a specified time limit (normally after the application has been advertised) and / or based on the councillor giving valid planning reasons that are not addressed by officers.

4.5 The following numbers of Members sit on each committee:

- District Development Management Committee – 15
- Area Plans Sub Committee South – 25
- Area Plans Committee East – 19
- Area Plans Committee West - 14

4.6 PAS has carried out research with a group of Local Planning Authorities from across the country on best practice in the size of Planning Committees. The conclusion was that the optimum number of Members on a committee was between 9 and 12. The reason for this was it gives more opportunity for community representation by ward councillors not on the committee, enables more training for planning committee councillors, creates better decision-making and optimises resourcing costs.

5.0 MANAGEMENT OF THE COMMITTEE

Accessibility

- 5.1 Access to the committee recordings was easy and efficient with links to each item on the committee. Also, the camera focused on the individual speaking so that it was clear to the viewer who was speaking at any one time.
- 5.2 Each Chair gave a clear and consistent committee introduction and identified some of the key participants. However, the Chairs were inconsistent in the way they introduced Members of the committee with some introducing Members and others not doing so.

Speakers

- 5.3 The management of speakers was generally good with all the Chairs being respectful of the speakers and giving them reassurance when needed. They all generally adhered to the time limits for the speakers but were pragmatic in allowing speakers to run over for a few seconds to finish their points.

Officer presentations

- 5.4 Officer presentations were inconsistent with some officers being more confident than others. For example, some of the officer presentations were too focused on giving a description of the proposal rather than pointing Members to the key issues that they considered most relevant in the balance of material considerations. Members should

be familiar with the details of the proposal by reading the papers and therefore it should not be necessary for officers to describe the proposal in detail.

- 5.5 In many cases the presentations were given by the Head of Development Management rather than the case officer. Whilst, on occasion, this may be unavoidable, we suggest that it only happens by exception. The reason for this is to allow the case officer to field as many of the factual questions as possible and allow the Head of Development Management to support the case officer and re-enforce particular issues where necessary. This issue was particularly noted on one of the items that we viewed where officers were strongly of the view that Members should not go against officer recommendation due to a recent appeal decision. If the case officer had led the presentation, then the Head of Development Management could have provided greater emphasis to the point, alongside the Legal Officer attending.

Officer involvement in the debate

- 5.6 Officers appeared well prepared at the committee meetings and, in some cases, had anticipated a potential Member overturn by preparing for an alternative outcome. We observed several Member overturns when an officer's recommendation for refusal was overturned to approval. In these cases, officers had prepared for potential conditions that allowed the decision to be made without the need for an adjournment or deferral.
- 5.7 Officers sometimes appeared quite reluctant to engage in the debate on individual items. It is usual for officers to comment more frequently on matters that are being considered by Members. At Epping Forest, we observed that officers normally only provided advice when specifically asked. At well-run committees, officers are more proactive in advising Members if, for example, the debate has strayed into non-material planning matters. This would be helped by the presence of a Legal Officer at the meeting who can support councillors in making defensible decisions. It should, however, be noted that when officers were asked to give their views, they tried to be clear, concise and helpful to the decision-making process. In the best managed committees there would be a greater understanding between the lead officer and the Chair so that the Chair would enable the professional views of officers to be provided at key points in the discussion, by the officer most appropriate to respond.
- 5.8 The officer involvement in the discussion was not helped by officers usually attending online rather than being in the physical meeting. It is always easier for individuals to engage with one another when they are physically in the room and hybrid discussions are inevitably a challenge. We understand the difficulties in all participants attending, particularly as the meetings take place in the evening. However, we consider that this is given greater consideration to find a more acceptable compromise.

Legal Officer

- 5.9 There was a noticeable absence of a Legal Officer in most of the committees we viewed. We understand that the council shares Legal support with another council and therefore there are significant resource constraints of a Legal Officer being present at all four committees. However, there were times during the meetings we viewed where we would have expected a Legal Officer intervention. For example, we watched an agenda item where some of the language used by a Member could have been construed as pre-determination and Members moved to refuse the application even though it was clearly against specialist officer advice. Whilst the lead officer did try to persuade Members, unsuccessfully, to amend their alternative motion, a Legal

Officer's view would help in advising councillors of the potential risks of their intended voting preferences.

Site visits

- 5.10 The committees have an unusual procedure whereby possible site visits are discussed at the start of the meeting and, if a site visit is agreed upon, then the item is deferred. At most Planning Committees site visits are agreed before the meeting with either a fixed time in Members' diaries for site visits or arrangements made before the meeting to agree if a site visit is required. By deferring for a site visit at the meeting, time and resources are not effectively used for all participants in the committee process, it leads to unnecessary delays and it causes inconvenience for Members, officers, applicants, the public and consultees.

Questions and debate

- 5.11 We observed rather rambling debates at some of the committees with no clear direction in the arguments being put forward. In some cases, there was no clear delineation between questions to the officers and debate by Members and we observed some incidences where Members appeared to be contradicting themselves due to the unstructured form of the debate. The best-run committees allow technical questions to go to officers first, and then they move to debate.
- 5.12 Another very visible observation was the level to which Members considered an item based on very local issues. This is perhaps inevitable when there are area committees based on very narrow geographic boundaries. Members appeared proud to speak on very local issues to support their local ward constituents. Whilst this is completely appropriate behaviour for a ward councillor who wishes to speak for their local residents, it is not appropriate for a Member of a Planning Committee who must consider an application based on the needs of all residents in the council area and not just the local ward constituents. Potentially this emphasis by Members towards very local considerations could be a cause for challenge by an aggrieved party.
- 5.13 It should, however, be emphasised that this issue varied greatly between committees and more reference is given below in the consideration of each committee.

Specialist officers

- 5.14 There was a notable absence of specialist officers at the meetings we viewed. In some cases, this would have been helpful. In particular, reference was often made to County Highways comments and, in some instances, Members were critical of the advice provided. The officers present did their best when asked, to justify the comments. However, as they are not specialists, Members' criticisms were not sufficiently rebutted. We understand the difficulties in having specialists, particularly from outside the council, being present at committee meetings. However, at least an online presence would be helpful if officers are aware of possible challenges to advice.
- 5.15 Through our interviews some of the stakeholders were also concerned that heritage officers were not attending the committee meetings and that the heritage issues were not being properly addressed in both officer reports and through the discussion at the committees. Whilst we did not identify any particular examples where the lack of a heritage officer input impacted a committee decision, we would suggest that when specialist matters such as heritage issues are discussed, a heritage officer is present.

Performance information

- 5.16 We observed no items at the committees we viewed where performance information was discussed with Members. We understand that performance updates have previously been given to the committees, but this is no longer the case. The council is potentially facing designation over the quality of decision-making and yet committee Members appear largely unsighted on the potential position it faces. Many Planning Committees will include a regular item where performance information on speed and quality of decision-making can be discussed and Members can be made aware of appeal decisions. This allows both officers and Members to celebrate success and reflect on decisions made when necessary.

Chairing skills

- 5.17 All the Chairs are very competent and experienced and understand the processes and procedures of the committees. There was, however, greater variability in the way that the different Chairs directed the questioning and debate and in bringing the discussion to a clear conclusion. Inevitably, this will always be the case when there are four different Chairs and further comment is made below under each committee. We did observe that some of the Chairs appeared keen to participate in giving their views at an early stage in the debate and even gave very local views on specific matters. In one case the Chair even allowed members of the public to both clap a speaker and the outcome, appearing to welcome the support. The Chair's role is to remain impartial and would normally only express their own opinions after carefully listening to the debate and any alternative motions that are put forward by other Members of the committee.

Voting

- 5.18 Voting procedures appeared clear and transparent. However, in some instances the voting procedure for overturning an officer recommendation appeared muddled and inconsistent and it would be helpful if this procedure was more transparent to viewers. Also, at some of the committees, there were an unusual number of abstentions. For one, a very straightforward item, three Members of the committee voted to abstain and it was unclear from the discussion why they felt this to be necessary. Abstentions should be rare for Planning Committee items and the reason for an abstention should be obvious to viewers.
- 5.19 We were told in the interviews that accusations have been about Members voting based on party lines rather than simply the planning merits of a case. We did not see any specific evidence of this behaviour from the committees that we watched, but we advise that the council is mindful of the accusations that are being made and it adds additional weight to having Legal support to ensure that Members are suitably advised on such matters.

6.0 ISSUES FOR EACH COMMITTEE

- 6.1 In addition to the general points raised above regarding our thoughts on the operation of the committees, outlined below are some specific points regarding the individual committees.

Area Plans Sub Committee East

- 6.2 The committee, in the main, operates very well. It has a strong Chair who clearly understands the procedures and commands the respect of the other Members. The level of debate was good with a clear focus on Planning issues. An area of concern that we observed was the weight Members gave to officer advice. In one item in particular we felt that Members appeared to give local opposition greater weight than professional advice even though there was little evidence to support the opposition.

Area Plans Sub Committee West

- 6.3 The Chair ran proceedings well and clearly had a strong grip on the processes. He took quite a relaxed approach to speaking and, at the meeting we watched, even allowed a speaker to come forward even though they did not register to speak. The Members appeared particularly parochial in their consideration of items on the agenda and focused very much on the local issues rather than the council-wide merits of the proposals.

Area Plans Sub Committee South

- 6.4 The Chair ran proceedings well and had a relaxed approach with speakers, politely asking a speaker to finish whilst allowing them to complete their point. Members focused very much on local issues and one Member was even heard to say "I will stand up for my Chigwell residents". The Chair was also heard to give his own views on applications during the debate rather than waiting to sum up the committee's view at the end of the debate. This committee also appeared to have a significant number of Members abstaining on items.

District Development Management Committee

- 6.5 A confident, well-respected Chair who conducted the proceedings in a relaxed but authoritative manner. However, there were indications that some participants were being allowed to unduly influence Members. For example, during one item the audience was allowed to clap a presenter and the outcome of an application. There was also evidence of Members abstaining without clear justification.

7.0 CONCLUSIONS

- 7.1 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.
- 7.2 Perhaps the most significant issue we found was the very unusually large number of committees operating and the number of Members who sit on the committees. This creates huge resource pressures and leads to some very localised opinions being made by Members. Members of a Planning committee have a duty to consider the

whole community and not just local ward constituents and we do not consider that all committee Members properly appreciate this statutory role.

- 7.3 Members receive sound and professional advice from officers, but do not always make the best use of officer advice and there is 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.
- 7.4 The quality of decision-making varies significantly across the different committees and this further puts the council at risk of a lack of consistency which is paramount if a council is to demonstrate sound and defensible decision-making.
- 7.5 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.

8.0 NEXT STEPS

- 8.1 PAS currently receives a grant from the Department of Levelling Up, Homes and Communities (DLUHC) to support councils under threat of designation. We would be happy to support the council through its consideration of the recommendations outlined in this report and in preparing an action plan to help enable it to meet the Government's requirements on the quality of decision-making in the future.