

**EPPING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF PLANNING SERVICES SCRUTINY STANDING PANEL
HELD ON THURSDAY, 3 JUNE 2010
IN COMMITTEE ROOM 1, CIVIC OFFICES, HIGH STREET, EPPING
AT 7.30 - 9.00 PM**

Members Present: J Philip (Chairman), H Ulkun (Vice-Chairman), Mrs P Brooks, C Finn, Mrs S Jones, J Markham, A Watts, J M Whitehouse and K Chana

Other members present:

Apologies for Absence: Mrs A Grigg and Mrs M McEwen

Officers Present D Macnab (Deputy Chief Executive), K Polyzoides (Assistant Director (Policy & Conservation)), R Sharp (Principal Accountant) and M Jenkins (Democratic Services Assistant)

1. SUBSTITUTE MEMBERS

It was noted that Councillor K Chana was a substitute for Councillor Mrs A Grigg.

2. DECLARATIONS OF INTEREST

There were no declarations of interest made pursuant to the Council's Code of Conduct.

3. NOTES FROM THE LAST MEETING

RESOLVED:

That the notes of the last meeting of the Panel held on 11 February 2010 be agreed.

4. TERMS OF REFERENCE

The Panel was presented with its Terms of Reference. Mr D Macnab, Deputy Chief Executive, outlined the Panel's background. The Panel was now commencing its third year of work, it had been created from the Value for Money within Planning Services Task and Finish Panel. The Overview and Scrutiny Committee on 10 July had requested that the Task and Finish Panel become a Standing Panel. It was noted that the Panel's Terms of Reference could be changed, but only with the approval of the Overview and Scrutiny Committee.

It was advised that some of the items within the Terms of Reference were now redundant or were likely to be in the near future, through the recent change in Government.

5. WORK PROGRAMME

The Panel discussed the Work Programme:

Item 1 (a) Regional Plan

The Panel were advised that an update on the Regional Plan situation would be provided at the next Panel meeting.

(b) Local Development Framework (LDF)

Officers were continuing with the LDF as no further direction had been received from the Government. Members requested a report concerning a position statement on the current economic situation of the District.

RESOLVED:

That a report regarding the progress on the LDF include a position statement on the current economic situation within the District be submitted to the Panel.

Item 2 (b) Value for Money Provision within Building Control

Members were informed that in September 2009 the Panel had requested a feasibility study on sharing Building Control services with Uttlesford and Harlow Councils. However it had been found that this was not financially advantageous to the District Council.

RESOLVED:

That an update be submitted to the Panel regarding the discussions Building Control had had with Uttlesford and Harlow Councils on sharing services.

Item 3 Chairmen and Vice Chairmen of Area Planning Committees to be invited to a meeting to provide feedback.

The Chairmen and Vice Chairmen of District Development Control Committee and Planning Committees attended a meeting on a 6 monthly cycle. Members requested a meeting to be scheduled before September 2010.

RESOLVED:

That a meeting of the Chairmen and Vice Chairmen of District Development Control Committee and Area Planning Committees be arranged before September 2010.

Item 4 Report from Legal Services on performance at planning appeals.

It was advised that this report was similar to the one submitted to the Area Planning Sub-Committees on a 6 monthly cycle.

RESOLVED:

That the report on performance at planning appeals be re-submitted to the Panel.

Item 5 Comments from the Planning Agents and Amenity Groups.

Members requested that this required repeating.

RESOLVED:

That N Richardson, Assistant Director of Planning, arrange another meeting.

Item 6 That a report be produced for the panel setting out the possible route any planning enforcement investigation could take.

A report had been submitted to the Panel in June 2009. Councillor C Finn requested a copy of the original report.

RESOLVED:

That the report – “Setting out the possible route any Planning Enforcement investigation could take” be forwarded to Councillor C Finn.

Item 7 Review the Corporate Planning Protocol, with respect to dealing with applicants, agents, developers and the local business community to ensure that the highest standards of probity and governance are achieved.

RESOLVED:

That an update be submitted to the Panel in September 2010.

Item 8 To review a Selection of Controversial Planning Decisions to see if lessons can be learnt from their consideration.

Members suggested that older planning decisions should be re-examined for consistency, and planning sites should be re-visited to ascertain their closeness to the original planning decision.

RESOLVED:

(1) That a report be submitted to the Panel in September 2010 regarding consistency between planning decisions and actual developments; and

(2) That an item be put in the Bulletin advising of this report and seeking members feedback on any controversial planning decisions.

Item 9 To consider whether the reporting arrangements for Terms of Reference sections and those from the Section 106s (including how they are negotiated agreed and implemented strategically to secure community benefit), and appeals are sufficient (including how new legislation impacts on these) and recommend accordingly.

The Chairman suggested that an extra item be added to the Work Programme concerning contributions to affordable housing from developers. The Chairman also suggested that an extra panel meeting be scheduled to deal with the workload.

RESOLVED:

That an item be added to the Panel’s Work Programme regarding contributions to affordable housing from developers.

Item 10 Best Value Review

Members suggested that a report be submitted during the 2011/12 cycle, in June 2011, drawing on figures from March 2011. Members also requested that outturns be reported at the December 2010 Panel meeting.

RESOLVED:

That the Best Value Review report be submitted during the 2011/12 cycle.

Item 11 Planning Conditions Controlling Damage to Highways Infrastructure

It was suggested that this item should be submitted to the December 2010 meeting with Essex County Council Highways officers being invited to the meeting. A further suggestion was to arrange member visits to other planning authorities to learn from their work. An item should be placed in the Bulletin inviting members to come forward with their experiences of other local authorities and of contentious applications.

RESOLVED:

(1) That an item be added to the December 2010 Panel meeting concerning Planning Conditions Controlling Damage to Highways Infrastructure;

(2) That Essex County Council Highways officers be invited to the December 2010 meeting; and

(3) That an item be placed in the Bulletin requesting members to come forward with examples of particular planning experiences of other local authorities and particular planning applications.

6. IMPROVEMENT PLAN

The Panel received two versions of the Improvement Plan one from 2009/10 and the current 2010/11 version.

Item 5 – Green Issues

RESOLVED:

That a report be submitted to the Panel on the progress towards improving the District Council's use of natural resources.

Members made the following resolutions:

RESOLVED:

(1) That the Portfolio Holders who had responsibility for planning issues be consulted on the Directorate's Improvement Plan;

(2) That a meeting be arranged involving the Chairmen and Vice Chairmen of the District Development Control Committee, Area Planning Committee and the Portfolio Holders with planning responsibilities and that they also be invited to an extra Panel meeting in summer 2010;

(3) That a report highlighting the successes of the 2009/10 Improvement Plan and a draft 2010/11 Improvement Plan based on the decisions held with the Planning Portfolio Holders and Area Planning Committees' Chairmen, alongside any item brought forward from 2009/10 with intended improvements for 2010/11, be submitted to the next or additional meeting of the Panel with intentions on how improvements will be made; and

(4) An item should be put in the Bulletin explaining the planning responsibilities of Portfolio Holders.

7. PLANNING APPEALS AND THE INSTRUCTING OF COUNSEL

The Panel received a report regarding Planning Appeals and the Instructing of Counsel. The report informed members on how planning appeals were dealt with by way of the Public Inquiry (PI) process were handled by Legal Services.

Appeals against the refusal of planning permission, refusal of a Certificate of Lawful Development and issue of an Enforcement Notice were made to the Secretary of State via the Planning Inspectorate (PINS) which determined the most appropriate appeal procedure. Appeals were dealt with by way of:

- Written representations
- Informal hearings
- Public inquiries

The PI procedure was normally used when the evidence needed testing and/or questions required asking, and if:

- The issues were complex and likely to need evidence to be given by expert witnesses.
- There was a need to be represented by an advocate, such as a larger or other professional expert because material facts and/or matters of expert opinion were in dispute and formal cross examination of witnesses was required.
- Legal submissions might need to be made.

The effect of the new policy was that fewer appeals would be dealt with by way of PI. Legal Services was only instructed by Planning Services when a PI was involved and required legal representation. Written representation cases and informal hearings were dealt with by the appropriate Planning Officer, with assistance sought from Legal Services if required.

The Senior Lawyer would usually undertake the advocacy in cases where the PI was scheduled for one day. However, the Senior Lawyer would be fully involved in the arrangements for the PI.

Number of Public Inquiries

- 2007 - instructions in respect of 15 Public Inquiries, 11 were proceeded with by the Appellant. Of these 4 were dealt with by the Senior Lawyer and 2 related to Gypsy and Traveller sites.
- 2008 - instructions in respect of 7 Public Inquiries, 4 ended were proceeded with by the appellant. All of these were dealt with by Counsel. There were no Gypsy and Traveller cases.

- 2009 - instructions in respect of 6 Public Inquiries, 3 were proceeded with by the Appellant. 1 was dealt with by the Senior Lawyer the remaining 2 were Gypsy and Traveller cases and dealt with by Counsel.
- So far this year instructions had been received in respect of 3 Public Inquiries, one had been altered to written representations, the other 2 were being dealt with by the Senior Lawyer.

There had been a steady decline in the number of appeals progressing by way of PI and that trend was likely to continue especially in view of the new guidance.

Involvement of Members

For the past couple of years a new protocol had been introduced in respect of all appeals dealt with by PI. The protocol engaged interested members and parish/town councils in the process. Councillors and interested parties may have valuable evidence and information which would help the Council in opposing the appeal.

Appointment of Counsel

The decision on instructing Counsel was based on the complexity of the issues, whether the matter was “politically sensitive.” Members requested more clarification on the criteria by which a sensitive issue would be referred to Counsel.

The following points were made:

- Legal Services appointed Counsel from an approved list
- Counsel could be removed from the approved list if performance was unsatisfactory
- The District Council was involved in a fair amount of litigation in the County Court, Magistrates Court, Crown Court, High Court and Tribunals and PIs
- Some work was submitted to Counsel because of the court level involved. Only Counsel had the necessary rights of audience or the matter was particularly complex
- Legal Services was a member of a number of local authority forums, one of which was looking into the feasibility of creating in-house barristers’ chambers through partnerships working with neighbouring councils.

Gypsies and Travellers

In respect of PIs relating to Gypsy and Traveller cases where ever possible Mr Mark Beard would be instructed. Mr Beard had acted for the District Council for over 10 years and had good knowledge of the District and its planning policies.

Counsel was therefore only used when considered necessary, with any appointment being made on the merits of the case and the level of expertise required, and legal Services would seek to get best Value in terms of both the quality of the service and the cost.

RESOLVED:

- (1) That clarification is put before the Panel regarding “politically sensitive” issues being referred to Counsel; and

- (2) That the Planning Appeals and the Instructing of Counsel report be noted.

8. GOVERNMENT RESPONSE - EPPING FOREST GYPSY AND TRAVELLER DEVELOPMENT PLAN DOCUMENT

The District Council wrote to CLG on 25 January 2010 requesting a meeting with the Minister then responsible for housing issues, to discuss the progress being made in increasing pitch provision, and the need for the continuation of the direction. A reply was received from the then Parliamentary under Secretary of State on 31 March 2010. The Parliamentary under Secretary of State turned down the request for a meeting and made the following points:

- Acknowledged the progress made on the Gypsy and Traveller DPD
- Advised that there remained a pressing and urgent need for pitches in the district
- The Government was not prepared to withdraw or amend the Direction
- The Government wished to see the Council dedicating more resources to the production of the Core Strategy
- Continue to increase the number of authorised pitches for Gypsies and Travellers
- Continue to grant permanent permission for existing tolerated, or other unauthorised sites
- The Government was prepared to revisit the Direction, once provision was made meeting the immediate needs of the travelling community.

Currently the recent permissions (by Council decision or appeal), and the granting of certificates of Lawful Development, meant that 17 additional pitches had been authorised in the district since 2006, half way to the target set by the East of England Plan. Officers calculated that if all outstanding cases of temporary, unauthorised or tolerated sites were to receive permission, the final total would still fall short of the target by 3 or 4 pitches. However the change of Government heralded a new approach to the issue. At this stage, it seemed likely that regional house building targets would be dropped, presumably along with pitch numbers for the travelling community. Other indications were that the Council's enforcement powers concerning encampments would be strengthened.

RESOLVED:

That the Government Response – Epping Forest Gypsy and Traveller Development Plan Document be noted.

9. INSURANCE COVER FOR THE COST OF ADVERSE PLANNING APPEALS

The Panel received a report regarding Insurance Cover for the Cost of Adverse Planning Appeals.

At the meeting held on 11 February 2010, members requested that the possibility of an insurance policy to cover the Council for adverse costs arising from planning appeals be investigated. The District Council's insurance company, Zurich Municipal, were asked whether a policy could be arranged. Zurich said the risk was not an area where insurance cover could be specifically arranged, because the risk was identified and classified as a business risk. Providing that proper planning procedures were

followed, there would not normally be capacity for a successful appeal, and the related costs awarded against the Council.

Zurich pointed out that an area of cover that the Council currently had which could be relevant would be official indemnity, where an error or omission in the planning process resulting in a third party suffering a financial loss, a claim could be relevant where financial loss was suffered.

RESOLVED:

That the Insurance Cover for the Cost of Adverse Planning Appeals Report be noted.

10. PLANNING DIRECTORATE STAFF FAMILY TREE

The Panel received the Planning Directorate Staff Family Tree. The Family Tree illustrated the composition of the different teams within the Directorate.

RESOLVED:

That the Planning Directorate Staff Family Tree be noted.

11. THE PLANIT

The Panel received a report regarding the PlanIt – Epping Forest Planning Department Newsletter.

The PlanIt was a two page monthly newsletter circulated internally, its primary aim was to promote staff inclusiveness. In the Planning Directorate, teams had tended to isolate themselves within the focus of their own discipline.

The publication was a medium for the following:

- Linking up and informing teams about each others' achievements
- Sharing good news
- Sharing success stories and updates on planning related issues, such as new Government initiatives and policy changes
- Provides hyperlinks for certain subjects allowing more in depth examination of articles

Initial feedback from officers and members had been positive with comments for improvements taken on board. There was the possibility for a version of the PlanIt to be circulated to the general public as a means of updating and informing people about planning if staff time and resources allowed. It was hoped that this would also elevate the Directorate's profile. The existing content would need editing and additional items added for public consumption allowing for valuable, appropriate information to be circulated informing the public on important planning matters and promoting the vital function that planning plays within the District Council's corporate structure.

It was requested that a copy of The PlanIt be circulated to members via the Bulletin and to local councils via email.

RESOLVED:

That the PlanIt be circulated to District Council members via the Bulletin and to local council representatives by email.

12. ANY OTHER BUSINESS

Members suggested that a report be submitted regarding overshadowing of properties and daylight issues in planning decisions. There was no current evidence of how these were assessed.

RESOLVED:

That a report be submitted regarding the assessment of planning applications involving overshadowing and daylight.

13. DATES OF FUTURE MEETINGS

The next programmed meeting of the Panel was on 2 September 2010. However Members had requested that a further Panel meeting be scheduled before then.

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