



Uttlesford District Council

Chief Executive: Peter Holt

Planning Committee Working Group

Date: Wednesday, 2nd March, 2022

Time: 2.00 pm

Venue: Zoom - <https://zoom.us/>

Chairman: Councillor S Merifield

Members: Councillors P Fairhurst, R Freeman, M Lemon, J Loughlin and R Pavitt

AGENDA

1 Apologies for absence and declarations of interest

To receive any apologies and declarations of interest.

2 Minutes of the previous meeting

3 - 8

To consider the minutes of the previous meeting.

3 Changes to the Consideration of Major Planning Applications and Consultations on Major Applications submitted directly to the Planning Inspectorate.

9 - 13

To consider the report on the consideration of major planning applications and consultations submitted directly to the Planning Inspectorate.

For information about this meeting please contact Democratic Services

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PLANNING COMMITTEE WORKING GROUP held at ZOOM on THURSDAY, 17 FEBRUARY 2022 at 2.00 pm

Present: Councillor S Merifield (Chair)
Councillors P Fairhurst, R Freeman, M Lemon, J Loughlin and R Pavitt

Officers in attendance: N Brown (Development Manager), B Ferguson (Democratic Services Manager), A Lindsell (Democratic Services Officer) and J Walsh (Planning Transformation Lead)

1 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

2 MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting held on 16 December 2021 were approved as accurate.

3 MEMBER TRAINING REQUIREMENTS FOR PLANNING COMMITTEE - FINAL WORDING

The Democratic Service Manager detailed the report and recommended that the following change to Part 5 –Probity in Planning – clause 4.1 of the Constitution is recommended to Full Council for adoption:

Current wording:

Officers will arrange training on planning issues. All members of the Council will be invited to attend. All members of the Planning Committee should attend.

To be replaced with:

Officers will arrange an annual mandatory training session for Councillors who are members or substitute members of Planning Committee. This training must be undertaken before participating in decision making at Planning Committee. All members of the Council who are not on Planning Committee or a substitute member of Planning Committee will be invited to attend on a voluntary basis.

Some Councillors raised concerns about making training compulsory and whether if insufficient training was completed Members would become incompetent to attend Planning Committee meetings.

Members discussed;

- Planning Committee Members were elected to represent residents and impose a democratic element.
- Planning Committee Members were provided with updated documents and planning guidance.
- The need for the proposal to be very carefully worded.
- The difference between competence and duty.
- The accepted competence of the current Planning Committee.
- The accepted procedure in place where new Members to the Planning Committee undertake planning training before being permitted to sit on the Planning Committee.
- Whether this proposal was a change to the Constitution or a guideline for Planning Committee members.
- Members did not object to undertaking the training.
- Members agreed that more training was required.
- The Development Manager already offered one to one training for new Members when the need arose.

Councillor Fairhurst advised that he had sought advice from two Queen's Counsel Lawyers who have advised that a Member who did not attend training could result in an applicant at appeal claiming an unlawful decision and would have a valid case to overturn a judgement as they lacked competence to sit on the Committee.

The Planning Transformation Lead confirmed that this could not happen as a Member that had not attended the training would not be sitting on the Committee.

Councillor Freeman acknowledged Councillor Fairhurst's concerns but noted that Planning Committee are quasi judicial and applicants have the right to have a Committee who know what they are talking about. Councillor Freeman confirmed that legitimacy lay within election, but further legitimacy was achieved by training.

The Chair clarified that this item demanded one training day for Members to update their knowledge and questioned why concerns had not been previously raised. She went on to confirm that provisions would be made for those unable to attend training due to illness.

The Planning Transformation Lead requested that Councillor Fairhurst shared the advice he had sought in writing and agreed to request a response from the Interim Legal Services Manager as particular issues of law had been raised.

The Planning Transformation Lead explained that the proposal was best practise and was a recommendation from her in the knowledge that the designation was imminent. The designation was a shared responsibility between Officers and Members and the way decisions were made could be scrutinised and challenged in court.

The Development Manager explained that Members should expect training from the Council who are required to ensure that Planning Committee Members are adequately trained.

The Chair proposed to defer the item until the next meeting of the Planning Committee Working Group so that the Interim Legal Services Manager could be consulted regarding the use of the word “mandatory” in the Constitution and whether it was reasonable for the training to be compulsory.

The Chair requested that members promptly email the Planning Transformation Lead, the Development Manager and the Democratic Services Manager with proposed amendments to the wording.

AGREED to defer the item until the next meeting of the Planning Committee Working Group. Members agreed to promptly email the Planning Transformation Lead, the Development Manager and the Democratic Services Manager with proposed amendments to the wording.

4 **AMENDMENTS TO THE CONSTITUTION RELATING TO PLANNING AND THE SCHEME OF DELEGATION**

The Planning Transformation Lead reported changes to the general delegations to Committees, Chief Officers and Deputy Chief Officers as they relate to Planning Committee and to the Assistant Director of Planning, now called the Director of Planning and Building Control.

She explained that the recommended changes were intended to increase the efficiency of the authority in dealing with minor applications and remove small applications which do not need to be there from the agenda. All of the major applications would now be reported to Planning Committee. Changes to the scheme would not remove the right of Members to call an application to Planning Committee should they wish to do so.

The Planning Transformation Lead recommended that the Planning Committee Working Group recommend to GAP Committee that the changes set out in the track changed document Appendix 1 Extract from the constitution with track changes, Section 2 Part 3 – Responsibility for Functions should be agreed as changes to the Constitution and recommended to Full Council for adoption, as detailed below;

- The first change was to para 1.1 to allow officers to deal with variation of conditions applications on all types of previously approved applications where they have been determined by Planning Committee, except where the application was accompanied by an Environmental Statement. Those applications would always go to Planning Committee.
- The second change required all major applications would be reported to Planning Committee. Previously it was the applications recommended for approval only. This change reflected the current complex policy environment. The wording relating to 5 dwellings was deleted as call in powers would capture these where they were controversial.

- The third proposed change inserted a new paragraph 1.6 to ensure applications where the applicant was an Officer of the Council or an elected Member it would be determined by Planning Committee.
- The fourth change ensured that any deed of variation application to a s106 Agreement where there was a change to the Head of Term and the Planning Committee agreed the Head of Terms would be reported to Planning Committee.
- The final proposed change was to paragraph 2. It was proposed to delete the need for enforcement notices to be jointly authorised by the Assistant Director of Governance and Legal. Whether to serve an enforcement notice was a matter of planning judgement and is dependent on whether in the opinion of the planning authority it is expedient to do so. Accordingly this was not a legal decision and there was no need to have a joint sign off arrangement.

AGREED to recommend to the GAP Committee that the amendments set out in the tracked change document Appendix 1 extract from the Constitution with track changes Section 2, part 3 Responsibility for Functions should be agreed as changes to the Constitution and recommended to Full Council for adoption.

5 **REPORT TEMPLATE**

The Planning Transformation Lead presented the proposed report template following review of five different reports.

The pilot skeleton framework was shared as a draft document and included;

- An executive summary
- A recommendation box which would detail the recommendation, including the S106, conditions and informatives
- Site location
- Proposal
- Environmental impact assessment
- Relevant history
- A preapplication advice section
- A summary of consultation responses including summarised Councillor representations, Parish Council and Highway Authority
- A policy section identifying explicitly the Development Plan and relevant policies
- Consideration and assessment
- Additional duties to consider public sector equalities and human rights
- Financial implications
- Conclusion
- S106/Conditions/Information

The Planning Transformation Lead confirmed that another new template would need to be created for applications likely to be considered by PINS and that the current skeleton would probably change following feedback from PINS.

The Chair thanked the Planning Transformation Lead and Development Manager and other Officers who have contributed to this document.

Members asked if it was possible to include a separate heading to detail the affordable housing proportion and the Planning Transformation Lead agreed to introduce a heading within the Proposal section;
Affordable housing 40% provided Yes/No

It was agreed that the report template was a work in progress.

6 UDC PLANNING COMMITTEE - ARRANGEMENTS TO VIEW AN EXEMPLAR PLANNING COMMITTEE MEETING IN PROGRESS

The Planning Transformation Lead explained that the PCWG are hoping to arrange a visit to view an exemplar Planning Committee in May and that a recommendation has been requested from the Planning Advisory Service for a council to visit.

The Planning Transformation Lead confirmed that details would also be circulated for members to access specific Planning Committee meeting recordings online.

Members asked what makes a Council exemplar and the Development Manager confirmed that criteria were set out by government, to demonstrate transparency that every Member of the Council was engaged on the key issues and how Members operate.

The Planning Transformation Lead confirmed that the East of England Local Government Association (EELGA) have recommended that the working group undertake this exercise.

The Chair suggested that only members of the Planning Committee that sit regularly would attend rather than substitutes and that the Development Manager would write to the Development Manager and The Chair would write to the Chair of the exemplar Committee.

Members discussed reflective visits undertaken prior to 2019 and the Development Manager agreed that they were valuable and would be reintroduced as restrictions allow.

7 FUTURE AGENDA ITEMS

The Development Manager explained the need to bring the next PCWG meeting forward to 2 March 2022. He confirmed that all major planning applications would come to Planning Committee regardless of recommendations, this would

need to be addressed at March Planning Committee which would need consideration by PCWG first.

The Planning Transformation Lead requested that any concerns relating to a review of public speaking be forwarded to her.

The Chair detailed historic briefings that all members could attend which EELGA recommended that they were stopped and explained that there could be an option to reinstate the briefings as a questioning session. The intention would be to save time. Members would attend having read the documentation and ask questions for clarification. It would also give Officers the opportunity to report and demonstrate transparency.

The Planning Transformation Lead noted that the briefings would not necessarily provide answers and that the correct protocol would need to be in place. She offered to ensure that the Interim Legal Services Manager attended the next PCWG meeting to discuss further.

Some members did not value the proposed briefings and raised concerns regarding pre-determination.

The meeting ended at 16:03

Committee: Planning Committee Working Group

Date: 2 March 2022

Title: Changes to the Consideration of Major Planning Applications and Consultations on Major Applications submitted directly to the Planning Inspectorate.

Author: Nigel Brown
Development Manager

Summary

1. This item considers the Council's response to the de facto changes in the functioning of the Planning Committee following the formal Designation Notice dated 8 February 2022 from the Minister of State for Housing (Department of Levelling Up, Housing & Communities).
2. The impact of this Designation Notice offers the opportunity for an applicant to submit any Major Planning Application directly to the Planning Inspectorate for determination. In such circumstances the Local Planning Authority will merely be a consultee on these applications and the timescales, which will run parallel with other statutory consultations will be **twenty-one days**. Any consultation responses made by the Council in this way will have to be reported to Planning Committee, and the current arrangements (specifically the frequency) of Planning Committee (including its governance requirements for publicity), do require some changes.
3. In response to the Designation Notice, the Council has considered its approach to the determination of all Major Planning Applications, and it is considered sensible that all Major Applications **regardless of recommendation** be reported to Planning Committee. This by its nature will certainly increase the case load and will add to the already busy Committee meetings. For context Planning Committee see approximately 15 majors per year this could increase to in excess of 25 Majors.
4. These two significant changes do require the need to revisit the current arrangements for Planning Committee. The purpose of this report is to consider the various options. It will not be possible to retain the current arrangements of a single meeting on a four-weekly Committee cycle.
5. The first significant change that is required to be made is the creation of a **Sub-Committee of the Planning Committee**. Due to the size of Planning Committee (11 members), a Sub-Committee, if formed, can be a panel of four members of the Committee, which is sufficient to render the sub-Committee quorate.

6. Sections 9E & 18 of the Local Government Act 2000; does provide powers for a Committee to appoint a Sub-Committee. Should the decision be made to create a Planning Committee Sub- Committee then further consideration will be required in respect of the following
 - The membership of the Sub Committee – if members are minded to establish a sub-committee (Options 1 and 2), membership and composition of the sub-committee will be set in accordance with Section 102 of the Local Government Act 1972 and Section 15 of the Local Government and Housing Act 1989. In procedural terms, this means the sub-committee will be subject to the overall political balance calculation and seats will be allocated to Groups in proportion to the overall composition of Council. Currently, the next scheduled review of political balance will be considered by Annual Council in May.
 - Section 17 (1) (b) of the Local Government and Housing Act 1989 gives provision for alternative arrangements to be put in place “without any member of the authority or committee voting against them”. Therefore, unanimous approval is required if members are minded to propose a membership scheme for the sub-committee outside of the overall political balance calculation.
 - Members are asked to consider the composition of the sub-committee and provide an indication of their preferred option in order to provide a recommendation to the Planning Committee.
 - The Sub-Committee will be subject to the same meeting regulations as Planning Committee and therefore would have to meet in person and in public.
 - The frequency of the Sub-Committee’s meetings would have to be established.
7. The second required change would be for the changing of the frequency of Planning Committee from its current four weekly cycle to an increased frequency of fortnightly or three weekly. The changes in frequency would be required to respond to any consulted applications, and to the level of applications going to Planning Committee.
8. The options offered, include a combination of these important changes.

The Options to be considered

OPTION 1

The creation of a Sub-Committee of the Planning Committee and retain the current frequency of Planning Committee meetings

This will allow a more agile response to consideration of the consultation upon Major Applications submitted to the Planning Inspectorate. As the Council would not be the determining authority for these applications, and the Council’s consultation period would run parallel with those with statutory consultations, and the community, the consideration of these applications would not include any

public speaking. Therefore, consideration of these applications would ensure a timely submission of the Council's response.

Challenges from this option

- It would not address the likely increase in cases being reported to Planning Committee
- It will have to be noted that our response on Major Applications in this way would be different to those determined by the Full Committee.

OPTION 2

The creation of a Sub-Committee of the Planning Committee and to change the frequency of Planning Committee meetings to every THREE WEEKS.

This would retain the agile arrangements for the handling of Consultation Applications, whilst allowing a more frequent Planning Committee cycle being available for the increase in cases for full Committee.

Potential Variations to this Option (OPTION 2A)

One potential variant of this option is the consideration and determination by the Sub-Committee of the most minor of planning applications to allow more time for Planning Committee to consider the increase in major applications being reported to the main Planning Committee meeting.

OPTION 3

To change the frequency of Planning Committee to FORTNIGHTLY

This would keep the Committee agile and able to handle the consideration of Consultation Applications without the need for the creation of a Sub-Committee.

Challenges from this Option

It is questionable whether this is a sustainable option. The capacity of members and officers (including those in Democratic Services) would be seriously stretched with a fortnightly cycle. Within this cycle would have to be scheduled matters such as site visits and the availability of physical accommodation within the Chamber.

Recommendation

9. To recommend to Planning Committee the favoured option in terms of the frequency of full Planning Committee and the creation of Planning Committee Sub-Committee. Officers recommend Option 2, with the serious consideration of Option 2A.

Impact

1.

Communication/Consultation	This group is a working group and will make recommendations to Planning Committee
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Risk Analysis

1.

Risk	Likelihood	Impact	Mitigating actions
That a review does not take place in accordance with good governance and best practice as recommended by the East of	3	3	The recommended changes are intended to improve the efficiency of the Local Planning Authority and create space for major applications to

England Local Government Association (EELGA)			be determined by Planning Committee
The Local Planning Authority's Failure to respond to consultations within the strict deadlines stipulated by the Planning Inspectorate	3	3	Review of the frequency of Planning Committee and the maximising the agility of Planning Committee to respond in timely way.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.