

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL
EXECUTIVE MANAGEMENT TEAM'S REPORT TO THE
CABINET

22nd July 2015

1. PROGRESS MADE IN IMPLEMENTING THE ACTION PLAN AGREED BY THE COUNCIL IN RESPONSE TO THE REPORT OF THE PLANNING PEER REVIEW TEAM

Submitted by: Executive Director – Regeneration and Development, Neale Clifton

Portfolio: Planning & Housing

Ward(s) affected: All

Purpose of the Report

To provide a progress report on the progress made in implementing the agreed Action Plan.

Recommendations

- (a) That Cabinet note the progress made; and**
- (b) That Cabinet agree to the proposals as set out in the report.**

Reasons

To ensure that improvements agreed following the receipt of the report of the Planning Peer Review Team are both implemented and maintained, and appropriate staffing resources are provided to the Council's Planning Service to enable it to perform its required functions.

1. Background

1.1 The Council commissioned in 2014 the national Planning Advisory Service to review its Planning Service with the aim of addressing perceived concerns about facets of the service to ensure that this important service is both effective and efficient.

1.2 The review process was undertaken in accordance with a nationally-agreed approach. This involved an assessment around a number of key themes.

1.3 The review team spent three days on site during which they interviewed a wide range of Members, officers and other stakeholders.

1.4 The Council in mid-August 2014 received a final report/letter from the Peer Review Team (PRT), a copy of which was subsequently circulated to all Members.

1.5 At its meeting on the 15th October 2014 Cabinet resolved

- a) To note the contents of the PRT's report and the recommendations therein;
- b) To agree with the proposal to prepare an Action Plan to address the said report's recommendations;
- c) That the Action Plan, referred to above, be reported to Cabinet for approval at the earliest opportunity; and

d) That officers write to the PRT thanking them for their report and confirming the Council's intended approach.

1.6 At its meeting on the 12th November 2014 Cabinet

- a) Agreed to the Action Plan which officers had drawn up in conjunction with Members and stakeholders;
- b) Agreed to receive in 6 months' time a report back on progress made in implementing the agreed Actions; and
- c) Agreed that the Planning Committee similarly receives the same report

2. **Issues**

2.1 The Action Plan agreed by the Council in November 2014 was based upon the 11 key recommendations of the PRT as summarised in their letter of 13 August 2014. These recommendations are set in Appendix 1.

2.2 Each key recommendation was the subject of a number of Actions. The Action Plan identified alternatives that had been considered and rejected, the expected timescale within which the Action was expected to be taken, the lead officer or Member, and the resources likely to be required to implement the Action. The Actions as agreed by Cabinet on the 12th November 2014 are provided in Appendix 2 to this report, together with an indication of whether or not they have been achieved.

2.3 There were 75 agreed Actions, with the majority indicating an expected implementation, or commencement within 6 months of the 12th November 2014 Cabinet meeting. Subsequent to that meeting the decisions of Cabinet were "called in" and were reviewed by the Economic Development & Enterprise Scrutiny Committee at its meeting on the 27th November 2014. The Scrutiny Committee chose to reject the call-in and to note the original decisions of Cabinet, with the decisions of Cabinet taking effect from the date of this meeting.

2.4 Officers have had a series of bi-monthly meetings with the previous Planning Portfolio holder and the then Chairman and Vice Chairman of the Planning Committee to review progress made, the most recent such meeting being on 5th May 2015. At each of these meeting progress was reviewed and in particular expected completion dates were rescheduled to take account of circumstances. Out of the 75 agreed Actions, 56 at the time of writing have been achieved.

2.5 Completed actions include:-

- the preparation of a revised Council Plan that reflects the relationship between key strategies and sets out broad strategic policy objectives (Action 1(a))
- the strengthening of the narrative and strategic context of the following Asset Management Strategy and Capital Strategy (Action 1(a))
- the creation of a Senior Planning Policy Officer post as an alternative to the previously agreed but unfilled Planning Policy Officer post (Action 4(a))
- the review of the Service's pre-application charges as part of the fees and charges review (Action 4(f))
- the reassessment of the Service's targets after seeking members' views (Action 4(g))
- the resolution of the issue of the authority to enter into Planning Performance Agreements (Action 4(j))
- a review of the structure of officer reports on applications to consider whether appropriate focus is being given to local finance considerations (Action 5 (b))

- the Council's full engagement as a landowner in the Local Plan preparation process including the Call for Sites (Action 5 (e))
- the introduction of the proactive presentation of items by officers at the Planning Committee where appropriate (Action 6(b))
- changing the frequency of meetings of the Planning Committee and holding separate meetings to consider planning policy items (Action 6 (c))
- setting up and delivering 6 training events for members of the Planning Committee (Action 7(d))
- various actions with respect to Section 106 procedures (Actions 8 (a) – (k))
- reviewing the Scheme of delegation (Action 9 (a))
- reviewing various procedures of the Committee (Action 9 (b))
- reviewing committee and delegated report structure and content (Action 11(g))
- Improvements to the labelling and accessibility of documents on the Council's Planning website (Actions 11 (n) & (o), and
- central monitoring of responses to correspondence from Parish Councils (Action 11 (q)).

2.6 At the time of writing some 15 of the agreed Actions have however not been completed. In the case of 6 of these 15 there has been progress and the direction of travel is positive. These are identified in Appendix 2. In the case of a further 4 agreed Actions they either do not have a fixed required implementation date, or if they do, that date has not yet been reached. In Appendix 2 they are identified as 'ongoing'.

2.7 This report focuses upon the 15 Actions which have not been fully completed, including those where there has been progress and the direction of travel is positive. Proposals are put forward with respect to each of them.

2.8 Agreed Actions 3(a), 3(b) and 3(c) refer to the bringing forward of a report to Cabinet on the development of an interim planning policy statement (IPPS) as part of the Local Plan preparation process, identifying the potential benefits and costs of such an approach including its implications for the existing Local Plan timetable and the weight such a statement could have in development management decisions; if such a proposal were agreed, the bringing forward of a timetable and the required consultation and resources implications; and then the implementation of the decision of Cabinet.

2.8 Your Officer's recommendation is that the IPPS report should now come before Cabinet at its meeting in September, with comments from an earlier Planning Policy Planning Committee on a date yet to be arranged.

2.9 The recommendation from the PRT, arose principally because officers were advising Members, in line with the NPPF, that as the Council was unable to demonstrate a 5 year housing land supply, policies on the supply of housing (within the saved Newcastle Local Plan and within the Core Spatial Strategy) had to be considered, at least for so long as this remained the case, as 'out of date'. Whilst the report on the idea of an IPPS has not yet been brought forward to Cabinet Members should note that steps (involving accelerated monitoring/ allocation of staff resources across the Service) have in the interim been taken to ensure that the "new" 5 Year Housing Land Supply position was established as soon as possible after the 1st April 2015 date. The priority given to this was at the expense of the Local Plan programme. A report on that position was submitted to 3rd June 2015 Planning Policy Planning Committee (to the effect that the Council could still not demonstrate a 5YHLS, because it could not identify its housing requirements). The item was deferred by the Committee for further information and advice, and a report back to the Planning Committee will be provided as soon as possible once that advice has been obtained.

Although the bringing forward of a report on the idea of an IPPS will divert staff resources at a critical point in the Joint Local Plan's development, it is accepted by officers that this is a priority, and the intention is to report to the 16th September Cabinet, with the views of the Planning Committee.

Recommendation with respect to these Actions – that these Actions continue to be pursued and that officers be asked to bring a report to the 16th September Cabinet

2.10. Agreed Action 4(b) was to review whether to either create a temporary post of a dedicated planning enforcement support officer or create, by other means, additional capacity for planning officers to progress their enforcement workload

2.11 The review has now taken place. As reported to the Planning Committee at its meeting on the 23rd June, the annual outturn performance for 14/15 with respect to the percentage of complainants being informed within the required timescales of any action to be taken about alleged breaches of planning control has fallen for the third year running (down to 52%). There are some signs of improvement (performance with respect to the above indicator improved significantly in the last two quarters of 2014/15) and the overall poor performance in 14/15 can at least in part be attributable to the absence for a considerable amount of time of the sole planning enforcement officer due to illhealth. Indications are (Table 1 of Appendix 3)) that the number of new enforcement cases, whilst it fluctuates considerably from month to month has been increasing again over the last year.

2.12 The existing expectation is that planning officers are responsible for recommending whether or not it is expedient to take enforcement action in cases allocated to them once such cases are past the preliminary investigation stage, and for then progressing these cases. However in practice this is not working because of other competing demands upon the officers' time (i.e. pre-application enquiries, applications, appeals and applications for the approval of details required by conditions). The progression of enforcement cases is consistently being given less priority than it requires.

2.13 To deal with this an input of additional dedicated staff resource at an appropriate level (i.e. a professional planning officer rather than an additional investigation and advisory officer) is now considered to be required – the intention being that such an officer would be the case officer for all applications for retrospective planning applications and progress all enforcement cases once the investigation stage had been completed. Such an officer would it is envisaged report to the Development Management Team Manager and that the post would be at a Senior Planning Officer level, thus helping provide a more resilient service.

Recommendation with respect to Action 4(b)

That a new post of Senior Planning Officer (Enforcement) be created at Grade 9 plus any appropriate Market Supplement

2.14 Agreed Action 4(c) was to explore the idea of creating a 'premium' or 'fast track' service for development management, through a report to Cabinet.

2.15 No progress has been made to date on delivering this 'action'. Although it was part of the Action Plan and could potentially have brought in new resources, this is not considered a priority at present for the Service, is considered to be unachievable at present, and your Officer's recommendation is that this action be taken no further.

Recommendation with respect to Action 4(c) - That this 'action' be taken no further

2.16 Agreed Action 4(j) was to consider the potential use again of consultants to address short term Development Management staffing issues

2.17 Performance figures despite the coming into post of the replacement Planning Officer in September 2014 and return in February 2015 from long term sick leave of another planning officer, are still not moving in desired direction. A report on the position with respect to the suite of 6 performance targets for Development Management noted that the outturn figures for 2014/15 showed that the Councils' targets for 2014/15 had not been achieved in 5 out of the 6 cases. A report to Finance, Resources and Partnerships Scrutiny (FRAPS) Committee on 15th June confirmed that with respect to two out of the three dashboard indicators for the Planning Service (all of which are concerned with the speed of the determination of planning applications) performance for the last quarter of 2014/15 was below the Council's targets.

2.18 The number of valid applications being received is on a gradual increase – as indicated on Table 2 in Appendix 3. Tables 3-5 in that Appendix show inter alia a significant and sustained increase in the number of applications for Minor Development (one step down in difficulty from applications for Major development) and a partial recovery in the number of applications for Major Development. Tables 6-8 in that Appendix show the trends in the other principal workstreams that make up the workload of the Development Management Section.

2.19 Your Officer's view is that the only way to ensure that performance gets back onto track and to deal with the various backlogs, is to bring in additional short term additional staffing resources. In the past use has been made of self-employed consultants and this, if members are in agreement with the principle, would be the most likely option to be utilised. This enables the Service to bring in such assistance quickly, to effect an immediate improvement in the situation, and then to end such arrangements as soon as appropriate.

Recommendation with respect to Action 4 (j) – That Officers be authorised to spend up to £20,000 on the securing of short term assistance to the Development Management function

2.20 Agreed Action 6(a) was to review the remit, membership (widened to include all members of the Planning Committee) and business of the Strategic Planning Consultative Group, involving the Group in that review and bringing a report to Cabinet, with comments from the Planning Committee.

2.21 A report was brought to 10th February Strategic Planning Consultative Group concerning this matter and your officers have been discussing the available options with the new Planning Portfolio holder and the Chair of Planning. It is now proposed to bring a report on this matter to the 16th September Cabinet, with the comments of the Planning Committee being obtained beforehand.

Recommendation with respect to Action 6(a) - That officers take steps to ensure that this item comes before Cabinet at its meeting on 16th September

2.22 Agreed Action 7(i) was to put on wider training sessions for non-planning committee members on probity, member officer relations, etc.

2.23 Although Member Services have yet to make any arrangements for such wider training it should be noted the first training event for members of the Planning Committee will include a section on probity, and that if there are spare spaces, they will be available for non-planning committee members – numbers will however be limited. The Member Training and Development Officer is in the process of sourcing appropriate training

Recommendation with respect to Action 7(i) – That appropriate training be provided if it can be sourced

2.24 Agreed Action 8(a) was to review local validation requirements to determine whether more applications should require to be accompanied by ‘Heads of terms’ (of possible legal agreements that might be required) or whether actual draft agreements should be required, as a precondition of validation

2.25 The Council will have to complete a review of its local validation requirements by October 2015, so in the interests of efficiency it has been decided that this ‘action’ should be incorporated within that wider review.

Recommendation with respect to Action 8(a) – that this action be incorporated in the statutorily required review of the whole Local validation list that must be completed before October 2015

2.26 Agreed Action 8(h) was to introduce a Service Level Agreement between Legal and Planning Services setting standards for response times to instructions/requests for clarification (with respect to Section 106 agreements)

2.27 Since the time of the Planning Peer Review there has been a substantial decrease in the number of Section 106 agreements waiting to be completed so the non-delivery of this action has had a very limited impact, although the action remains appropriate

Recommendation with respect to Action 8(h) – that when resources permit such a SLA be drawn up and introduced

2.28 Agreed Action 8(o) was to invite key consultees to enter into a Service Level Agreement as already in place between the Borough Council and the Highway Authority, with respect to development management functions

2.29 This is an action which principally impacts upon stakeholders involved in applications for Major development, so the non-delivery of this action has had a very limited impact

Recommendation with respect to Action 8(o) - that when resources permit such agreements be progressed, if the other party shows a willingness to enter into such an SLA

2.30 Agreed Action 8(q) was that draft conditions should be prepared within 2 weeks of Committee in all cases (where approval agreed) and also be the subject of consultation with the developer

2.31 Whilst the Government has drawn back from making consultation with applicants regarding the terms of draft conditions of planning permissions for Major development a statutory requirement it is undoubted good practice so it should remain an appropriate ambition for the Service. Whilst there are individual examples of good practice within the Service such early drafting and consultation is not universally occurring, at least in the case of those permissions whose release is subject to the prior completion of planning obligations. It is hoped that by the provision of additional staff resources intended to relieve at least in the short term the workload backlog this will enable an associated improvement in performance in the drafting of conditions.

Recommendation with respect to Action 8(q) – that a new date (December 2015) be set as the target by which this practice should be embedded within the Service

2.32 Agreed Action 9(c) was to review the Planning Committee members protocol seeking the required approvals for any changes

2.33 A preliminary presentation on the changes required has been made to the Constitution Review Working Group (CRWG) and it has been established this is a matter for Council which it will not get to until its 9th September meeting at the earliest (via CRWG, FRAP and Planning Committee).

Recommendation with respect to Action 9(c) – that officers take steps to ensure that this item comes before Council at its meeting on 9th September if possible

2.34 Agreed Action 10(a) was to seek external legal advice, and Action 10(b) to bring a report to Cabinet, on the issue of pooling post April 2015 (of Section 106 contributions) and to revisit the advice given to the December 2013 Cabinet that adoption of a CIL Charging Schedule could not proceed in light of the decision to abandon the Site Allocations and Policies Local Plan & to instead proceed with the new Local Plan.

2.35 This matter is now being progressed.

Recommendation with respect to Actions 10(a) and 10(b) – that appropriate steps be taken to bring a report on this matter to Cabinet on 16th September

2.36 Conclusion

Whilst considerable progress has been made in implementing the Action Plan (with some 56 'actions' having been completed and a further 6 having a positive direction of travel) and almost all of these have involved officers of the Planning Service it is evident that the Planning Service has found it difficult to do this whilst at the same time maintaining performance levels in other areas, and several major actions were not completed when they should have been. The change in the frequency of planned meetings of the Planning Committee (from 3 to 4 weeks), designed to create some headroom for such developments has not proved as beneficial in this respect as had been hoped – in part because additional meetings (of the Committee) have had to be held.

2.40 Your Officer considers that the problems the Service has experienced in progressing the action plan reflects in part the difficulties which both the Head of Planning and the two Business Managers in progressing matters that develop the Service whilst at the same time dealing with "day to day" matters. It is considered that if resources permit there would be merit in actively pursuing the option of employing a 0.5 FTE practice manager or similar to provide assistance to these three officers.

Recommendation - That a new 0.5 FTE post of practice manager to the Planning Service (Grade 8) be created

3. Reasons for the recommendations

3.1 The recommendations provided above are considered those required to ensure that improvements agreed following the receipt of the report of the Planning Peer Review Team are both implemented and maintained, and appropriate staffing resources are provided to the Council's Planning Service to enable it to perform its required functions

4. Financial and Resource Implications

4.1 The recommendations in this report with respect to additional staffing resources, if accepted, have financial implications for the Council's 2015/16 budget and that for subsequent years, as there is no current budgetary provision for such budget expenditure

4.2 The financial implications are as follows

For 2015/16

Up to £20,000 for the employment of consultants

Up to £21,133 (6 months salary costs plus NI and pension costs for a Grade 9 appointment (at top of Grade) plus assumed 4 spinal column points Market Supplement)

Up to £8,450 (6 months salary costs plus NI and pension costs for a Grade 8 0.5 FTE appointment (at top of Grade))

Total for 2015/16 – up to £49,583

2016/17 and thereafter

Up to £42,266 (Annual salary costs plus NI and pension costs for a Grade 9 appointment (at top of Grade) plus assumed continued 4 spinal column points Market Supplement)

Up to £16,900 (Annual salary costs plus NI and pension costs for a Grade 8 0.5 FTE appointment (at top of Grade))

Total – up to £59,166 p.a. (+ any subsequent pay award)

4.3 In respect of the estimated £50k additional expenditure in the current financial year, in the first instance this will be financed from any additional planning fees over and above the budgeted amount, together with savings from minor staffing changes elsewhere within the service. The balance will then have to be met from the Council's Contingency Reserve.

4.4 In respect of the ongoing £60k this will need to be built in to the updated Medium Term Financial Strategy which is due to be considered by Cabinet in October.

5. Outcomes Linked to Corporate Priorities

5.1 The Action Plan has impacted positively on the following of the Council's corporate priorities:

- creating a cleaner, safer and sustainable Borough
- creating a Borough of opportunity
- creating a healthy and active community
- creating a co-operative Council, delivering high value, community –driven services

6. Legal and Statutory Implications

6.1 The duties of the Council as a Local Planning Authority are set out in primary and secondary legislation. There are no legal or statutory implications associated with the recommendations of this report

7. Major Risks

7.1 The Government has established a system of designation of poorly performing planning authorities, the consequence of which is that applications for Major development can apply direct to the Planning Inspectorate rather than to the Local Planning Authority with the associated loss of local decision making and revenue (the application fee being payable to the Planning Inspectorate rather than the Local Planning Authority. At present designation is based upon a performance level that falls beyond two criteria – one relating to the speed of determination of applications for Major development and the other relating to the Council's performance on appeal – a quality measure. On neither basis is the Borough Council currently at risk of designation, although performance against the quality measure could vary considerably. The Government have however announced an intention to further lift the performance threshold below which authorities will be designated, and are proposing further criteria for designation – which the Council would be at risk of not meeting.

7.2 The Planning Peer Review identified a range of issues with the Planning Service. A failure to address these issues could well involve the Council in reputational damage and direct costs.

8.0 Appendices

8.1 The following Appendices are attached to this report

- **Appendix 1** – The key recommendations of the Planning Peer Review Team's report
- **Appendix 2** – Actions agreed by Cabinet November 2014 with achievement as at 10th July 2015
- **Appendix 3** - Development Management workload elements

9. Key Decision Information

9.1 This is a key decision as defined in the Council's Constitution

10. Previous Cabinet Decisions

10.1 15th October 2014, Cabinet, Agenda item 10 – Minutes published

10.1 12th November 2014, Cabinet, Agenda item 4 - Minutes published

11. Background Papers

11.1 Planning Peer Review report dated 13th August 2014