

**Decision Maker:** DEVELOPMENT CONTROL COMMITTEE

**Date:** Tuesday 11<sup>th</sup> January 2022

**Decision Type:** Non-Urgent                      Non-Executive                      Non-Key

**Title:** PLANNING SERVICE IMPROVEMENTS

**Contact Officer:** Tim Horsman, Assistant Director Planning & Building Control  
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**Chief Officer:** Director of Housing, Planning and Regeneration

**Ward:** (All Wards)

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1. Reason for report

This report sets out the current position in respect of continuous service improvements to the Planning Service and seeks agreement for recommended actions.

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2. **RECOMMENDATION(S)**

1. **Members agree actions as recommended against each item in the table in Section 3.4 of this report**
2. **Members agree the recommendations of the Standards Committee from July 2021 in Section 3.5 of this report**
3. **Members agree the related changes to the Scheme of Delegation in Section 3.7 of this report**
4. **Members agree the related changes to the Local Planning Protocol in Sections 3.8 – 3.12 of this report**
5. **Members agree to the creation of an online form for planning ‘call in’ requests as set out in Section 3.13 of this report**
6. **Members are additionally asked to agree (i) the non-related amendment to the Scheme of Delegation set out in paragraph 3.14 of this report and (ii) the change to weekly list procedures set out in paragraph 3.15 of this report.**
7. **Members agree that recommendations 3,4 and 6(i) above be considered by Full Council**

### Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
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### Corporate Policy

1. Policy Status: Existing Policy:
  2. BBB Priority: Excellent Council Quality Environment Regeneration:
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### Financial

1. Cost of proposal: Not Applicable:
  2. Ongoing costs: Non-Recurring Cost:
  3. Budget head/performance centre: Planning Department
  4. Total current budget for this head: £1.653m
  5. Source of funding: Existing revenue budget 2021/22
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### Personnel

1. Number of staff (current and additional): 66.8ftes
  2. If from existing staff resources, number of staff hours:
- 

### Legal

1. Legal Requirement: Non-Statutory - Government Guidance:
  2. Call-in: Not Applicable:
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### Procurement

1. Summary of Procurement Implications: N/A
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
- 

### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: N/A

### 3. COMMENTARY

- 3.1 Following being close to ‘designation’ by the government in 2019 the Council through both Officers and Members has been committed to identifying and implementing a wide range of service improvements to secure better performance and quality of decision making in its Planning service.
- 3.2 Following the Planning Advisory Service (PAS) report from 2019 there have been regular reports to Development Control Committee on related service improvements setting out proposed and achieved actions. The Council asked PAS to return to Bromley in 2021 to reassess the position and advise on any further recommendations for continual improvement.
- 3.2 A new set of recommendations and actions has been identified from the appended 2021 PAS report and this is set out in a new table below. As the 2021 PAS report addressed issues from the previous report that the author considered to be outstanding, the table previously included in the Planning Service Improvements reports has been replaced with an updated version at 3.4. A list of the completed recommendations from the earlier table is also set out below at 3.3 for information. The 2021 PAS report is appended to this report.
- 3.3 Previous PAS recommendations which are considered to have been completed:
- New Local Planning Protocol
  - Criteria for applications to be considered at DCC
  - Scheme of delegation to be broadened
  - ‘Call ins’ to be in writing with clear planning reasons
  - ‘Call in’ monitoring to be reported to DCC
  - Format of committee agenda to be reviewed including ‘Lists’
  - Officer role at committee to be reviewed including presentations
  - Quality of committee reports to be improved
  - Review of appeal decisions and costs to be reported to DCC
  - Where motion goes against Officer recommendation, clear reasons for refusal or conditions to be agreed before vote is taken
  - Review of site visit procedures for committee members
  - Consideration of use of different room for committee meetings
  - More pro-active approach to major pre-application discussions including early Member involvement such as presentations to committee and improved communication between Officers and Members
  - Regular reports on performance of planning and appeals team
- 3.4 The new 2021 PAS report identified the following issues and recommendations, and these are set out in the table below alongside suggested actions for Members to consider:

<b>PAS Recommendation (from PAS report)</b>	<b>Reasoning (from PAS report)</b>	<b>Proposed Action</b>
1. Members must be careful to balance all factors appropriately in their decisions and ensure that they base their views on good evidence rather than hunches and gut feelings.	Decision making can be based on hunches and gut feelings rather than good evidence and the balancing of all factors.	Training on planning decision making – in particular around evidence needed to support decisions - in person and signposting to information / guides – to

PAS Recommendation (from PAS report)	Reasoning (from PAS report)	Proposed Action
		be added to Councillor Planning Training intranet page.
2. Less emphasis on the local view at committee by wider training of Members with particular reference to the Local Planning Protocol and the LGA's "Probity in Planning".	No significant change was detected since the 2019 PAS report in the approach to local views at committees with Members acting as strong advocates for local views rather than being seen to take a broader perspective required in planning decision making.	Training on planning decision making – in particular around balancing local and strategic considerations - in person and signposting to information / guides – to be added to Councillor Planning Training intranet page.  Addition of strategic implications into committee reports.
3. Improve consistency of decision making between all the planning committees.	Consistent decision making is important in maintaining quality defensible decisions.	There are a number of ways this can be achieved – in the longer term the restructuring and / or reduction in number of planning committees and / or chairmen could be considered but in the short term it is felt this matter can be initially addressed by compulsory training for Members sitting on any planning committee to ensure a consistent approach to decision making.
4. Committees should not be dominated by individual Councillors.	This makes it more difficult for the Chairman to progress the meeting.	The Chairmen ensure that all Members have an equal opportunity to contribute and not allow individual members to dominate discussions.
5. Profile of the Local Planning Protocol and Code of Conduct should be raised amongst Officers and Members.	This is essential for quality effective decision making and good knowledge of it was not evident.	Report to DCC updating plus more signposting including Councillor Planning Training intranet page.  Make reference in planning application reports.

<b>PAS Recommendation (from PAS report)</b>	<b>Reasoning (from PAS report)</b>	<b>Proposed Action</b>
		Require Councillors to have read LPP before sitting on or attending to address any planning committee.
6. Local Planning Protocol should be reviewed and included in future training for Members and Officers.	This is essential for quality effective decision making and good knowledge of it was not evident.	Report to DCC updating plus more signposting including Councillor Planning Training intranet page.
7. Information on committee scheduling for major applications to be provided to DCC Chairman and Vice Chairman on a weekly basis and provide a basis for future agenda planning.	More frequency is needed to ensure good committee programming and agenda planning.	Agreed more regular updates as required.
8. Certificates of lawfulness should be exempt from call in to committee and should all be determined under delegated powers (which should be amended accordingly).	The decision is not based on the normal balance of planning issues but solely on the facts of each case. Consequently, they are not applications that should be presented to committees for debate.	Certificates only to be called in on an exceptional basis but there are some cases which involve a degree of judgement.
9. Call in requests should only be made by a relevant Ward Member or with the agreement of one of the Ward Members. The Member who has called in an application should attend the relevant committee meeting.	A significant number of applications are still considered by the PSCs because they have been called in by Members. They take up a considerable resource both in committee time, officer preparation and report writing.	As recommended although if unable to attend the Member calling the application in can submit written comments or dial in remotely to the meeting instead – update delegated powers and LPP.
10. Call ins should be in writing using an online form requiring specific information including options around whether the Member would be happy to allow a delegated decision based on a specific recommendation and include clear reasons why the application needs a committee decision.	A significant number of applications are still considered by the committee because they have been called in by Members. They take up a considerable resource both in committee time, officer preparation and report writing.	Agreed – suggested content for a form is set out in this report. Delegated powers and LPP to be updated.
11. Brief Officer presentations to be	There is a clear benefit	Presentations will be made

<b>PAS Recommendation (from PAS report)</b>	<b>Reasoning (from PAS report)</b>	<b>Proposed Action</b>
made at all planning committees on each item before debate.	to public perception that, when Members debate an item, they have a clear understanding of the issues in front of them and discussions with Members and officers confirmed they find presentations very helpful.	at all committee meetings.
12. The Officer role at committee be fulfilled effectively and robustly so Officers are able to provide professional advice to the committee on items at any point. Chairmen should ensure that the order of proceedings set out in Section 7 of the Local Planning Protocol is consistently followed and Chairmen and committee members should encourage and allow Officers to fulfil their roles properly.	Planning committees can only work effectively if there is mutual trust and respect between Members and officers and a culture of working together to deliver high quality decisions and service.	Agreed. For Chairmen to action and Officers to ensure that they are confident to fulfil the role. Officers to speak first by making presentation.
13. Substitutions at committee should be impartial and seen to be so.	There is evidence that substitutions based on Ward Members interest are continuing and occasionally ward Members are “loading” particular meetings.	Agreed. To be added to Local Planning Protocol and for Councillors to note and action. No more than 2 out of 9 Members sitting on a committee should be representing any particular ward at any time. This does not include visiting Members.
14. Where a motion goes against Officer recommendation the procedure should be: <ul style="list-style-type: none"> <li>• summarises motions put and seconded</li> <li>• clarifies reasons for refusal or permission if different to that recommended or if additional reasons / conditions are to be added</li> <li>• gives the Planning Officer the opportunity to advise committee prior to motion being considered.</li> </ul>	Members should be clear what they are voting on and need to avoid the possibility of a challenge against a decision.	Local Planning Protocol to be updated and Chairmen to be mindful of this.  Planning Officer to be given clear opportunity to advise the committee before any decision is made.  Training on valid grounds of refusal and conditions to be provided.
15. In the 2019 PAS report, it was	This approach remains a	Process to be added to the

<b>PAS Recommendation (from PAS report)</b>	<b>Reasoning (from PAS report)</b>	<b>Proposed Action</b>
<p>recommended that where a final decision to refuse could make the Council vulnerable at appeal and awards of costs, officers should seek a deferral of the item for one cycle of the committee so that a confidential report which sets out the risks can be prepared and avoids officers having to advise on these issues in public (the final decision on the application should however always be in public), or defer the application to the next DCC.</p>	<p>concern. The latest figures available show that £36,236.15 had been paid out in cost awards for the period April 2019 to March 2020. These cost awards were in part because the Council could not provide objective analysis of its reasons or substantive evidence to support the reasons for refusal. The times when applications might need to be deferred are small and I remain of the view that this option should be available to the committee and officers if the decision is likely to put the Council in a vulnerable position. Doing so does not undermine the position of the committee and Members but instead displays a careful approach to the process.</p>	<p>Local Planning Protocol and option to be available to committee whilst being mindful of non-determination appeal timescales.</p>
<p>16. In respect of committee room:</p> <ul style="list-style-type: none"> <li>• The current seating layout in a “U” format be continued post COVID as it enables eye contact to be made with all of the participants, which the previous “T” layout did not.</li> <li>• Member seating is placed as close as possible to the public seating area to enhance inclusivity</li> <li>• Examination of the best way to provide facilities for PowerPoint presentations to be visible to all Members and the visiting public and most appropriate solution installed as soon as possible.</li> <li>• Information available to visitors to the meetings be reviewed and improved.</li> </ul>	<p>In order to make meetings as inclusive as possible.</p>	<ul style="list-style-type: none"> <li>• Keep seating as currently laid out</li> <li>• Powerpoint has been used as described at DCC and can be for future meetings</li> <li>• Officers will review the experience for the public who attend meetings to include a review of information on the website and facilities at the meeting.</li> </ul>
<p>17. Relevant training for committee Members and substitutes should be compulsory in the following areas:</p> <ul style="list-style-type: none"> <li>• Introduction to Planning</li> <li>• The Development Plan and Decision Making</li> <li>• Predetermination and</li> </ul>	<p>To ensure good quality decision making.</p>	<p>Training programme to be arranged / updated.</p> <p>Annual training to be obligatory for all Members who sit on or substitute at any planning committee.</p>

PAS Recommendation (from PAS report)	Reasoning (from PAS report)	Proposed Action
Predisposition <ul style="list-style-type: none"> <li>• Probity and Disclosure of Interests</li> <li>• How committees work</li> <li>• The Local Planning Protocol</li> </ul>		Regular updates on planning for Members.  Officer training to also be rolled out as appropriate
18. A clear programme for the following reports to be considered should be agreed: <ul style="list-style-type: none"> <li>• performance improvements</li> <li>• analysis of 'call ins'</li> <li>• application performance including speed of decision making and proportion of delegated decisions</li> <li>• outcomes of overturned appeals for major applications</li> <li>• appeals resulting in costs</li> <li>• detailed monitoring of appeals.</li> </ul>	Such reports provide important and useful information for Officers and Members to assist in quality decision making	Schedule of reports to be agreed with DCC Chairman
19. Increase regularity of DCC meetings to monthly	To ensure reasonable sized agendas and avoid delays in determining applications.	DCC to remain every 2 months however additional sessions to be added as needed for pressing applications or policy matters.

3.5 Members are also asked to consider the following recommendations from Standards Committee in July 2021:

*i). When more than 50% of a planning committee declared that they knew a planning applicant the matter would automatically be referred to the Development Control Committee. The Chairman of the Development Control Committee would regularly liaise with officers and when applications were submitted by local developers whom many Members may know the application would automatically be referred to the Development Control Committee.*

*ii). Members to be made aware that a "Cab Rank" principle operated for the allocation of planning applications and they should therefore not request that an application be referred to a specific committee.*

*iii). Councillors who have called an application to committee should not move or second the motion.*

3.6 Members will note from the suggested actions above that there are changes to other documents recommended and these are as follows:

**Scheme of Delegation:**



### 3.7 Recommendations 9 & 10 –

Part (21)(v) of the delegated powers of the Assistant Director for Planning & Building Control is part of a list of situations where a delegated decision may not be made on a planning application and currently reads as follows:

*“(v) Any application listed in (20) above which one or more Bromley Councillor formally requests in writing (“calls in”) with a reason (s) be determined by Committee.”*

Proposed new wording:

*“(v) Any application listed in (20) above which one or more Bromley Councillor for the Ward in which the application site is located (or any other Bromley Councillor with the written agreement of a Councillor for that Ward) formally requests (“calls in”) using the online call in request form giving a planning reason(s) for that ‘called in’ application to be determined by committee.”*

#### **Local Planning Protocol:**

### 3.8 Recommendations 5,13 &17 & Standards Committee Recommendation (i) -

Add new section ‘1A – Attendance at Planning Committee’ to the Local Planning Protocol as follows:

*1A.1 Officers and Councillors attending any planning committee meetings to address or advise the committee are required to have read and understood this Protocol prior to attending a meeting.*

*1A.2 Substitute Members at planning committee meetings should be impartial and no more than two Members sitting on a committee should be representing any particular ward at any time. This does not include visiting Members.*

*1A.3 All Members who sit on a planning committee are required to have basic training before they sit on that committee, which is provided annually on the following topics and will be monitored:*

- *Introduction to Planning*
- *The Development Plan and Decision Making*
- *Predetermination and Predisposition*
- *Probity and Disclosure of Interests*
- *How committees work*
- *The Local Planning Protocol*

*1A.4 When more than 50% of the Members of a specific Plans Sub Committee declare at the start of the meeting (or beforehand) that they know a planning applicant, the matter would automatically be referred to the Development Control Committee without debate. The Chairman of each committee is responsible for identifying such cases.*

### 3.9 Standards Committee Recommendation (ii) –

Add new paragraph 2.5 as follows:

*2.5 Applications are placed onto committee agendas by Officers using a ‘cab rank’ principle whereby they are reported to the next available committee once the case officer is content that the application is ready to be reported. Members should not request to Officers that applications be considered by a particular committee or on a particular date.*

### 3.10 Recommendation 14 –

Update paragraph 8.5 to read as follows:

*8.5 Where a motion goes against Officer recommendation the procedure should be:*

- 1. Chairman summarises motions put and seconded*
- 2. Chairman clarifies reasons for refusal or permission if different to that recommended or if additional reasons / conditions are to be added*
- 3. Chairman gives the Planning Officer the opportunity to advise committee prior to the motion being considered.*

*The advice from the Planning Officer will be based upon the material considerations that have been discussed by the Committee and whether there are grounds that could be defended in the event of an appeal or legal challenge. The solicitor advising the Committee will be called upon as necessary to give advice on legal matters.*

### 3.11 Recommendation 15 –

Update paragraph 8.6 to read as follows:

*8.6 If the Planning Officer considers that he/she is unable to give that advice immediately, or if the Planning Officer considers that a final decision to refuse could make the Council vulnerable at appeal and awards of costs, Officers should be able to seek a deferral of the item for one cycle of the committee so that a confidential report which sets out the risks can be prepared and avoids Officers having to advise on these issues in public (the final decision on the application should however always be in public), or defer the application to the next Development Control Committee.*

### 3.12 Standards Committee Recommendation (iii) –

Update paragraph 8.1 to read as follows:

*8.1 Councillors who have called in an application to committee should not move or second a motion on that application. The Chairman should take the motion that is proposed and seconded first and only if that motion fails move to the next motion that is proposed and seconded.*

#### **Other Documents:**

### 3.13 Recommendations 9 & 10 –

Suggested questions for online form for Councillor call in requests:

- 1. Name of Councillor*
- 2. Is the site in your Ward, and if not do you have the written agreement of a Councillor for that Ward?*
- 3. Application reference number*
- 4. Site Address*
- 5. Planning reason for call in*

6. *Would you be happy for a decision to be made under delegated authority if the application was to be a) refused or b) permitted or with any other specific recommendation – e.g. with a specific planning condition?*

3.14 Members are also asked to agree the following change to the Scheme of Delegation:

Part (21)(viii) of the delegated powers of the Assistant Director for Planning & Building Control is part of a list of situations where a delegated decision may not be made on a planning application and currently reads as follows:

*(viii) Where less than 21 days has passed since the application appeared on a “Weekly List” of applications circulated to members other than where all ward Members have agreed otherwise in writing.*

Non material amendment applications (suffixed AMD) and details pursuant to conditions (suffixed CONDT) are expected to be determined within much shorter timescales than standard planning applications and the requirement to wait for 21 days from the weekly list date has been causing unnecessary delays in some cases for these simple applications. Members are asked to agree a shortened timeframe for call in for these two specific application types to help Officers process these more quickly as follows:

*(viii) Where less than 21 days has passed since the application appeared on a “Weekly List” of applications circulated to members other than where all ward Members have agreed otherwise in writing, other than for non-material amendments and details pursuant to conditions, where the time frame is 7 days from the weekly list date.*

3.15 Members are also asked to agree that weekly lists only be provided in Ward Order from now onwards, instead of the numerical and ward order lists that are currently circulated.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 There may be some training costs however no other significant costs are expected at this stage.
- 4.2 Better decision making may result in a reduction of costs awarded against the Council at appeal and some changes may reduce the cost of processing applications, for example those determined under delegated powers as opposed to committee decisions.

#### **5. LEGAL IMPLICATIONS**

- 5.1 The recommended measures should reduce the likelihood of successful legal challenge against planning decisions.

#### **6. PERSONNEL IMPLICATIONS**

- 6.1 See financial implications above

<b>Non-Applicable Sections:</b>	Policy Implications; Procurement Implications Impact on Vulnerable Adults and Children
Background Documents: (Access via Contact Officer)	Planning Advisory Service Reports May 2019 and June 2021 Probity in Planning (PAS) December 2019 Bromley Council Constitution Bromley Local Planning Protocol