

Review of DCC and Planning Sub Committees London Borough of Bromley

Planning Advisory Service and Vink Planning – July 2021

Introduction

1. This report sets out the results of a second review of the way the Development Control (DCC) Committee and Planning Sub Committees (PSC) of London Borough of Bromley (LBB) operate. This second review was carried out at the request of LBB by the Planning Advisory Service using Martin Vink, an experienced PAS consultant and formerly Development Manager at Ashford Borough Council. It was requested by the Council as it was again at risk of designation by MHCLG due to its record on major appeals. As with the previous review in 2019 the emphasis was on whether the 5 planning committees are
 - making defensible decisions on planning applications, and
 - operating effectively.
2. Again, the review was carried out by interviewing a range of Councillors and officers and viewing several committee meetings. The meetings viewed were the virtual meetings of the DCC on 25 March 2021 and the PSC meetings of 15 October 2020 and 4 March 2021.

Overall Impressions

3. The committees are generally being well run but chairmen need to tread a careful balance between ensuring business is progressed and leading the debate and decisions. Chairman also need to ensure that the debates are not dominated by individual Councillors.
4. Access to the committees by the public is good and speaking opportunities are taken up well. The order of proceedings and voting procedures are clear.
5. The quality of debate is generally effective but the predominance of the local views in the debate remains. 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.
6. I and several of the Councillors I interviewed are concerned about the consistency of decisions between the 4 PSCs. Whilst there is generally consistency between the sister committees (1 & 3 – 2 & 4) there can be variations.

Recommendation

- Officers should review this area and report to the relevant committee chairmen.
7. Agendas are clear and the minutes are a particularly good record. Access to information is easy, either through the Council's web site or the Mod.Gov app.
 8. As identified in this report there have been some significant improvements in the way the committees operate. I have reviewed this progress and suggested how further improvements might be made.

The 2019 Review

9. The previous review (see report dated May 2019 at Appendix 1) identified several concerns about the way the planning committees were operating, principally
 - an overly strong presumption by the Council to protecting the local environment over delivering necessary new development

- an unduly strong emphasis placed on “local or ward views”
 - an approach to decision making which does not give sufficient weight to the primacy of National and up to date local planning policy
 - decisions taken after the original refusal because some reasons are not defensible at appeal.
10. It identified 20 recommendations to resolve these principal concerns and to improve the way the committees operate.
11. The Council has responded very proactively to the 2019 report by
- Members and officers working together to deliver change
 - reporting the recommendations to the DCC committee on 6 occasions between October 2019 and March 2021
 - responding positively to most of the recommendations
 - reviewing procedures and implementing change.
12. As identified below some changes have yet to be embedded in the way committees operate and I have identified areas where improvements can be made.
13. The following sections of the report look at each of the areas for improvement in turn and identifies how successful changes have been.

New Local Planning Protocol for Members

14. A Local Planning Protocol and Code of Conduct (LPP) was adopted in July 2020 and is embedded in the Constitution (Appendix 11). It applies to both Members and officers and is based on the LGA advice in “Probity in Planning” published in 2019. This publication was also included in a DCC agenda for Members. The LPP is an important and effective document and contains advice on many of the issues which were raised by the PAS review in 2019 (see Appendix 1). The application of the Protocol by all Members and officers, involved in the planning committee process, would ensure the smooth running of committees and protect all concerned from unwanted scrutiny.
15. Whilst I recognise that the LPP was only adopted in July last year and committee meetings have been held virtually for much of the time since, I am concerned that many Members did not have a good knowledge of its contents nor were all the procedures within it being followed, for example call in procedures, format of committee meetings and the role of officers (see detailed comments below). This must change if the Council is to be consistent and effective in the way it handles planning decision making.

Recommendation

- To raise the profile of the Local Planning Protocol and Code of Conduct amongst Members and officers
- To review the effectiveness of the Local Planning Protocol and Code of Conduct on a regular basis and update as necessary
- To include the Local Planning Protocol and Code of Conduct in any future training of planning committee Members and of officers attending DCC and PSCs.

Reduce number of Members on DCC

16. In our earlier report we recommended that the size of the DCC be reduced however, LBB have decided not to implement this recommendation. Having viewed a recent committee I did not identify that the numbers

of Members present was problematic however, some Members are taking a dominant role and making it more difficult for the chairman to progress the meeting. This is also a problem in some PSC meetings.

Scheme of delegation to be broadened

17. The scheme has been completely reviewed and a revised scheme agreed. This is set out in the Constitution and summarised in the Local Planning Protocol. The revised scheme is a significant improvement and provides clarity for all. Applications are now only considered by the Committee if
- They are subject to a written 'call in' by a Councillor
 - They fall outside of the powers delegated to Planning Officers
 - Planning Officers decide to refer the application to committee
18. It clarifies that major applications only go to the DCC following agreement by the chairman and non-major applications are mainly considered by Plans Sub Committees. On major applications Officers recommend a decision route, and this is agreed by the Chairman and/or the Vice Chairman of DCC within 3 working days of receiving the Officer recommended decision route. Officers usually provide a list every month, but this causes problems with programming particularly now that the DCC is only meeting every eight weeks.

Recommendation

- An Excel spread sheet is sent to the chair/vice chair of DCC at the end of each week identifying the proposed committee dates for major applications.
 - The chair/vice chair should confirm the recommended decision route within 3 working days
 - Applications would be removed from the spreadsheet when determined but would re-appear if appealed
 - The spread sheet would provide the basis for future committee agenda planning.
19. Certificates of Lawfulness applications both proposed and existing use are being considered by the PSCs. At one of the committees I viewed, the application had been called in by a Councillor.
20. These applications seek to establish whether an existing or proposed works are lawful in terms of the current planning legislation. 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. Whilst I recognise that ward Members may have useful local factual information that can assist in the determination of applications for existing use, this does not justify them being determined at the planning committees where the debate was around the merits of the proposal (i.e., the suitability of the size and design of an extension) rather than whether the proposal met a range of legal tests. The determination of the applications should be carried out by the planning and legal officers of the Council.

Recommendation

- The scheme of delegation be revised to confirm that Certificate of Lawfulness applications both proposed and existing are not reported to the Planning Committees but determined by planning officers in consultation with the legal team as required.
- Certificate of Lawfulness Applications are exempt from call in to committee by Members.

'Call ins' to be in writing with clear planning reasons

21. This recommendation has been acted upon with clear requirements being agreed. The LPP requires Members to

- make call in requests in writing
 - give clear reasons for the call in which must be related to material planning issues or because there are *strong* (my emphasis) public interest reasons.
22. 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. Those I interviewed confirmed that not all Members are complying with these requirements.

Recommendation

- Call in requests that are not made in writing should not be acted upon.
- Call in requests must have clear reasons why the application needs a committee decision
- Call ins should only be made by a relevant ward Member or with the agreement of one of the ward Members
- Who has called in the application and the reasons for the request should be included at the beginning of the committee report.
- The Member who has called in the application is expected to attend the relevant committee meeting to speak on the application
- The process be automated using an online form which would be logged on the back-office system and made available to the case officer. The form would
 - require the details of the ward Member, the application number and the reasons for call in
 - include options which would allow Members to indicate whether they would be happy for officers to determine the applications if they were recommended either for approval or refusal
 - require completion of all sections before the request is accepted thereby avoiding any misunderstandings.

'Call in' monitoring to be reported to DCC

23. Clear monitoring reports are now being presented to the DCC showing total call ins and disaggregated data at the ward level. This has confirmed that call ins are most common in a small number of wards and the relevant Members should ensure that they apply discretion when invoking this procedure.

Format of committee agenda to be reviewed including 'Lists'

24. This has been reviewed and the "lists" removed. The agendas are now much clearer and users prefer the new approach.

Officer role at committee to be reviewed including presentations

25. Changes here have been limited. The July 2020 version of the Local Planning Protocol confirms that, for each major application, officers will be the first to address the committee providing an update and a short presentation. Only a limited number of presentations have been given so far but, where they have, users have found them useful, they have concentrated debate on the salient issues and there is a clear benefit to public perception that, when Members debate an item, they have a clear understanding of the issues in front of them.
26. All my discussions with Members and officers confirmed they find presentations very helpful. Similarly, they all agreed presentations should be made for all applications on both the DCC and PSC committee agendas. The only proviso to this was that presentations must be concise.

Recommendation

- That officers present each application on the agenda to the DCC and PSC. The presentation to include
- images of the existing site (where possible) utilising officer photographs or Google Earth or Street View.
- a description of the application proposals including useful images / elevations / plans from the application
- a short summary of the main issues for consideration
- presentations to PSC committee to be no more than 3 minutes
- presentations to DCC to be limited to 5 minutes unless the application is particularly large or complex when a longer presentation can be agreed in advance with the chairman.

27. Planning Officers still appear reticent to interject into debates to provide advice or correct misleading statements and to take a robust role in the meetings if it is required. 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. The Local Planning Protocol highlights and supports this important officer role and is specific that

“The role of Planning Officers at committee is:

- to use professional judgement when recommending decisions on applications and other planning matters.
- to provide professional advice to the committee on planning applications and other matters at any point in the meeting.

If a motion is proposed that contradicts that in the Officer report the Planning Officer should be given the opportunity to give the committee advice on that motion prior to any vote.”

Recommendation

- Chairmen should ensure that the order of proceedings set out in section 7 of the agreed LPP is followed consistently
- Officers should ensure that they fulfil their roles at committee effectively and robustly
- Committee Chairmen and Members should encourage and allow them to do so.

Quality of committee reports to be improved

28. All committees are now operating a revised report template. This includes using images to assist in describing applications. All users of the committees reports confirm that this has been a beneficial change and makes it much easier to assimilate the necessary information in the decision making process.

Recommendation

- Officers to continue to use the new report templates and ensure that images are included where possible to assist Members in understanding the sites and the proposals.

Review of appeal decisions and costs to be reported to DCC

29. This recommendation has been acted upon and a detailed report was last presented to the Development Control Committee on 19 November 2020. Ideally this report should be repeated every six months and significant changes or lessons learned highlighted to Members. Of particular use within the report is comparison with national statistics, especially the levels of appeals allowed which remains above the national average, and the numbers of appeals by ward. This latter analysis highlights particularly well the impact that call in applications have in certain wards in the Borough and emphasises the need for Member training to be kept up to date.

Less emphasis on 'local view' at committee

30. I did not detect any significant change 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.

Recommendation

- Wider training of Members with particular reference to the Local Planning Protocol and the LGA's "Probity in Planning".

Substitutions at committee should not be related to Ward Interest

31. The response to this in the reports to DCC on service improvements is "This could impact on the ability to provide substitutes and may not be necessary as long as other recommendations are followed in respect of Member training and approach"

32. Unfortunately, I obtained anecdotal evidence that this is continuing and occasionally ward Members are "loading" particular meetings. Every effort should be made to ensure that substitutes at the committee meetings are impartial and can be seen to be impartial.

Where motion goes against Officer recommendation, clear reasons for refusal or conditions to be agreed before vote is taken

33. The agreed Local Planning Protocol now requires this but when I viewed committees, held before the Protocol was agreed, votes to overturn officer recommendations were taken and the reasons decided upon after the decision had been made. This is a dangerous procedure; Members may not be clear what they are voting on, and the decision could be open to challenge. The agreed procedure now is that after any debate the Chairman

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

This approach complies with best practice.

34. The Planning Protocol also requires that

"If the officer considers that he/she is unable to give that advice immediately, further consideration of the matter will be suspended and the agenda item will be adjourned so that the officer can bring a report to the next available committee setting out his/her advice."

This reflects the concerns expressed in our previous report and emphasises the need for officers to be able to defer consideration of an application until they can present a full answer to questions raised. This chimes well with the issues discussed in the next section.

Recommendation

- Ensure clear understanding and application of the Local Planning Protocol by all Members and officers at committee meetings.

Deferral of items where there is a risk of losing appeal and/or costs

35. In the PAS report of 2019 (see Appendix 1) we said

“The Committee has a procedure for deferral of decisions to a later PSC which are contrary to officer recommendations to approve (Section 4 of the PSC agenda). 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 decision on the relevant application should however always be made in public. An alternative would be to defer such applications to the next meeting of the DCC. This would emphasise the role of the DCC as the “parent committee”.”

36. This approach has not been adopted by the Council with the report to the DCC stating

“This is potentially too onerous and would create unnecessary delay and additional committee time. This could be dealt with by a combination of better discussions with Ward Councillors during the planning application process and legal and planning officer advice at and before the meeting where appropriate.”

37. This approach remains a 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.

Recommendation

- Implement the recommendations from the 2019 review report.

Review of site visit procedures for committee Members

38. A review has occurred and effective procedures have been reviewed and incorporated in the Local Planning Protocol.

Consideration of use of different room for committee meetings

39. The Council has reviewed this but has concluded that the Council Chamber remains the best location. Consequently, consideration needs to be given to making the meetings as inclusive as possible. Changes have been made due to COVID-19 requirements but further adaptations would be beneficial.
40. The previous report highlighted the need to improve information available to visitors. Understandably with the pandemic, this has not been progressed.

Recommendation

- 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.
- Member seating is placed as close as possible to the public seating area to enhance inclusivity
- 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.
- Information available to visitors to the meetings be reviewed and improved.

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

41. Significant changes have taken place since my last visit. Members are now being involved in pre application discussions with applicants on major and significant applications. Members are finding this very helpful. They have also bought into the culture of trying to resolve issues and improve applications at an early stage, often making them less likely to run into last minute issues at committee and be refused.

Committee should include at least one Executive Member

42. The Council has decided that this is not an option they wish to take up.

Effective compulsory training should be provided for all committee Members including substitutes and a list of trained Members retained

43. The 26 November 2019 Planning Service Improvement report to DCC highlighted a comprehensive Member training plan for Members was being prepared and options for delivery methods were being reviewed. A list of 15 topics which training could cover were identified. Officers were working to provide a Members’ webpage to include information about the Planning team at Bromley, the Local Planning Protocol, a rolling training schedule, information from past training sessions and other useful documents and links, plus key headline planning news in a simple and easy to digest format. This portal has the potential to be very useful.
44. Interviewees confirmed that some training, for example on viability, has since been provided but had not seen the online portal. Further training should be rolled out and an update on the online portal should be provided.
45. I remain concerned that training for committee Members and substitutes is not compulsory. Bromley is unusual in this and strongly encouraging Members to attend training is insufficient to ensure good decision making continues. All those I interviewed which included most of the committee chairmen supported making training compulsory if Members want to be able to determine applications.

Recommendation

- All Members of the Planning Sub and Development Control Committees should be required to have a minimum level of training to include
 - Introduction to Planning
 - The Development Plan and Decision Making
 - Predetermination and Predisposition
 - Probity and Disclosure of Interests
 - How committees work
 - The Local Planning ProtocolSuch training to be compulsory for Members wishing to take part in the debate and voting at these committees.
- All Members be strongly encouraged to undertake other topic based training as may be offered to maintain their levels of competency.

Regular reports on performance of planning and appeals team

46. Since the 2019 review several reports have been presented to the Development Control Committee. These have covered
- performance improvements
 - analysis of 'call ins'
 - application performance including speed of decision making and proportion of delegated decisions
 - outcomes of overturned appeals for major applications
 - appeals resulting in costs
 - detailed monitoring of appeals.
47. The reports are providing Members with important and very useful information. I appreciate that the period since the previous review has been dominated by the difficulties resulting from the COVID-19 pandemic but it is essential these reports are continued and on a regular basis. At present there is no clear pattern of when they are presented to DCC and a programme should be agreed. This is especially important for the report which provides detailed monitoring of appeals, which has a wealth of useful information, and the report which explains why major appeals have been allowed. This latter report is useful training for Members and officers.

Recommendation

- Agree programme for regular presentation of monitoring reports and review of the implementation of agreed actions/performance.

Other Areas of concern / improvement

48. The frequency of DCC meetings is being reduced to once every 8 weeks. Given the number of items the committee must consider this may well be problematic and delay the determination of major applications. Making meetings monthly would help avoid the problem of the meeting on 25 March 2021, when the agenda was far too long with 24 items on the agenda and a report pack of 544 pages.

Recommendation

- Carefully forward plan DCC agendas via the spreadsheet described in paragraph 18.
- Limit scale of agendas by programming DCC meetings for each month and cancel if there are insufficient items for the agenda.

Conclusions

49. The Council has taken a robust approach to improvements since the 2019 report and much good work has been done. Commitment to improvements from Members and officers is strong and will help in carrying the committee process forward. Of particular note are the adoption of the Local Planning Protocol, revised report formats, presentations to committee and Member involvement in pre application discussions. There are still several areas where further improvement can be made and I hope that the recommendations in this report are helpful and that you are able to take many of them forward.

Martin Vink

23 July 2021

Appendix 1: Report by PAS to LB Bromley May 2019

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Introduction

1. With a desire to learn and share best practice on decision-making processes, and considering potential 'designation' by the MHCLG based on major application performance at appeal, the London Borough of Bromley (LBB) requested the Planning Advisory Service to
 - provide a light touch review of the council's Development Control Committee (DCC) and Planning Sub Committees (PSC), and
 - advise whether they are operating effectively.
2. The review has been carried out by Cllr Melvyn Caplan from Westminster City Council, a former leader of that council and currently, amongst other roles, chair of a Planning Sub Committee and Martin Vink, a consultant on behalf of PAS but formerly Development Manager at Ashford Borough Council
3. In delivering the review we identified its scope as set out in Appendix 1.
4. To review the Committee processes in line with the scope, and make recommendations based on an assessment of evidence, we have taken account of the following sources of information: -
 - a) Publicly available material from LBB (Constitution, Committee reports, etc.)
 - b) National best practice guidance
 - c) Reviewers' own experience
 - d) Observations through attendance at the Planning Sub Committee meeting on 28 March and Development Control Committee meeting of 4 April 2019
 - e) 1:1 interviews with Councillors, Council staff, and public stakeholders

General comments relating to Development Control and Planning Sub Committees

5. DC/Planning committees pose a combination of challenges which need to be reconciled in a manner which is effective, fair, and consistent. The role of Councillors on the Committees presents a challenge to the individual. It is often considered to be a quasi-judicial role, but has been described as

"A formal administrative process involving the application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly."

(Local Government Association/Planning Advisory Service: Probity in Planning for Councillors and Officers 2013.)
6. In this role Councillors are expressly being asked to place to one side any party-political interests, and their role as the representatives of a particular ward, and assess, debate, and then determine often controversial planning proposals in the wider public interest of the whole council area, and in line with national and local planning policy. They must do so in a way which demonstrates they have understood their role and have approached the decision point open to considering and weighing the merits of all the material issues.
7. Planning, legal, and democratic support officers of the Council all have clear roles to play in supporting their Councillors in ensuring the DCC and PSCs are efficient, effective, and uphold the highest standards of

decision making. Training, guidance material, report writing, presentations and advice at Committee all need to be effective and regularly reviewed in the light of a changing environment.

8. All councils need to be satisfied that the operation of its Planning Committee is delivering value for money. The council needs to be satisfied that there is a good match between the significance of the decision to be made on each of the applications which form the agenda for each meeting, and the substantial time and resource costs associated with a planning application being determined by Committee.

Background

9. Bromley Borough Council covers an area of 150 sq. Km on the southern edge of London inside the ring of the M25. Development pressures are strong with major developments planned for the town centre and other locations.
10. The Borough has a newly adopted Local Plan (2019) and a number of Supplementary Planning Documents including a Town Centre Action Area Plan, Affordable Housing, General Design Principles, Conservation

Application Performance January 2017 - December 2018

| | Total | Determined in agreed time | Not Determined in agreed time | percentage in agreed time | LB Bromley Target |
|---|-------------------------------|---------------------------|-------------------------------|---------------------------|-------------------|
| Majors | 59 | 48 | 11 | 81% | 60% |
| Non Majors | 5959 | 4940 | 1019 | 83% | 70% |
| Appeal Decisions for applications determined between April 2016 - March 2018 | | | | | |
| | Total applications determined | No of Appeals Allowed | | % allowed | MHCLG target |
| Major Appeals | 75 | 9 | | 12.0% | 10% |
| Non Major Appeals | 6542 | 262 | | 3.7% | - |

Area Guidance, etc. The Borough is also included in the London Plan 2015 and the 2017 draft London Plan. The Borough includes large areas of Green Belt, some Metropolitan Open Land, 45 Conservation Areas plus Areas of Special Residential Character. Protecting this character whilst dealing with development pressures is a significant tension in the council's decision making. The principal planning issues facing the Council are:

- Pressure from increasing housing targets — where any additional homes can be built
- Pressure for school places and locations for new / expanded schools
- Pressure for more development in town centres

- Pressure on existing protected land (Green Belt / MOL)
 - Budget cuts / staffing levels
 - Ability to attract (experienced) staff to Bromley
11. The speed of handling planning applications is good but the quality of decisions (% overturned at appeal - 24 months to the end of March 2018) was 12% for major applications, outside the Government target of 10% which places the Council at risk of designation.
12. The proportion of applications determined by officers (delegated decisions) has increased slightly in recent years to 91%. Given that major applications only account for approximately 10% of all applications and the delegation agreement does not require all major applications to go to the committees, the proportion of decisions that are delegated appears low.
13. The percentage refused is very high which linked to the high levels of applications leads to a large number of appeals. This is not only a significant resourcing issue for the Council but has resulted in 271 appeals being allowed in the period 1/4/16 to 31/3/18. Awards of costs for appeals was £170,000 last year. Does this suggest a restrictive approach to decision making across the Council which is out of sync with decision making elsewhere and which will result in the Council continuing to be at risk of designation as appeals are allowed?

% Applications Refused in 2018

| | % Refused | Number of LPA with higher % in England | Number of London Boroughs with higher % |
|--------------------|-----------|--|---|
| Major Applications | 44 | 1 | 0 |
| Minor Applications | 32 | 19 | 6 |
| Other Applications | 22 | 12 | 6 |

Note: There are 339 Local Planning Authorities in England and 33 London Boroughs

14. Decisions on planning matters, including applications, are made by the Development Control Committee (DCC), any of the 4 Planning Sub Committees (PSC) and officers. Of the 60 councillors at Bromley 31 sit on either the DCC or PSC. Of the 31 only 17 sit on the DCC. Each of the PSC has 9 members with some members sitting on more than one PSC, for example 4 members sit on both PSC 1 and 3 and 5 sit on both PSC 2 and 4.
15. The Committees terms of reference and voting procedures are set out in the Council's Constitution. Members are bound by the Council's general code of conduct and whilst there is a requirement for members to maintain high standards it might be useful to incorporate reference to the 7 Standards of Public Life identified in the Localism Act 2011:
- **Selflessness** – public interest
 - **Integrity** – not open to inappropriate influence/private gain
 - **Honesty** – truthful; declaration of interests and gifts
 - **Objectivity** – use best evidence; impartial; non-discriminatory

- **Accountability** – open to scrutiny
- **Openness** – open and transparent decisions in public
- **Leadership** – uphold and exhibit standards and behaviours

19. In our discussions no reference was made to any specific Protocol or Code of Conduct for Members when handling planning matters. Such Protocols are common amongst other planning authorities and set the framework for the member and officer roles in determining planning decisions.

20. Since our visit we have found, by chance, that LB Bromley did publish a Development Control Guide to Good Practice in 2006 which is still current but no longer issued to Councillors. We appreciate that this document predates the Localism Act (2011) and in many respects is out of date. However, it not only deals with probity issues but also includes useful background and explanation of the way in which the Bromley Planning Committee functions. We appreciate that the Council now use the LGA “Probity in Planning” (2013) booklet as it is more up to date and reflects the Localism Act 2011. We suggest, however, consideration is given to agreeing a revised Protocol for the PSCs and DCC which incorporates the elements of the 2006 document that are still relevant and particular to LB Bromley with the advice in the LGA booklet which recommends Councils adopt a local code for these issues. This would allow members and officers have a clear reference for procedures and approaches which are specific to LB Bromley.

21. Procedures for speaking at the Committees are set out in Planning Division Information Sheet 1.4 available on the Council’s web site.

Assessment

22. The principal driver for us being invited to Bromley was the risk of the Council being designated as a poor performer due to its major appeal record (see 13 above). Whilst the Council has been unfortunate that 4 major allowed appeals related to 2 sites, the very high level of refusal of applications, the resultant high number of appeals, the success rate of appeals supported by further reading of the major appeal decisions and Members’ approach at the committees suggests certain trends, namely

- an overly strong presumption by the council to protecting the local environment over delivering necessary new development
- an unduly strong emphasis placed on “local or ward views”
- an approach to decision making which does not give sufficient weight to the primacy of National and up to date local planning policy
 - decisions taken after the original refusal because some reasons are not defensible at appeal.

We deal with these below.

22. We were only able to see one PSC and one DCC in action. Our overall impression is that whilst local people think the committee represents local level views well, the committees may not be operating in the best interests of the Borough as a whole. The relationship between members and officers appears strained and limits the effective delivery of the service. We set out below our comments and conclusions against the scope of the review set out in appendix 1.

Purpose

- *Is it clear that members of the Committee fully understand their role?*
 - We found:
 - Committees and members who are focused on maintaining the open character of the Borough, its conservation areas and areas of special character.
 - Meetings that are run based on local knowledge, where debate starts with the ward view as opposed to a planning view of the application with subsequent ward input.
 - Committees and members who do not appropriately balance ward/local views with the Borough wide agenda of
 - promoting economic development to generate new income and employment opportunities,
 - providing access to affordable, secure and decent homes
 - enhancing cultural and community activities across the Borough.
 - An approach to new development which does not adequately recognise the demands being placed on the Borough. Repeatedly we heard that Bromley is different from the rest of London which suggests an unresolved tension between delivering local protectionist aspirations and fully engaging with the need to deliver the requirements of the London Plan. This approach is perhaps best summarised by the inspector at the appeal into new housing at the junction of South Eden Park Road and Bucknall Way, Beckenham, when he said

“...But it is clear that Bromley is likely to have to deliver a step change in dpa completions in coming years and that its recent failure to adequately balance the need to exceed the delivery of 641 dpa against a continued blanket protection of all UOS sites is unrealistic and unsustainable if London, the capital city and most prosperous part of the UK, is to achieve anywhere near its OAN (Objectively Assessed Need)...”

We note Council officers consider that the Inspector fundamentally misunderstood the OAN and that the current position is that Bromley has exceeded its housing target and there is nothing to suggest that this will not continue to be the case.
- We appreciate that the recently adopted Local Plan makes allocations for new housing and that the council currently has an adequate 5 year land supply but there could be increasing demands to deliver housing coming from the review of the London Plan and the local desire to protect the current character of the Borough may not be persuasive in forthcoming appeals (although it is noted that Bromley has objected to the draft London Plan and at present it is of limited weight). Indeed, it was not surprising that the representatives of local residents’ societies were complimentary of the approach of the council and its planning committees as their views are often supported by the council’s decisions.
- The size of the Planning Sub Committees is acceptable but as explained above (para 15) the number of councillors involved and the limited cross over of members between each committee does raise issues of consistency.

- The size of the DCC is very large at 17 members and should be reduced to a more manageable size.
 - Paragraph 2.07 of the Constitution lists the functions of the Development Control Committee as
 - Planning and Conservation - responsible for all duties relating to planning and development control,
 - Unitary Development Plan,
 - Highways use and regulation, and
 - Common Land and Village Greens

The Plans Sub Committees are responsible for all powers and duties of the Council as Local Planning Authority.

In other words, the PSCs are authorised to deal with all planning applications whatever their size. With the DCC and PSCs having the same powers to determine applications, there needs to be clarity about which types of applications are referred to the DCC for determination. We were unable to find a clear procedure for this. Indeed, we gained the distinct impression that applications appeared on the DCC agenda in part to satisfy members wishes to have some planning applications to determine at each DCC rather than any structured approach. Consequently, the purpose of the DCC in relation to handling planning applications needs to be clarified. We can see that it could have a role for example determining

- applications which are identified by previously agreed criteria as being large or strategic, or
- applications where the PSCs wish to make a decision which is contrary to officer advice, or
- applications where the PSCs decision could leave the council at risk of a cost award if an appeal was lodged

as well as the other responsibilities currently included in The Constitution.

- *Do the delegated agreement and process for 'call ins' serve to support the Committee members and officers in making best use of their time to look at the 'right' applications?*
- Whilst the percentage of delegated decisions has increased during recent years it is still at the lower end of the scale. Currently the delegation procedure allows all applications to be determined by officers unless the application is for
 - the approval of 10 or more dwellings
 - the approval of any new commercial development whether or not a major application
 - approval of any application resulting from an enforcement case,
 - and any application "called in" by any councillor, whether or not the application is in their ward or an adjoining ward.
 - An application is submitted by a Member or an officer

We saw an application decided by the DCC which was straightforward, with no local representations and was consistent with policy. This could have been determined by a PSC or most effectively could

have been a delegated decision if the Scheme of Delegation did not require all *new* commercial development to be determined by councillors.

- The Scheme of Delegation is too restrictive. For example, why are all new commercial applications and approval of enforcement cases singled out for committee attention? As with other procedures we believe this may be a historic approach and the scheme should now be reviewed.
- We identified a high level of call ins with concentrations from particular councillors and wards. We were surprised that call-ins can be made by any member regardless of whether the application is in their ward or not. In any event, and to avoid any misunderstandings, any request that delegated powers should not be exercised must be made in writing with reasons stating why PSC should determine the application. This approach accords with the council's Good Practice Guidelines (2006) and the advice in "Probity in Planning" (p10).
- Going forward the level nature and source of call-ins should be monitored, reported to the DCC and options for maintaining suitable sized agendas explored.
- *Do members understand the process, and is the information they receive relevant and concise?*
 - Councillors appeared to have a clear understanding of the committee process
 - The agenda format, in particular the various lists, is confusing and staff were not aware of the reasons for it. The Good Practice Guidelines of 2006, provides some explanation but we suggest the format of the agenda is reviewed, in conjunction with
 - a review of the planning officer role at committee (see below)
 - questioning of what constitutes an application meriting special consideration (section 2 of the agenda) - would the public know why these applications are special?
 - a review of the relationship of PSCs to the DCC with perhaps applications, where Members wish to make a decision contrary to the officers' recommendation, standing referred to the DCC
 - improving the quality of reports to the committee (see below)
 - a regular review of appeal decisions and the reasons for appeals being allowed, especially when costs are awarded against the Council.

Format and Process

- *How are applications debated and voted on?*
 - Councillors in the main concentrated on relevant planning considerations.
 - Our discussions and experience of the committees suggest too great an emphasis is given to the "local view". We were told that particular Ward Members put pressure on officers and members to secure refusals in their wards. In addition, there is evidence that ward members appear as substitutes on the PSCs when applications in their wards are listed on an agenda, which is not good practice.
 - We are concerned that ward members are attending as strong advocates for their ward and are also voting on the application. Members should be the champions of their residents, but in most cases should not

decide applications in their own ward. This would reflect the approach advocated in “Probity in Planning” p10.

- Notwithstanding the bias towards the local/ward view, debate kept to the appropriate planning issues.
- There is inadequate involvement of officers in the debate, indeed we have the impression that councillors have a poor opinion of officers and do not welcome their advice at the Committee. Consequently, the officer role is reduced to one of providing updates. The Council’s own Good Practice Guidelines of 2006 provides clear guidance (below) which should be incorporated in the revised protocol we have recommended. It can be updated to include/reflect the advice in “Probity in Planning” by the LGA.

“Officers’ Right to Speak

The Chief Planner or his representative should be allowed to speak first on any item to correct or update the officers’ report, to set the scene and to summarise the gist of his advice. He/she should be entitled to respond throughout the debate, but at the Chairman’s discretion, to correct or amplify any potentially misleading statement by Members. If after the discussion, it appears that some Members are not following the officers’ advice, the officer should be allowed to respond to any new points made and to address the implications of a contrary decision.

Reasons

Since the Chief Planners reports are written several weeks ahead of the committee meeting, it is sensible to allow the Chief Planner or his representative to update his report with the results of any outstanding consultations and late objections. Because the reports are publicly available prior to the committee meeting both applicants and objectors often asked for additional points to be made or factors stressed. To avoid complaints about maladministration, it is essential for the offices to be allowed to amplify the report. On many controversial proposals that have a complex history, it is useful for the officer to point out the salient issues. It is not unusual for Members in debating the issues to make comments that might be interpreted as misleading. This is not intended to be a criticism of Members since questionable information may have been provided by applicants or objectors, or the officer’s report should perhaps have been framed more clearly. In these instances again, it is essential for any such comments to be amplified or corrected by the officers to avoid the decision been based on arguably inaccurate facts, or misunderstanding. It is open to Members to refuse an application that has been recommended for permission, but before the final vote is taken the officer ought to be allowed to speak to clarify any matters or point out the implications of the Members’ decision, as well as comment on any conditions or suggested grounds of refusal."

(LB Bromley Development Control Good Practice Guidelines 2006)

- The Committees were well chaired.
- Voting procedures at the Committee were very clear.
- Care should be taken to ensure, where the motion is different from the officers’ report, that the reasons for refusal or for approval and any necessary conditions are clear before the vote is taken.

- The Committee has a procedure for deferral of decisions to a later PSC which are contrary to officer recommendations to approve (Section 4 of the PSC agenda). 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 decision on the relevant application should however always be made in public. An alternative would be to defer such applications to the next meeting of the DCC. This would emphasise the role of the DCC as the “parent committee”.
- Care should be taken that motions for refusal are always clearly put and well defined to enable officers to formulate effective reasons for the minutes and decision notices.
- *Does the standard, clarity and layout of Committee reports support the Committee process?*
- Good decision making starts with good, clearly understood information.
- We strongly support the recent change to officers providing a clear, well reasoned recommendation to either approve or refuse each application. This approach is best practice and to continue with the previous approach, of providing optional recommendations, is not supported nor is it in accordance with the Royal Town Planning Institute Code of Practice.
- The reports are too long and fail to concentrate on the issues central to a determination of the particular case. In a desire to cover everything, the key issues of policy that are important are not sufficiently prominently highlighted.
- The report should state why the application has been presented to the committee for a decision. If the application has been called-in the report should state by whom and why.
- A precis of consultee comments should be given and not provided verbatim.
- The reports should include maps, plans and drawings which adequately describe the proposal rather than relying on members viewing details online beforehand or by passing a file around the committee table during discussion. This latter practice seems counterproductive as it distracts members from the debate, is not clear to members of the public and assists the perception that the committee does not fully appreciate the issues of particular cases.
- Members should also be encouraged to access the relevant file online prior to the committee meeting.
- Examples we saw which support this change to reports and the introduction of presentations at committee were:
 - decision on whether or not to allow a second dormer window on a front roof line in an Area of Special Residential Character would have been better informed and more robust if photographs of the site and street had been provided in an initial presentation.
 - debate about the height and design of proposed dwellings on a constrained site appeared uninformed, as no graphics were available.
 - debate on whether to allow an increase in the number of dwellings on a site by subdividing previously permitted units would have been better informed if plans and drawings showing the approved and proposed structures had been provided prior to the debate or referred to by officers

when it was clear a decision contrary to their advice was likely to be made. (This refusal leaves the council open to a difficult appeal.)

- *Does the presentation of Committee reports by Planning Officers support the Committee process?*
- There are no presentations by officers at the committees. Instead, a file of plans and relevant information is handed round the members during debate. We found this a particular failing and it must be addressed. We were left with the distinct perception that councillors did not always know the sites referred to nor did they appreciate the design and impact issues arising from the various applications. The lack of presentations does foster poor perceptions of the committees by the public potentially bringing the council into disrepute.
- The committee being provided with an illustrated presentation with site/contextual photographs and relevant plans/drawings would aid the debate and improve the perception for those attending that the applications and their context were clearly understood.
- *What is the process for Councillor site visits, how are views recorded and reported back to Committee?*
 - Our impression is that site visits by the committee are very infrequent and we did not discuss them. The 2006 Good Practice Guidelines confirms that these visits are for fact finding only and the merits of the case should not be discussed. Procedures for agreeing and handling site visits should be reviewed. Consideration might also be given to early site visits for the largest and most complex applications. There is also useful advice on page 15 of "Probity in Planning".
 - For the larger and more complex applications, the absence of clear photographs Plans and 3D images as well as no site visits gives a poor impression of the decision making process
- *Does the Committee chamber layout support the Committee process?*
 - No - see Customer Experience below.
- *How effective are the arrangements for training Committee members?*
 - see Quality and Improvement section below

Customer Experience

- *How is public engagement managed at the Committee?*
 - Speakers at the Committee appreciated the welcome and clear guidance provided.
 - Customers told us, and we saw, the welcoming and inclusive style of the Chairs of the Committees.
 - Speakers seemed to appreciate the opportunity to respond to questions from councillors.
 - Speakers described the room as intimidating (see customer experience below)
 - Customers reported well run, professional and effective Committees.

- Committee agendas are available well in advance and easily accessible for customers via the [mod.gov](https://www.mod.gov.uk) app.
- *How could public understanding of the role, and limitations of the Planning and Development Control Committees be improved?*
 - Using Committee Room 1 instead, unless a very large number of the public are expected to attend, as the layout of the Council Chamber is restrictive and intimidating for those taking part in proceedings. Officers have raised concerns about member security if a smaller room is used but many other Councils hold meetings in smaller more intimate rooms without security issues. Additionally, security staff are on duty in any event should they be needed. This issue should not prevent the Council developing a more inclusive approach to its customers at planning meetings.
 - Customer experience at the Committee meeting is mixed.
 - Customers are clearly directed to the Council Chamber and welcomed by staff.
 - Details of applications that have been withdrawn are displayed as is how to access the Council's public Wifi.
 - The acoustics of the Council Chamber are poor and the layout of the room makes it very difficult for the public to hear.
 - The committees felt very distant from the public gallery.
 - The layout of the tables as "T" meant that the councillors could not be clearly seen and that views of the people on ends of the top table were blocked, making it more difficult for these officers to interact with the committee members.
 - No information is available about of how the Committee will operate or on emergency evacuation procedures. A laminated A4 sheet with this information might prove helpful to the public.
- *How should public representations be managed during the Committee?*
 - The public welcomed the opportunity to address the Committees and answer questions. The 3-minute allowance for speakers is adequate, successful and mirrors many other councils.

Roles and Responsibilities

- *Is the role of Councillors on the Committee, and more widely, understood in relation to the handling of planning applications and ensuring probity?*
 - Member's involvement in applications seems to be solely at the end of the process i.e. at committee. This is often too late in the process and prevents the opportunity for active engagement with the local point of view at a stage when change/improvements to developments could more easily be made. We suggest a more proactive approach to pre-application discussions on major applications involving:
 - meetings with developers attended by members and officers to discuss early ideas and to set out likely local concerns

- presentations to a wider audience of members of the planning committees, again to understand the issues likely to be of concern, and
- on the biggest applications
 - public engagement events, and possibly
 - the presentation of an early issues report to the PSC/DCC to confirm officers are covering all the areas members would wish.

These measures ensure that

- no big surprises happen at the determining committee
- local concerns can be fully considered and where possible ameliorated
- applications are less likely to be refused for reasons that cannot be adequately supported at appeal
- perceptions of the council will change from being highly regulating to facilitating and consequently more in tune with national policy in the NPPF.
- Officers should encourage Ward Members to contact them to discuss potentially contentious applications and members should respond positively to the initiative.
- There is no specific Planning Code of Practice for Members and we believe that the Council would benefit from more tailored advice and procedures. Some advice is provided in the Development Control Good Practice Guidelines (2006) but this should be updated to reflect the changed roles of councillors following the Localism Act 2011.
- Officers should encourage and facilitate the involvement of Ward Members in pre application discussions to ensure early discussion of local views and issues. Their involvement should not be prevented on grounds of commercial confidentiality. Ward members should be trusted to maintain confidentiality.
 - Officers should seek greater opportunities for effective and meaningful member and community involvement in pre-application discussions particularly around major developments.
- *Is the role of the Portfolio Members at Committee understood by all concerned?*
 - Only 3 of the 31 PSC and DCC members are also members of the Executive. This seems quite a low proportion and the council may wish to give consideration to having at least one Executive member on each of the PSC and DCC to ensure that strategic issues are adequately addressed as part of debate.
- *Is the support from officers at the Committee consistent and of high quality?*
 - There is little dialogue between officers and members and little evidence of an atmosphere of mutual trust and respect.
 - Officers should be enabled to provide appropriate advice, clearly explain the relevance of national and local policy and feel confident to advise Members when their approach to an application is difficult to support in planning terms. This approach follows the Good Practice Guidelines of 2006. The importance of having a clear unambiguous professional recommendation cannot be overstated. It reflects both best

practice and the requirements of the RTPI. The previous practice of option recommendations should not be reintroduced.

Quality and Improvement

- *How effective are the arrangements for training Committee members?*
- Training on planning matters is provided but from what we learnt is limited and not compulsory. Effective training should be compulsory for all Members who wish to sit and vote on the PSCs and DCC and to substitute. Additional training on specific topics should also be provided on a regular basis. A list of trained members should be maintained by Democratic Services and available to the Chairs of the committees to ensure that only trained members make decisions. The Standards Committee also has a role to monitor and advise on these matters. It is not sufficient to only rely on induction training; continuing member training for planning members is vital.
- Training could be extended to
 - reviewing appeal decisions particularly major appeals
 - viewing the results of decisions on the ground and evaluating what went well and what didn't.
 - design and place making especially in relation to higher density housing and the implications of the new NPPF
- *What monitoring and review arrangements are in place for the Committee to assess its performance?*
 - Reports to the DM Committee on the performance of the Planning Department and on the results of appeals are sporadic. These should be presented on a regular/quarterly frequency. Reporting on appeals should explain the reasons for refusal and the Inspector's decision which would provide a very good way of examining issues and good training.

Conclusions

23. We found well chaired committees but a decision making process which was not working well. The decisions being made at both delegated and committee level result in very high levels of refusals and too many appeals. Whilst this may in part reflect the particular geography of the Borough, we are not convinced that this is the sole reason. We saw an approach where, amongst other issues:

- The local view was frequently given too much weight
- Members are not adequately fulfilling their borough wide role and determining applications in the wider public interest,
- Ward Members are voting on applications in their own wards,
- Members have little trust or respect for their officers or the advice being provided,
- Officers feel prevented from an active participation in the committee process,
- Too many reasons for refusal are not capable of support at appeal and officers are having to seek committee approval not to defend them.

- too many applications are being called to committee,
- the Scheme of Delegation was not effective and requires review,
- the lack of plans, drawings and photographs in reports and the absence of officer introductions/presentations at committee meetings hampered effective debate and undermined positive perceptions of the Council,
- there is little member involvement in pre-application discussions,
- In the sections above we have identified areas of good practice and made suggestions where improvements would be beneficial identified areas where improvements could be made,
- public engagement is hindered by the size and layout of the Council Chamber.

24. Some of the issues we have highlighted were addressed by the Council's own Guide to Good Practice (2006). We appreciate, with the introduction of the Localism Act and changing attitudes to member involvement, that some of this document is out of date and that more recent advice is given in the LGA booklet "Probity in Planning" (2013). The later booklet advises councils to develop their own codes and procedures and to document these so that all participants in the committee process have a clear point of reference. We strongly urge the Council to revise and update the 2006 document to reflect modern advice and practice.

25. We hope the insights provided are helpful, and that you are able to take forward many of the suggestions.

26. We wish you well for the future.

Cllr Melvyn Caplan and Martin Vink

May 2019

Appendix 1 - SCOPE OF THE REVIEW

The review has considered the following five aspects of the way the Planning Committee functions: -

Purpose

- Is it clear that members of the Committee fully understand their role?
- Do the delegated agreement and process for 'call ins' serve to support the Committee members and officers in making best use of their time to look at the 'right' applications?
- Do members understand the process, and is the information they receive relevant and concise?

Format and Process

- How are applications debated and voted on?
- Does the standard, clarity and layout of Committee reports support the Committee process?
- Does the presentation of Committee reports by Planning Officers support the Committee process?
- What is the process for Councillor site visits, how are views recorded and reported back to Committee?
- Does the Committee chamber layout support the Committee process?
- How effective are the arrangements for training Committee members?

Customer Experience

- How is public engagement managed at the Committee?
- How could public understanding of the role, and limitations of the planning Committee be improved?
- How should public representations be managed during the Committee?

Roles and Responsibilities

- Is the role of Councillors on the Committee, and more widely, understood in relation to the handling of planning applications and ensuring probity?
- Is the role of the Portfolio Holders at Committee understood by all concerned?
- Is the support from officers at the Committee consistent and of high quality?

Quality and Improvement

- How effective are the arrangements for training Committee members?
- What monitoring and review arrangements are in place for the Committee to assess its performance?