

DEVELOPMENT CONTROL COMMITTEE

Minutes of the meeting held at 7.00 pm on 8 February 2011

Present:

Councillor Alexa Michael (Chairman)
Councillor Charles Joel (Vice-Chairman)
Councillors Reg Adams, Douglas Auld, Nicholas Bennett J.P.,
Lydia Buttinger, Peter Dean, Simon Fawthrop, Peter Fookes,
Will Harmer, John Ince, Russell Jackson, Paul Lynch,
Mrs Anne Manning, Russell Mellor, Tony Owen and
Richard Scoates

Also Present:

Councillors Jane Beckley, Julian Benington, Stephen Carr and
Michael Turner

76 APOLOGIES FOR ABSENCE AND NOTIFICATION OF ALTERNATE MEMBERS

Apologies for absence were received from Councillors Katy Boughey and Eric Bosshard; Councillors Nicholas Bennett J.P. and Tony Owen attended as their alternates respectively.

77 DECLARATIONS OF INTEREST

There were no declarations of interest.

78 CONFIRMATION OF THE MINUTES OF THE MEETING HELD ON 13 JANUARY 2011

RESOLVED that the Minutes of the meeting held on 13 January 2011 be confirmed and signed as a true record.

79 QUESTIONS BY MEMBERS OF THE PUBLIC ATTENDING THE MEETING

No questions had been received.

80 PRESENTATION - WORK OF THE PLANNING INSPECTORATE

The Chairman introduced Ben Linscott, Assistant Director of Planning at The Planning Inspectorate who gave a presentation on the work undertaken by the Inspectorate and how that work impacted on Bromley.

Mr Linscott had been employed by the Inspectorate since 1996, and for the past five years had worked in a managerial capacity where his role involved

administering the S.78 appeals service. He had also been heavily involved with changes to the appeals service. Mr Linscott was responsible for overseeing groups of Inspectors, managing their casework and the areas in which they worked.

Members were informed that a particular challenge for both local authorities and the Inspectorate was the rapid change of policies. The Inspectorate strived to ensure that Inspectors were aware of all changes.

Mr Linscott outlined the principles and procedures to which the Inspectorate had adhered since the service began. The majority of appeals were made by written representations but could also be made by holding an inquiry or a hearing. 25,000 appeals were received each year. The principles of openness, fairness and impartiality govern all public decision-making by the Inspectorate. Inspectors need to be clear that the right evidence has been submitted to enable them to reach an informed decision.

Many Inspectors were also planners but this was not a prerequisite for conducting appeals. The law does not require Inspectors to have expertise in the field of planning but they should be capable of making an informed judgement.

200 cases per year were challenged through the High Court where judgement on an appeal was thought to be incorrect.

A thorough review of the appeal process was undertaken 4-5 years ago resulting in a more proportionate process where each category of appeal followed its own procedure. The review also resulted in improved customer focus and better use of resources. Many leaflets and guidance documents on the appeals service were now available to the public via an online planning portal.

Mr Linscott reported that no complaints against decisions had been received since the new procedures had been adopted.

The Advisory Panel on Standards (APOS) which previously measured Inspectors' performance and reported to Ministers was now defunct.

A charging system for appeals was introduced by the 2008 Planning Act but was never acted upon. The Government proposed to implement a charging scheme and a consultation document would be issued early in 2011. The charging scheme would apply to S.78 planning appeals and advertisements but would not apply to enforcement.

As a result of the changes to appeal procedures, no further material can be accepted by the Inspectorate once a Committee hearing has taken place. Only the required documents and case documents (as put previously to Committee) would be accepted. With regard to the Householder Appeal Service (HAS), one main issue of concern was the disadvantage officers felt when their recommendation had not been accepted. To ensure that the

Inspector understands the reason for refusal, it should be explained clearly in the minute of the meeting as this is the final document of Committee procedure that is admissible to the Inspectorate.

Mr Linscott reported that 10,000 hours of officer time had been saved since the introduction of the HAS. Any HAS case was available online for the public to view and it was anticipated that the entire service would be available online over the next three years. The number of complaints received in relation to the HAS was lower than for any other casework.

A question and answer session then took place.

Councillor John Ince referred to instances where the Local Authority had refused an application and it had gone on to appeal with a perfectly reasonable decision for refusal. He enquired what weight the Inspector gave to planning authority guidance having cognisance of the GLA guidance which may contain slight differences.

Mr Linscott responded that under S.38(6) of the Planning Act, there must be a Development Plan. Unless material considerations indicate otherwise, applications for development would be decided upon by the Development Plan. The UDP was the Local Authority's plan and the Mayor of London had the London Plan (which was also part of the Development Plan). It was up to individual Inspectors to decide which of the two development plans should apply. The PPS was the most recent Government policy document to be affected by changes. There was a Development Plan element for every type of case and the Local Authority would need to explain fully why the Local Authority policy had greater weight attached to it.

Councillor Charles Joel commented that the general public were unaware of the charges to be introduced and asked Mr Linscott to quote an approximate figure for the charge for a two storey extension. Councillor Joel also asked who would be liable for costs.

Mr Linscott replied that the Inspectorate does not make policy. Figures would be based upon differing caseworks and would vary if the appeal was carried out by written representations, a hearing or inquiry. The fee would be paid by the appellants not the Local Authority.

Councillor Joel sought clarification that win or lose the appellants would be liable to pay.

Mr Linscott replied that talks were in progress on that subject.

Councillor Mrs Anne Manning raised a concern in regard to the Householder Appeals Service where there were no written representations, hearings or inquiries. She commented that if the Committee decided against officer recommendations, the minutes of the meeting generally did not clarify the thinking behind the reason for refusal.

Members were informed that the proportionality of the S.78 procedure was assessed and found to be excessive and therefore the decision was made to review the process rather than fully repeat it. Representations were usually always the same. In reviewing the process, local authorities were asked to work with the Inspectorate to discuss issues of concern. One concern was the overturn of officer recommendation. The minutes should briefly explain the reasoning so the Inspector could understand the appeal or an appellant would know what needed to be corrected. There had been cases where Inspectors had agreed with officers.

Councillor Mrs Manning reported that in one particular case, an Inspector had picked up on the fact that the Council had not included a transport ground of refusal; he had then introduced one. Councillor Mrs Manning asked why the Inspector had done that.

Mr Linscott said the Householder Appeals Service was a risk. Case Officers were always willing to listen to a special pleading. He said Local Authority officers could talk to his Case Officers. S.79 of the Act gave the Secretary of State and therefore Inspectors, power to address further consultation. Inspectors could not refuse without giving proper consideration to a case.

Councillor Tony Owen was concerned with matters of visual inspection and commented that there were times when one Inspector could make two different decisions on two separate occasions in the same way that two Inspectors could make two different decisions. He stated there had been instances where the wrong decision had been made. Councillor Owen commented that the Inspectorate's 'quality' was geared to time but he was interested in the quality of decision-making. The Local Authority had no way of taking Inspectors to task and he wanted to know how bad decisions taken by Inspectors could be eliminated.

Members were informed that the process undertaken was intended to work by parties putting the best case forward with a description of what was right or wrong. The Inspector should reach a reasoned and reasonable judgement. Mr Linscott said he had visited sites where a decision had not been agreed with. He said the Inspectorate gave good, supportive training to their Inspectors e.g. design skills and competence training. He said the Inspector should have explained his decision. If complaints were received about an individual Inspector, then he would know there was a problem. Mr Linscott's role was to pinpoint from where the problems emanated. Each case was different and he was always looking to find better ways of measuring Inspector skills.

Councillor Russell Jackson enquired about consistency and the different emphasis placed on design between local authorities. He asked Mr Linscott if he saw trends under different grounds from different local authorities across the country.

Mr Linscott replied that he could not understand why design was not higher up local authority agendas. In accordance with PPS1, local authorities should

look to achieve good design; it should be the starting point. The Inspectorate worked to a Design Champion Principle. In that respect, it was up to the leader of a group to imbed designer skills in Inspectors around the country. Inspectors should set design standards high. If there was doubt about a design, then there was good reason to refuse. Unfortunately, design was usually the worst subject for local authorities to explain.

Councillor Simon Fawthrop spoke about the principle of fairness, commenting that the planning system was not fair. If an application was granted, there were no grounds to appeal. Councillor Fawthrop was of the opinion that expertise was the problem not the solution. He stated that where the Local Authority would listen to all parties and judge both ways accordingly, Inspectors would listen to experts but not to laymen. He declared this to be a major problem.

Mr Linscott responded by saying the Inspectorate was moving towards a non-expert model of Inspectors. He said he did not think of himself as an expert but as an impartial individual and stated that at hearings, all individuals carried as much weight as each other and that he listened to all of them equally.

Councillor Fawthrop commented that the online Planning Portal was “appalling” as it only permitted a person to upload 5 mbs of information; one picture alone could take up to 4 mbs. He thought the Inspectorate should do away with set limits.

Mr Linscott replied that the Planning Portal did not belong to the Inspectorate but was a Communities and Local Government (CLG) owned service. He agreed that it was frustrating and recommended that officers direct their concerns to the Portal Group who manage the service. He emphasised that the Inspectorate wanted to work online and was working towards running its own internet service.

Councillor Peter Fookes was glad to learn of the charging system for appeals. He asked three questions as follows: (a) whether the Council could reclaim costs; (b) how many Inspectors there were; and (c) how the work was allocated.

Members were informed that there were 250 salaried Inspectors who were allocated work as locally as possible, usually within a 40-50 mile radius. In this way, Inspectors got to know local policies. They were given cases proportionate to their skills. There were also 80 non-salaried Inspectors who were called upon to conduct lower rated work. The overall cost of casework was an estimated £35m. The Inspectorate needed to save 35% of that figure over the current spending period whilst maintaining quality. Mr Linscott said he could not comment on the matter of charging and claims but information would be available once the consultation period had ended.

Councillor Russell Mellor reported that there was one particular site which was refused on 100% solid grounds. The applicant appealed and

subsequently the appeal was won. Councillor Mellor asked for Mr Linscott's views on this as he thought it made a mockery of planning law.

Mr Linscott responded by saying he could not comment on individual cases but was happy to look into the matter if Councillor Mellor referred the matter to him. Mr Linscott stated that the Local Authority Development Plan held weight under the Act and material considerations came into play. He said that if the Inspector had been irrational, then there was a problem.

Mr Linscott was asked how complaints from particular areas were picked up. Mr Linscott replied that there was no law of precedent. An appeal would be determined on the merits of the case. He declared that he had never been led by precedent.

In answer to the question of what would happen if two Inspectors gave different decisions on the same site, Mr Linscott stated that the onus would be on the two Inspectors to explain why their opinions differed.

Councillor Fawthrop said he could not understand why the cost regime was not pursued more. The appellant could apply for costs if the appeal was won. He stated that the Local Authority should pursue a cost regime. He observed that if an Inspector made an inconsistent decision to another Inspector, then there would be a risk of costs. Fewer Inspectors would save costs. Councillor Fawthrop suggested that if an application had gone to appeal and had subsequently been turned down, then no further appeal should be made on the same site for a period of 10 years. He claimed this would reduce the number of appeals.

Mr Linscott replied that this was something that could be lobbied with the local MP.

The Chairman thanked Mr Linscott for attending the meeting and for giving a very informative presentation.

RESOLVED that the Chief Planner write to the owners of the Planning Portal in regard to the inadequacy of the service provided.

**81 FORMER BLUE CIRCLE SITE: JOINT USE EDUCATION
PAYMENT 106 CONTRIBUTION**

Pending receipt of advice from Counsel, this report was withdrawn from the agenda.

**82 LOCAL REQUIREMENTS FOR THE VALIDATION OF
PLANNING APPLICATIONS**

At a meeting held on 23 November 2011, the Development Control Committee agreed that consultation be undertaken on the proposed revision of local requirement lists (Minute 60, page 38) . Local lists enabled officers to

assess particular planning applications properly and to invalidate those which were not accompanied by the relevant material stipulated on the list.

The current report contained comments received during consultation with statutory consultees, residents associations, agents and other relevant bodies. The local information requirements were set out in a matrix attached to the report.

The Chief Planner informed Members that since the report had been published, further requirements had been established. A revised version of the matrix was circulated to Members and is attached hereto as Appendix 1.

With reference to the requirements for marketing evidence, Councillor John Ince stated that applicants often claim that a proposal had been marketed for years but had little evidence to support such a claim. The Chief Planner responded that the requirements of the list would ensure that this did not happen in future.

Referring to the requirements for Lighting Assessment, Councillor Simon Fawthrop indicated a desire for the reduction in night lighting and light pollution. The Chief Planner stated that light pollution was a subject to be considered. However the matrix outlined specific documents required; it did not deal with policies.

Councillor Tony Owen commented that there was a need for submitted drawings to be clear and accurate and that this should be alluded to within the Section Drawings and Levels category. Councillor Reg Adams agreed and stated that references to dimensions should also be included. The Chief Planner stated that the onus was on applicants to submit good plans and that the Local Authority should recognise when a bad drawing had been received. There was no requirement for written dimensions to be submitted. The Matrix was not exhaustive; it existed to 'flag up' those requirements which were absent in the past.

Members were reminded that the matrix was now before Committee for adoption, having previously been considered by the Development Control Committee at a meeting held on 23 November 2010. If further changes were to be made, the document would need to go through the whole consultation process again.

RESOLVED that the local information requirements set out in the revised matrix be adopted.

83 CONSULTATION ON MAYORAL COMMUNITY INFRASTRUCTURE LEVY - DRAFT CHARGING SCHEDULE

Members' views were requested on the draft consultation document and charging schedule issued by the Mayor of London as an initial step to setting up a London-wide Community Infrastructure Levy, under powers set out in Part 11 of the Planning Act 2008 and the Community Infrastructure Levy

Regulations 2010. Money raised would go towards London's share of the Crossrail funding package agreed with Government. London Boroughs were asked to respond with their views by 1st March 2011.

The report was initially considered by Members of the Executive at a meeting held on 2 February 2011. Members had made a provisional decision but requested an extension of time to allow for full and meaningful discussions. A copy of the Minute was circulated at the meeting.

Paragraph 3.2 of the report set out three zones in which London boroughs had been placed, together with the rate payable for each zone.

Although in principle, the Chairman was in favour of Crossrail, she was concerned that charges to Boroughs should be proportionate to the level of benefit gained by each. As Bromley was least likely to benefit from Crossrail, members were surprised to note that it had been banded in zone 2 with a levy of £35 per square metre whereas Bexley (which would benefit more from Crossrail as it would reach its Borough boundary) had been banded in Zone 3 at £20 per square metre.

Councillor Charles Joel was against the proposed levy and alluded to the consortium set up when the Channel Tunnel was developed. Councillor Joel suggested that the Crossrail development should follow the same route.

Councillor Russell Mellor was bemused by the levying of charges for Crossrail as he was led to understand that funds were already in place. Councillor Mellor suggested that the Mayor's reasons for the charges be sought.

Councillor Nicholas Bennett J.P. stated that the proposal amounted to extra taxes on developments within the Borough. Councillor William Harmer agreed, commenting that development should be encouraged not deterred.

Councillor Nicholas Bennett J.P. also commented that Crossrail would not bring any benefits to Bromley and could, in fact, take business away from the Borough.

A map of the Crossrail route was circulated to Members (attached as Appendix 2) and it was noted that Crossrail did not reach South London at all.

It was estimated that a total sum of £46m could be collected by 2026.

The Chief Planner explained that banding was based on house price values within each zone and used as the basis for measuring a fair charge.

RESOLVED that:-

- 1) the Council write to the Mayor of London highlighting the disproportionate charge levied to boroughs, against the projected benefits of Crossrail to each. The zonal banding structure should be revised so that it properly reflects the benefits to be gained by the**

London Boroughs. The Mayor's attention should be drawn to the Fares Fair Judgement 1982;

2) it be noted that the introduction of CIL would take benefits away from Bromley

3) the comments and recommendations outlined above be referred to Members of the Executive.

The Meeting ended at 9.08 pm

Chairman