

Corporate Scrutiny Committee – 17th September 2020

Report of the Director of Regeneration and Enterprise

Planning Services – Public Consultation

Purpose

1. To clarify the processes and procedures in place for the Planning Service in respect of public consultation and involvement in the planning process.

Recommendation

2. To endorse the processes in place and advise on any suggested improvements in respect of public consultation/engagement.

Background

3. The Planning Service is responsible for all planning related matters within the borough. This includes the formation of local and regional Policy; providing general planning advice; determining planning applications; all matters in respect of protected trees and investigating and actioning enforcement matters.
4. This report focusses on the Development Management aspect of the service.
5. A number of the above functions involve extensive public consultation and interaction. This report intends to summarise those consultations in order that Members are aware of the various avenues of support and can advise on the suitability of the existing measures.
6. It is important to note that many of the functions that are undertaken are statutory and are tightly regulated. Consequently, the Council's planning service has little discretion on some of the procedures it must follow.



Planning Support

7. The role of planning support is varied but in essence the team undertakes the following functions:
- validation of all newly received applications;
 - contact with applicants and agents to rectify any issues with submissions;
 - calculate the appropriate fees and receipt all payments;
 - send out all consultation paperwork including neighbour notifications, statutory consultations and site notices;
 - arrange publication of newspaper notices;
 - receipt, and where appropriate acknowledge, all application responses;
 - prepare decision notices;
 - prepare the Development Control Committee agenda and papers;
 - log and process all planning appeals, including liaison with the Planning Inspectorate;
 - act as the first line of response to all customers to the service and provide a similar service for Building Control, Enforcement, Policy and Property Services.
8. In order to provide some context on the extent of this workload, between 1st April and 31st July 2020 the team have logged 249 pre-application enquiries; registered 848 planning applications; responded to 2,920 email requests, and taken 13,100 external telephone calls. During the period they also received 21 formal compliments. As members will appreciate this 4 month period was during a national lockdown and subsequent working restrictions, thus undertaken largely via remote working.

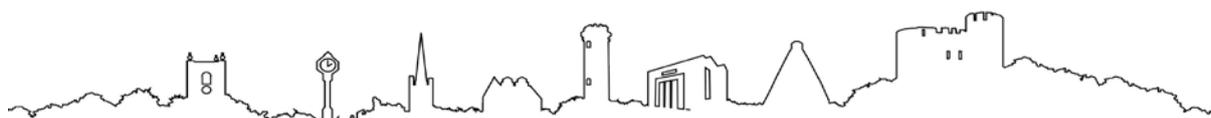
The Planning Application Process

9. At present there are 36 planning application types split into 3 categories Major, Minor and Other, each application requires differing levels of information in order to be determined and have different determination dates ranging from 28 days to 13 weeks.
10. When following the legislative requirements 23 application types require no customer consultation to determine the application (certain applications may require statutory professional advice). Of the applications that do require consultation, over the past few years the government requirement has reduced and in many cases only neighbours that touch the boundary of the proposed development are required to be notified. Large developments or any application next to open land or the highway will also require a site notice and applications within the Major category also require a notice to be published in the local press. In addition, certain application types require statutory consultations from industry professionals such as Highways, Environmental Health, Conservation or the Emergency services.

11. During the 4 month period 1st April to 31st July 2020 the service sent out 32,064 customer consultations and printed and displayed 144 site notices. 694 responses were received to these customer consultations. This equates to approximately 2% response rate.
12. Also during this period 7,958 statutory consultations were sent out. 111 new enforcement cases were logged and acknowledged; and 249 pre-application applications were logged and acknowledged. Pre-applications are confidential between the authority and the applicant therefore no consultations are carried out.
13. Customer consultations are geographically selected from within the planning system, officers can add additional consultees if required. If a customer has submitted an objection or support for a planning application all details of the submission are published to the Council's website and the information will be used by the planning officer when determining the application. If a customer has supported or objected to an application to be determined by the Development Control Committee each customer is re-contacted to inform them of the process and give them the opportunity speak at the committee meeting. If an application is subject to an appeal once again any customer who made a representation on the application will be contacted to notify them of the appeals process.

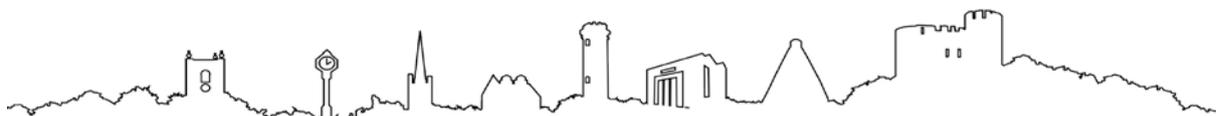
Additional Consultation Tools

14. All planning applications are published on the Council's website and are available to search or view free of charge. In addition, a weekly list of newly registered and determined applications is available from the website.
15. On the home page of the website is an option to sign up to "my alerts". Once registered residents can enter their postcode and can select items from a list including planning and building control applications. The user can then set a radial boundary from 100 yards to miles (if required). Once preferences have been determined the customer will be alerted by email when an application in their area is validated, the link will take them directly to the planning/building control application pages. Anyone can then submit a representation on an application provided it is still to be determined. All such representations will be considered as part of the assessment process.
16. A Planning/Building Control ChatBot was recently introduced to the website (during the COVID-19 lockdown period). It is available to all website users and assists users who can ask it a question either by typing in the question or by using Alexa, Cortana or other voice activation and the system will search for and display the answer.
17. All members received automated emails via our Query Build programme. These emails include attachments which detail all new, determined or appealed applications within their wards. These reports can also be extended to show new enforcement applications if required.



Role of Planning Officers

18. In addition to all of the above points of contact planning officers visit every site which is the subject of a planning application and respond to each and every telephone or email query on these applications. This is considered to be an essential part of the assessment process.
19. In addition Dudley's planning service is one of the few services who offer a duty officer service from 9am-5pm Monday to Friday. Most other Local Planning Authorities either offer a much reduced period or no service at all. The duty officer post is manned by a planning officer at all times. Prior to the Covid-19 pandemic this service also assisted customers at the reception at 4, Ednam Road.
20. As one might expect, most customer contacts in respect of planning applications are objections. Whilst officers will always consider the extent and reason(s) for the objections, their role is to balance those objections against all other representations received and against national and local policies and guidance. As a consequence regardless of the number of objections to a scheme it may still be approved. Only objections which are considered to be "material" in planning terms can be considered. A list, although not exhaustive, of what may be considered to be material and matters that would not be considered material is included at the back of the Development Control Committee agenda. For information that list is attached as an appendix to this report.
21. Where planning applications receive significant representations which conflict with the recommendation of the planning officer, the decision will usually be made by the Development Control Committee.
22. As well as assessing formal applications and providing general advice as detailed above, all planning officers work collectively on providing advice to applicants in respect of informal pre-application submissions. This process is intended to assist applicants by advising them on the likelihood of an application being supported if it were submitted as a formal application. Officers use their experience and expertise, and the policies and guidance in place to recommend any alterations to schemes increasing the likelihood of approval being granted. It is not always possible to find the necessary amendments to make a scheme acceptable. In such instances the applicant is provided with an honest appraisal and is entitled to still make an application and await the outcome. If necessary they also have the appeal process to utilise.
23. Finally, there may be a perception that officers support applicants over local residents and businesses. Whilst it is true that the vast majority of applications are approved, this is understandable given the context of the above explanation. Many schemes are improved during the informal stages and thus are more likely to be approved when formally submitted. Also, there is an abundance of advice on the website and provided by the means described in this report which allows applicants to design their schemes so as to comply with the various requirements.



24. The most important factor which needs to be understood is the “presumption in favour of development”. This is a fundamental principle of the planning system. It essentially means that if the Local Planning Authority wishes to refuse an application that it **must** have significant and demonstrable reasons to do so. It must also be satisfied that those concerns cannot be overcome by the imposition of conditions.
25. When the applicant feels that the Council’s refusal is unwarranted they have the right to appeal to the Planning Inspectorate who will independently assess the proposal and may overturn the Council’s decision and approve the application. The Inspector may also award costs against the Council if he/she feels that the decision was “unreasonable”.
26. In this context the perception is that residents’ views are not given the importance they deserve is understandable, however the limitations of the planning process and the overall intent to support sustainable development explains why most applications are approved.
27. Not to dismiss residents’ concerns, officers will always respond to complaints or queries following decisions and endeavour to explain decisions made. The corporate complaints procedure can also be used.
28. If members are unhappy with the service being provided or require clarity on decisions being made, the first port of call should be the Planning Manager, Carl Mellor, who will ensure that the necessary attention is given to those concerns and a response provided.

Best Practice

29. The Planning Service is always looking to adapt to changes in legislation and the needs of our customers. Striving for continual improvement is imbedded. This is demonstrated by our attempts to liaise with and learn from other authorities who lead in specific areas. We liaise with colleagues across the country to learn from their experiences and determine whether they would work in Dudley.
30. It should also be noted that we are regularly contacted by others who consider us to lead in a number of areas ourselves. The Planning Support team has frequently hosted other authorities to look at our processes and procedures. This includes how we efficiently validate and register applications and how we use workflow principles and processes to improve the speed and efficiency of the planning process. This accounts for our excellent performance statistics which are amongst the best in the country.
31. We have a strong relationship with the Planning Advisory Service (PAS) who work closely with the Ministry for Housing, Communities and Local Government (MHCLG). We are considered a “Friend of PAS”. As a consequence, we are

invited to events and discussion groups around best practice and improvement techniques.

32. We have also been cited as MHCLG as best practice nationally for Householder Local Development Order (LDO). That procedure gives residents extended rights to do works to their homes without the necessity to go through the formal planning process, provided they adhere to our design standards.

Government Consultation on Changes

33. On 6th August 2020 the government published a White Paper entitled “Planning for the Future”. This is at consultation stage and all responses must be received by 29th October 2020.

The paper is extensive and if the measures proposed are adopted will have a significant impact on the planning process for years to come. The suggested changes which relate to the Development Management aspects of planning are summarised as follows:

Extension of the Permission in Principle (PIP)

It is proposed to extend this scarcely used provision which allows the granting of Permission in Principle to certain developments. The extension proposes for this to apply to all housing-led development (with some exceptions). The consequences would be that there would be no requirement for a planning application and consequently no public consultation on the principle of that development. An application would still be needed to determine the details of the scheme but at that stage the principle would have been agreed.

Increasing the threshold for affordable housing contributions

The current threshold is 10 units. This would be increased to 40 or 50 units. The consequence would be that no contribution or provision of affordable housing would be required until meeting this higher threshold. As the vast majority of sites in Dudley are smaller in size then this would mean a significant reduction in the provision of affordable housing for residents.

Removal of Section 106 agreements and/or Community Infrastructure Levy (CIL) and replacement with an Infrastructure Levy

The Infrastructure Levy would only need to be paid once a development has been completed and occupied. This means that any infrastructure required to support development would have to be funded via other means. It may mean that local authorities have to borrow money to put the infrastructure in place before the developments are completed and the money is recouped. The present system requires payment on commencement which assists with infrastructure delivery to minimise impact on existing infrastructure and communities.



Removal of Development Management Policies from Plans

These local policies would be replaced by national standard versions. Whilst it is not clear how this will be implemented there would be concerns that the ability of local authorities to dictate the way in which their areas develop would be significantly reduced.

It is proposed to place the 8 and 13 week determination periods on a statutory footing and to incentivise determination within those periods; two proposals included are an automatic refund of the application fee and deemed granting of an application for failure to determine within statutory timescales. This will increase pressure on planning services to make speedy decisions and may be at the cost of public consultation.

More Digital Engagement

Greater digitisation of the planning application process, including shorter and more standardised planning applications, and standardisation of technical supporting information and national planning application registers.

New digital engagement processes to improve the user experience and engagement for example to enable users to submit comments and visualise emerging proposals whilst on-the-go on a smart phone.

34. Proposed actions

Officers would value Members suggestions on improvements to the way in which the service liaises with its customers and stakeholders. It is suggested that a working group may be convened to consider improvements. Some suggestions include:

- a) Better use of the Council's Communications and Public Affairs Team (CAPA) to inform users of the role of the planning service and how they can access and influence it;
- b) Provide a formal response to "Planning for the Future" White Paper (potentially as part of a joint response with Black Country colleagues);
- c) Promote member contact with the Planning Manager to address specific operational issues when they arise.

Finance

35. Due to the regulatory nature of the planning process, the methods of consultation are standard and any consultation over and above that required in the legislation will have an impact on cost and resources.

Law

36. The over arching legislation which underpins the planning process is the Town and Country Planning Act 1990 (as amended). There are numerous other pieces of legislation and guidance which details how Local Planning Authorities must administer the planning application process.
37. Local planning authorities are required to undertake a formal period of public consultation, prior to determining a planning application. This is prescribed in Article 15 of the Development Management Procedure Order (as amended). There are separate arrangements for applications for permission in principle which are set out in Article 5G of the Town and Country Planning (Permission in Principle) Order 2017 (as amended).
38. Applications for prior approval for development which is subject to Permitted Development Rights which are set out in Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Equality Impact

39. The proposals take into account the Council's Policy on Equality and Diversity. As a part of all consultations all reasonable efforts will be made to ensure that anyone can access the information required and make any representations they wish.

Human Resources/Organisational Development

40. It is considered that by providing the range of sources and methods of communication that the service continues demonstrates a commitment to improving service development.

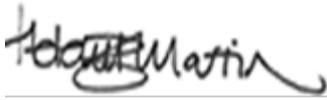
Commercial Implications.

41. There are not considered to be any commercial implications as a result of this report.

Health, Wellbeing and Safety

42. This report relates to the whole of Dudley borough and is intended to positively involve and engage with all residents, businesses and visitors. The objective is to ensure that communities are fully involved in the shaping of the borough and on decisions that affect their neighbourhood.



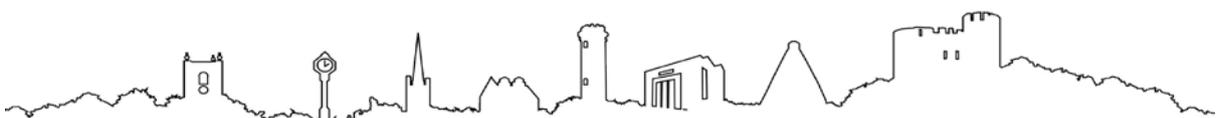


Helen Martin
Director of Regeneration and Enterprise
Strategic Director Place

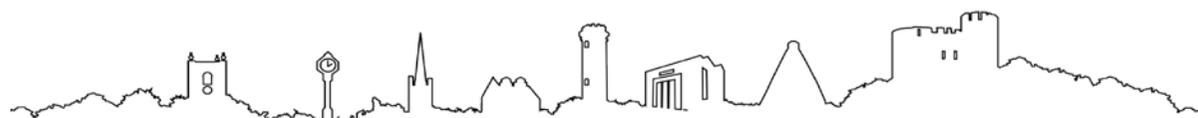
Contact Officer: Carl Mellor
Telephone: 01384 814157
Email: carl.mellor@dudley.gov.uk

List of Background Papers

List of Material and Non-Material planning considerations



Material considerations	Non Material considerations
<p>Layout: Does it reflect the character of the area? Does it protect existing residents' amenity? Does it provide sufficient amenity space? And does it protect businesses/future residents from noise/odour/dust complaints?</p>	<p>Market competition: competition with centre in terms of the requirement for a sequential approach to town centre development is material, but general competition with local shops or businesses is not.</p>
<p>Design and appearance: materials, scale, massing, style of development in terms of proportions, vertical or horizontal emphasis, heights. Appropriate to host building, immediate neighbours and wider street scene.</p>	<p>Loss of view: unless you own all of the land between you and the view, you have no right to it.</p>
<p>Landscaping: Is this appropriate, sufficient, particularly if forming a screen or providing some form of mitigation?</p>	<p>Loss of property value</p>
<p>Highway safety: Can safe access and egress be made? Is there sufficient car parking? Can the site be serviced by fire engines, bin lorries and delivery vehicles?</p>	<p>Matters covered by other legislation</p>
<p>Impact on heritage assets/nature conservation: Does the development have a positive, neutral or negative impact on heritage assets? Can the impact be mitigated through the provision of enhancements elsewhere?</p>	<p>Matters that can be adequately controlled by the imposition of a suitably worded condition</p>
<p>Planning history: Has a similar scheme been approved/refused before? Is there appeal history.</p>	<p>The fact the application is for a retrospective development. Development without consent is not unlawful (with a few exceptions). It only becomes an offence once formal</p>



	enforcement action is taken and the recipient of a notice fails to comply.
	The fact that the application is a repeat application (repeat non-amended applications can, in exceptional circumstances, be refused to be registered but once registered they must be considered on their merits.
	The fact that the developer/applicant has a history of non-compliance with conditions/consents. Non-compliance is dealt with through the planning enforcement process, not through the decision making process.
	What may or may not happen as a result of the decision in the future.

